

# **Procurement Policies and Procedures Manual**

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**2022**

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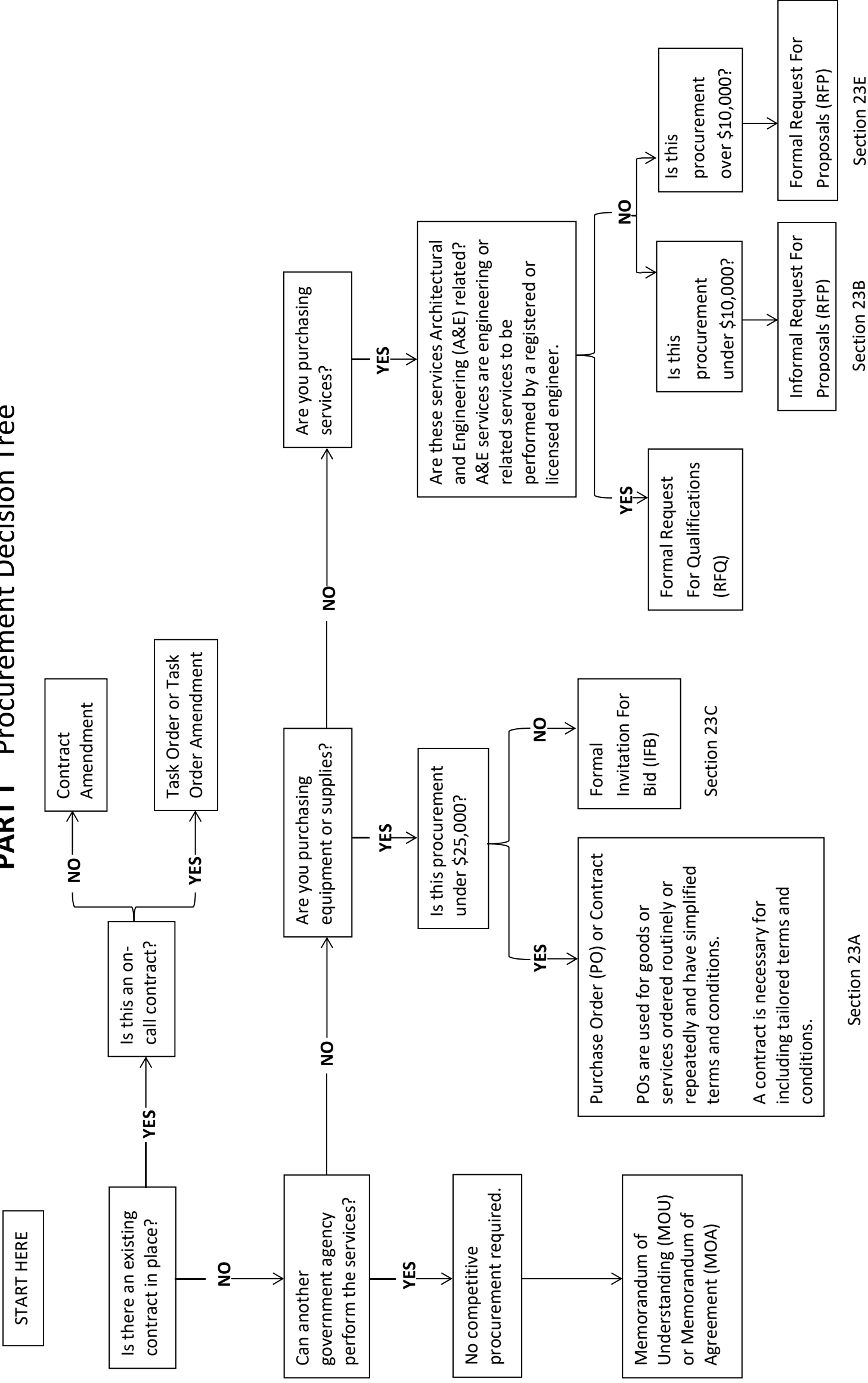
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# PART I Procurement Decision Tree



Section 23A

Section 23B

Section 23E

## **PART II Specific Policies and Procedures**

Part II of this manual contains specific policies and procedures that have been adopted by AGENCY. For the purposes of this manual, even when not specifically indicated as such, “Executive Director” refers to AGENCY Executive Director or designee.

### **SECTION 001 BACKGROUND**

This manual sets forth the requirements AGENCY uses in the solicitation, award, and administration of its third-party contracts with nongovernmental entities, whether the contract results in revenue or expense to AGENCY. These requirements are based on the common grant rules, federal statutes, executive orders and their implementing regulations, FTA policy, FHWA policy, State of California Public Utilities Code, State of California Public Contract Code, State of California Labor Code, AGENCY Board and administrative policies, and all other local, state, and federal requirements relating to procurement and applicable to AGENCY as a regional public agency. Additionally, general requirements for intergovernmental agreements are included in specific sections.

AGENCY staff will be trained on the use of this manual on a reoccurring basis.

### **SECTION 002 REVISIONS TO MANUAL**

All references to state and federal laws and regulations refer to those versions of the laws and regulations, as they may be amended from time to time. The manual will be reviewed for updates to laws, regulations and other sources of guidance annually.

### **SECTION 003 VARIATIONS FROM PROCEDURES**

In the event that circumstances dictate other than the processes indicated in this manual, the Executive Director or designee and/or Board may authorize a variation within the limits of state and federal regulations. Staff must document the reasons for not conforming to all of the processes described in the manual. The Executive Director, his/her designee and/or the Board may only authorize a variation when it is in the best interest of AGENCY.

### **SECTION 004 APPLICABILITY OF COMPETITIVE PROCUREMENT REQUIREMENTS**

The solicitation, award, and administration of third-party contracts must be carried out on a competitive basis, except in the instances set forth below. Competitive procurement requirements apply even if the award will not require AGENCY to directly pay any funds to the award recipient. So, for example, competitive procurement requirements apply in situations where the contractor will be paid by commission or fee from a source other than AGENCY. Competitive procurement requirements also apply to revenue agreements. If the awardee of AGENCY contract will receive compensation from any source as a result of AGENCY’s award, then a competitive process should be used to ensure fairness. Exceptions are as follows:

1. If the requirements of sole source or limited competition procurement are met as set forth in Section 22.
2. If AGENCY chooses to use an alternate procurement method that is authorized for state or local agencies by state or federal law.

**Appendices**

- Sole Source Approval Form (Appendix 1)
- Limited Competition Approval Form (Appendix 26)

**SECTION 005 CONFORMANCE WITH THE LAW AND AGENCY POLICIES AND PROCEDURES**

AGENCY should use procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal and state law. AGENCY’s policies require all competitive procurements to commence with a Procurement Requisition form and a Method of Procurement Selection (MOPS) form providing the Project Manager with the information necessary to make a purchase. Section 036 (Procurement Requisitions) of this manual provides additional information regarding these forms. All procurements and contracts must be approved in accordance with AGENCY’s policies concerning delegation of authority. (See Section 032 Delegation of Authority of this manual for additional information.)

**Appendices**

- Method of Procurement Selection Form (Appendix 10)
- Procurement Requisition Form (Appendix 2)

**SECTION 006 CONTRACT APPROVAL DELEGATIONS, DEVELOPMENT and ADMINISTRATION**

1. Contract Approval Delegations

Threshold	Approval Required
Up to \$25,000	Executive Director
Over \$25,000	AGENCY Board

All procurements MUST be approved by the AGENCY Executive Director.

All procurements exceeding \$25,000.00 must be approved by the Executive Director and by the Board of Directors. Transactions approved by persons without authority are void.

In the event of an emergency or urgent need, the Executive Director is authorized to take all necessary actions to prevent significant unnecessary loss to AGENCY, a shut down of public services, or to address a situation threatening the health or safety of persons or property, including but not limited to, authorization to contract with a contractor or consultant on a sole sources basis, consistent with applicable state or federal law without prior approval from the Board of Directors. In the event such an emergency or urgent need occurs, the Executive Director will consult with the President of the Board and submit a report to the Board of Directors at its next regular meeting in order to obtain ratification for those actions.

2. Due to the small size of the agency, AGENCY's Project Managers will perform the duties normally assigned to a contract's officer with oversight from the AGENCY Director of Finance and Administration. The Director of Finance and Administration or his or her designee will review each procurement after completion of major milestones including requisition, solicitation, award, contract closeout to ensure that the procurement is in compliance with the policies and procedures manual in general and to ensure that the procurement process is adequately documented.
3. For purchases involving no federal funds and that do not need any specialized terms and conditions regarding matters such as allocation of risk or liability due to the nature of the procurement and not exceeding \$25,000, a simplified contract or the contract template of the contractor may be used. For purchases involving federal funds, all applicable federal requirements and certifications are required for the contract. For purchases exceeding \$25,000, a contract should be used in order to ensure provisions are included to protect AGENCY's interests. AGENCY will implement a contract development and administration process that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts.
4. Prior to any contract development, a scope of work must be prepared in order to determine what procurement method and type of contract document will be used and fill out the MOPS form. In addition, an independent cost estimate (ICE) must be prepared for all procurements. The person responsible for developing the ICE form must be free from financial and organizational conflicts of interest. In order to avoid the perception that the person who approved the ICE form for a project may improperly bias the cost or price negotiations with the contractor/consultant/vendor selected for award, it is advisable that a different person than the one responsible for approval of the ICE have primary responsibility for any contract negotiations that may be needed.
5. In order to determine what type of contract payment type should be stated in the procurement and included in the contract language, the Project Manager will use the Contract Payment Type Selection Form and select the applicable language from the contract boilerplate options.



## **Appendices**

- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23)
- Independent Cost Estimate, Scope of Work, Summary and Staffing Plan (Appendix 24)

## **SECTION 007 STANDARD OF CONDUCT FOR PERSONS INVOLVED IN PROCUREMENT**

AGENCY staff is required to follow AGENCY Standard of Conduct Policy when carrying out procurement or contracting functions. If non-AGENCY staff is used to evaluate proposals or bids, those persons should be provided a Declaration Concerning Conflicts for Evaluators.

## **Appendices**

- Standard of Conduct Policy (Appendix 3)
- Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7)
- Declaration Concerning Conflicts for Evaluators (Appendix 8)

## **SECTION 008 STATEMENT OF NECESSITY TO ENSURE MOST EFFICIENT AND ECONOMIC PURCHASE**

It is AGENCY policy to review proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The Director of Finance and Administration will review all requisitions for compliance with this policy.

1. AGENCY adopts adequate procedures for determining the types and amounts of property and services it needs to acquire. These procedures will avoid the purchase of unnecessary property and services not needed (including duplicates and quantities or options not intended to be used). AGENCY monitors compliance of these procedures by determining what is necessary, current, and reasonably expected at the time the contract was executed.
  - a. AGENCY may not add quantities or options to contracts solely to permit assignment to another party at a later date. These limits on assignments do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.
  - b. If the quantity of property or services reasonably believed as needed at the time of contract award changes, AGENCY may assign its unneeded contract authority to another entity.

2. AGENCY considers procurement size on whether to consolidate or break out the procurement to obtain a more economical purchase.
  - a. When economically advantageous to enter into joint procurements with other government agencies, AGENCY may be responsible for undertaking the joint procurement and may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services.
  - b. AGENCY may break out procurements into smaller amounts to provide greater opportunities for DBEs, small and minority firms to participate. AGENCY will not split a larger procurement merely to gain the advantages of small purchase procedures.
3. AGENCY contracts may include options to ensure the future availability of property or services so long as it is able to justify them as needed for its projects. An option, for a specified time, may allow AGENCY to acquire more than what was originally procured or also may extend the term of the contract. To be used without being considered a sole source, however, such options must be evaluated as part of the selection or low bid determination process.
4. To obtain the best value, AGENCY reviews lease versus purchase alternatives and if necessary, obtains an analysis to determine the more economical alternative. Before leasing an asset, AGENCY makes a written comparison of the cost of leasing compared with purchasing or constructing the asset. Costs used in the comparison are reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.
5. AGENCY is responsible for preparing specifications that describe its needs, while assuring that those specifications are not exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of federal laws or regulations. The specifications describe the property or services to be procured and state how the bids and/or proposals will be evaluated.

## **Appendices**

- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23)

## ***SECTION 009 USE OF OTHER NON-AGENCY PROCUREMENTS***

Public Utilities Code section 132352.4(b)(2) states that AGENCY is permitted to contract in conjunction with other government agencies without utilizing competitive procurement procedures. This exception to competitive procurement is not permitted when FTA or FHWA funds will be utilized to carry out the project unless the procuring agency followed federal procurement requirements. In all cases a market, price or cost analysis must be performed and

documented to establish the amount that will be paid at the time of purchase will be fair and reasonable per Master Fund Transfer agreement provision, CFR 49 18.36 (f)(1).

## **Appendices**

- None

## **SECTION 010 THRESHOLD DETERMINATIONS CONCERNING CONTRACTORS/CONSULTANTS/VENDORS**

There are several determinations that must be made by the Project Manager before a contractor, consultant, or vendor can be procured and/or utilized, whether or not the procurement is competitive. A discussion of these issues follows.

### **Conflicts of Interest**

1. A contractor is eligible for an award by AGENCY so long as the procurement in question does not create an actual, potential, apparent or the appearance of a conflict of interest. A prohibited conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to AGENCY or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations:
  - If the selected consultants and/or subconsultants will be assisting AGENCY in the preparation of one or more documents (for example, specifications or a feasibility study) that will be used for a future solicitation, assisting AGENCY evaluate the work of others on the project, or designing the specifications for a future project, the consultant team selected will not be allowed to participate as a proposer or join a team submitting a proposal in response to future solicitation(s) because this could cause an organizational conflict to arise.
  - A consultant that provides legal, lobbying, auditing, or public relations services to an entity with a conflicting position from AGENCY or with whom AGENCY is in or previously was in litigation, may be precluded from providing services to AGENCY if AGENCY believes the consultant may not be able to render impartial advice or provide effective advocacy on behalf of AGENCY.
2. A notice of potential for conflict of interest shall be included within any solicitation document issued by AGENCY.
3. For purposes of this section of the manual, a “firm” is defined as any company or family of companies, non profits or related non profits, where there is a single parent board of directors or staff of officers who can influence the policies and actions of the design company.

4. For purposes of this section of the manual, “ineligible” shall include the prime contractor for the services, subcontractors for portions of the services, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.
5. If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, the appropriate member of AGENCY management staff, depending on type of project, will (upon written request) provide a written ruling. Contractors should be encouraged to use this procedure prior to submittal of a bid or proposal. In the event a conflict of interest is determined to exist, a written appeal may be made by the affected firm to the Executive Director within five calendar days of notice from AGENCY of the conflict. The Executive Director will determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.
6. Waiver of any actual, potential, or apparent conflict of interest that may exist or arise as a result of concurrent legal representation of AGENCY and parties whose interests may conflict shall be decided by the Executive Director in consultation with Legal Counsel.

#### Debarment

7. Prior to doing business with a firm, the Project Manager must verify that the firm has not been debarred by AGENCY or any of the agencies funding the procurement and add documentation of the debarment check to the contract file.

#### Procurements That Will Give Consultants Project Management Responsibilities

8. If a procurement’s scope of work will include allocation of project manager types of responsibilities or any other responsibilities that will call for a consultant’s or subconsultant’s staff to prepare an ICE or Record of Negotiation (RON) or negotiate contract terms on behalf of AGENCY, the persons on the consultant’s staff who will perform these responsibilities will need to fill out a disclosure of financial interests (Form 700) and be free of any conflicts of interest and any apparent or the appearance of a conflict of interest. If the scope of work will include such responsibilities, the Project Manager should inform Legal Counsel so that an attorney can provide appropriate terms and conditions to protect AGENCY interests for insertion in the contract.

#### Procurements that Will Allow Use of AGENCY’s Office Staff by Non-AGENCY Staff

9. If a procurement will call for the contract awardee to house any staff at AGENCY, the Project Manager should consult with Legal Counsel so that appropriate terms and conditions to protect AGENCY interests are inserted in the contract.

## Appendices

- None

### **SECTION 011 CONTRACT AWARDS TO RESPONSIVE AND RESPONSIBLE BIDDERS/OFFERORS**

1. AGENCY will make awards only to responsible bidders/offerors who submit responsive proposals/bids and who can demonstrate they possess the ability to perform successfully under the terms and conditions of a proposed procurement.
2. AGENCY may award a contract to other than the lowest bidder. AGENCY may include a statement in the solicitation reserving the right to award the contract to other than the low bidder or offeror.
3. AGENCY will award only to “responsive and responsible” contractors that it believes possess the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. AGENCY determines responsiveness and responsibility after receiving bids or proposals and before making contract award. A bidder/offeror must demonstrate affirmatively to AGENCY that it qualifies as “responsible” and that its proposed subcontractors also qualify as “responsible.” To determine that a bidder/offeror is “responsive and responsible,” AGENCY, at a minimum, will determine and ensure that the bidder/offeror satisfies the following criteria:
  - a. Has no known record of dissatisfactory integrity or improper business ethics;
  - b. Is neither debarred nor suspended from federal programs under DOT regulations, “Non-procurement Suspension and Debarment;”
  - c. Bidder/offeror confirms that it is in compliance with the Common Grant Rules’ affirmative action and FTA’s DBE requirements;
  - d. Bidder/offeror confirms it is in compliance with the public policies of the federal government;
  - e. Has the necessary organization, experience, accounting, and operational controls and technical skills (or the ability to obtain them);
  - f. Is in compliance with applicable licensing and tax laws and regulations;
  - g. Has, or can obtain, sufficient financial resources to perform the contract;

- h. Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
  - i. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; and
  - j. Is able to provide a satisfactory current and past performance record in view of its records of long-time performance or performance with a predecessor entity, including key personnel with adequate experience, a parent firm with adequate resources and experience if applicable, and key subcontractors with adequate experience and past performance and past experience in carrying out similar work, with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations.
- 4. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible unless AGENCY determines that the circumstances were beyond the bidder's or offeror's control or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance.
- 5. AGENCY may consider the number of the bidder's or offeror's contracts involved and the extent of deficient performance in each contract when making the responsibility determination. AGENCY maintains the right to reject all bids or proposals submitted in response to IFB or RFPs.
- 6. All requisitions resulting in the formal procurement process of an IFB, RFQ, or RFP should document the award to a responsive and responsible contractor through use of checklists, reference checks, recommendation memo, or other contract file documentation and, at a minimum, should include the following applicable items:
  - a. Review "Responsibility" Requirements. Before selecting a contractor for award, AGENCY must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
  - b. Perform a reference check of an adequate number of references and complete the applicable reference check form.
  - c. Review the federal debarred/suspended contractor listing at: <http://sam.gov/portal/public/SAM>. AGENCY may collect a debarment and suspension certification from the prospective contractor or include a clause in the contract requiring disclosure. AGENCY checks the System for Award Management (SAM) before awarding a contract.

- d. Review the State debarred/suspended contractor listing at:  
<http://www.dir.ca.gov/DLSE/Debar.html>. AGENCY treats any proposer listed on the debarment and suspension list as non-responsible and ineligible for award.
7. For all contracts in excess of \$500,000, the following uniform system of determining whether or not a bidder/offeror is “responsive and responsible” may be applied. Following is a nonexclusive list of factors in relation to the work to be performed for the project:
- a. Financial Requirements:
    - i. Bidders/offerors shall have evidence of the availability of working capital;
    - ii. The largest value of all work any bidder/offeror has had under contract over a previous similar time frame as the subject contract shall meet or exceed the total amount of the bid;
    - iii. The dollar value of at least one of the previous individual contracts listed shall be at least 50 percent of the dollar value bid on the AGENCY contract; and
    - iv. The bidder/offeror shall have successfully completed contracts during the previous five years that together exceeds five times the annual value of the AGENCY contract.
  - b. Experience Requirements:
    - i. The bidder/offeror must demonstrate organization experience on work similar to AGENCY contract by submitting a list, covering at least the previous five years, of all projects of any type that have been completed or are under construction. The list shall contain a name, title, address, and phone number for agency/firm staff to contact to verify the contract details;
    - ii. The bidder/offeror shall demonstrate individual experience by submitting a list of all officers, superintendents, and engineers who will be involved in AGENCY contract. These key personnel shall have at least three years experience on contracts where the work is similar to AGENCY contract and shall have been employed by the bidder/offeror for at least two years before AGENCY contract bidding date. The individuals listed shall have been involved at the same level of responsibility on successfully completed contracts during the previous five years that together exceeds the value of AGENCY contract. A résumé for each individual listed shall include the name, title, address, and phone number of an individual or organization who can verify the individual’s experience;

- iii. The bidder/offeror shall submit a summary of all claims made in the last five years arising out of previous contracts listed (this summary shall include all claims by owner against bidder or bidder against owner and the final status of each claim);
  - iv. The bidder/offeror shall state whether or not it has defaulted on a project within the last two years;
  - v. The bidder/offeror shall list any violation of the apprenticeship requirements under a State Business and Professions Code of Labor Code found by an appropriate authority within the last two years;
  - vi. The bidder/offeror shall state whether they have been found guilty of failure to pay required prevailing wages on a public contract within the last two years;
  - vii. The bidder/offeror shall state whether they have been formally found to be a non-responsible bidder, for reason other than being nonresponsive by a public agency within the last two years;
  - viii. The bidder/offeror shall list how many projects the bidder will be working on in conjunction with AGENCY project;
  - ix. The bidder/offeror shall state whether they have ever been terminated by an owner or client or rejected from bidding on a public works project in the last five years;
  - x. The bidder/offeror shall state whether a surety ever completed any portion of the work on the bidder's project within the last five years;
  - xi. The bidder/offeror shall state whether the bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder has ever been disqualified, removed, or otherwise prevented from bidding on or completing a federal, state, or local government project because of a violation of a law or safety regulation, and if so, explain the circumstances; and
  - xii. For all items identified under this subsection, the bidder/offeror shall provide name of owner, title of project, contract amount, location of project, date of contract, and name of bonding company.
- b. Reporting Forms:
- i. In order to demonstrate that AGENCY financial and experience requirements are met, the bidders/offerors shall submit, when requested by AGENCY, a Contractor's Statement of Experience and Financial Condition prepared by the bidder/offeror and a financial statement prepared by an independent auditor, both verified under oath, shall meet AGENCY's requirements.



- ii. Failure to provide accurate information relative to its financial status or experience may result in the debarment of the bidder/offeror from future AGENCY work.
  - iii. AGENCY will make its determination of responsiveness and responsibility based upon information submitted by bidders/offerors, and, if necessary, interviews with previous owners, clients, design professionals, or subcontractors with whom the bidder/offeror has worked, including AGENCY project managers. If a nonresponsive or non-responsible offeror submits additional evidence within the time limitation provided by AGENCY, then that additional evidence should be considered by the director in making the recommendation to the Executive Director regarding determination of the bidder/offeror that should be awarded the contract.
8. The methods above may be employed at the discretion of the Project Manager to include the requesting of a Dun & Bradstreet (<http://www.dnb.com/government>) financial report on the low bidder (IFB) or highest evaluated offeror(s) (RFP). All methods employed must be documented and contained in the contract file.

## **Appendices**

- Contractor's Statement of Experience and Financial Condition (Appendix 4)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)

## **SECTION 012 WRITTEN RECORD OF PROCUREMENT HISTORY/PROCUREMENT FILE**

AGENCY will maintain and make available to authorized agencies, records detailing the history of a procurement. At a minimum, these records should include:

1. The rationale for the method of procurement: AGENCY provides the rationale it used for each contract, including a limited competition or sole source justification for any acquisition that does not qualify as competitive;
2. Selection of contract payment type: AGENCY states the reasons for selecting the contract type it used, such as fixed-price or cost reimbursement;
3. Reasons for contractor selection or rejection: AGENCY states its reasons for contractor selection or rejection and includes a written responsibility determination for the successful contractor; and
4. The basis for the contract price: AGENCY evaluates and states its justification for the contract cost or price.

The determination for items 1 and 2 above will be made through the use of the Method of Procurement form or equivalent documentation to the contract file. In addition, any Board agenda report requesting approval to award a third-party contract or recommendation memo will serve as a record detailing procurement history. For item 3, a recommendation memo is used to justify contractor selection. For item 4, the justification for a procurement cost can be detailed in the Independent Cost Estimate (ICE) document.

At a minimum the procurement folder should include:

1. Solicitation document (IFB, RFQ, or RFP)
2. Contract (agreement/MOU/lease/letter agreement/PO/etc.)
3. Amendments
4. Task orders
5. Documentation establishing reasonableness of procurement method (MOPS, procurement requisition, Purchase Order Checklist, Sole Source Approval form, Limited Competition Approval form)
6. Documentation establishing reasonableness of amount paid (ICE, RON, evaluation committee score sheets)
7. Documentation of required federal forms and U/DBE compliance
8. Documentation establishing selection of payment method.

### **Appendices**

- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23)
- Independent Cost Estimate, Scope of Work, Summary, and Staffing Plan (Appendix 25)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)

## **SECTION 013 USE OF TIME-AND-MATERIAL CONTRACTS**

AGENCY will use time-and-material type contracts only:

1. After a determination that no other type of contract is suitable; and

2. If the contract specifies a ceiling price that the contractor shall not exceed the amount except at its own risk.

## Appendices

- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)

## SECTION 014 WRITTEN PROTEST PROCEDURES

AGENCY has written protest procedures to handle and resolve disputes relating to its procurements. There are separate procedures related to protests involving the Disadvantaged Business Enterprises provisions in procurements and contracts. All protest decisions must be in writing. For FTA- or FHWA-funded procurements, AGENCY will disclose all information regarding the protest in a timely manner in its next quarterly milestone progress report and at its next project management oversight review. A protestor must exhaust all administrative remedies by pursuing AGENCY's protest procedures to completion before appealing the decision to the FTA. In the case of contracts funded by the FTA, the FTA will review only protests regarding the alleged failure of AGENCY to have written protest procedures or alleged failure to follow such procedures. An appeal to the FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date when the protester has received actual or constructive notice of AGENCY's final decision.

1. AGENCY's role and responsibilities with regard to the FTA when there is a protest on FTA-funded procurements:
  - a. AGENCY will provide copies of all protests and any or all related supporting documents for protests that have a value exceeding \$100,000, or; involve a controversial matter, irrespective of amount, or; involve a highly publicized matter, irrespective of amount.
  - b. AGENCY will provide a brief description of the protest; the basis of disagreement, and; if open, how far the protest has proceeded, or; if resolved, the agreement or decision reached, and; whether an appeal has been taken or is likely to be taken.
  - c. When AGENCY denies a bid protest, and especially if an appeal to the FTA is likely to occur, AGENCY will inform the FTA regional administrator for the region administering a regional project or the FTA associate administrator for the program office administering a headquarters project directly.
2. The FTA's role and responsibilities with regard to FTA-funded procurements in the appeals process for reviewing protests state that the protester must qualify as an "interested party,"

which is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract.

- a. A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
- b. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety would qualify as an “interested party” because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
- c. An association or organization that does not perform contracts does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.

Violations of federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of state or local law or regulations will be under the jurisdiction of state or local authorities.

## **Appendices**

- Protest Procedures for Procurements (Appendix 5)
- DBE Complaint Procedures (Appendix 33)

## **SECTION 015 CHANGES AND MODIFICATIONS**

AGENCY is responsible for issuing, evaluating, and making necessary decisions involving any change to its contracts, amendments, any change orders, or modifications. It also will evaluate and make the necessary decisions involving any claim of a constructive change to a contract. Changes and modifications will be evaluated to ensure that if they will constitute a sole source, applicable sole source documentation is prepared. In addition, an ICE will be prepared and the project manager will document negotiations of prices, costs and/or profit mark-up.

AGENCY will have cost justifications supporting each change order it may issue and approve any proposed change order before it is issued. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of any applicable grant, cooperative agreement, or other funding restriction and must be reasonable for the completion of project scope.

Please see **SECTION 029 Cardinal Contract Change** for further detail.

## **Appendices**

- Method of Procurement Selection Form (Appendix 10)
- Sole Source Approval Form (Appendix 1)
- Record of Negotiation (Appendix 27)

## **SECTION 016 DISPUTES**

AGENCY has written procedures to handle and resolve disputes relating to contract provisions. All disputes must be in writing by contractors/consultants. Adequate documentation must be submitted by the contractor/consultant documenting the facts, events, negotiations, and/or applicable laws establishing the grounds for the dispute.

AGENCY will notify the FTA about disputes on FTA assisted procurements that have a value exceeding \$100,000 if the FTA funding could be used to resolve the dispute. Upon request from the FTA, AGENCY will provide a brief description of the dispute; basis of disagreement, and; if open, how far the dispute has proceeded, or; if resolved, the agreement or decision reached, and; whether an appeal has been taken or is likely to be taken.

This information will be provided to the FTA as applicable in AGENCY's next quarterly milestone progress report and in the next project management oversight review, if any.

Disputes that do not involve FTA assisted procurements will be resolved by the Executive Director. The AGENCY Board of Directors will act on appeals to the Executive Director's decision.

## **Appendices**

- None

## **SECTION 017 CONTRACT PERIOD OF PERFORMANCE LIMITATION**

Except for procurements of rolling stock and replacement part contracts, which are limited on federally funded procurements to five (5) years, AGENCY's other contracts (such as property, services, leases, construction, revenue) are not limited by federal requirements to the five-year limit.

Even if a federal time limit is not applicable, however, AGENCY staff will use sound business judgment and be judicious in establishing, extending, and documenting a contract's period of performance. Generally, AGENCY's standard maximum contract length will not exceed five (5) years, inclusive of options, unless the reason for a longer term is documented in the contract folder. Contracts may be awarded with periods of performance in excess of five years if prior concurrence by the Executive Director in consultation with Legal Counsel is documented. This

requirement applies to the initial contract and contract extensions or renewals beyond a five-year term. The same process also is required for the exercise of an option which will extend the contract's period of performance beyond five years.

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. AGENCY staff should consider competition, pricing, fairness, and public perception when making decisions regarding the term of a contract. Particular attention should be paid when the procurement provides for on-call services on a wide range of services for more than three years. Such procurements limit the firms eligible for award to a specific list of on-call firms and may lead to missed opportunities for better pricing and/or experience from other firms that have been established or have gained the necessary experience to be eligible for award if a new procurement was issued at a sooner interval. AGENCY staff will document its rationale for determining the performance period designated for each contract.

AGENCY considers contract time extensions in light of whether they are permissible changes or impermissible cardinal changes. Once it awards the contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

Contract Extensions must be executed prior to the expiration date of the original contract.

## **Appendices**

- Sole Source Approval Form (Appendix 1)

## **SECTION 018 ASSIGNMENT OF CONTRACT RIGHTS, JOINT PROCUREMENTS, AND INTERGOVERNMENTAL PROCUREMENT**

AGENCY limits its procurements to the amount required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. Advertised quantities and dollar amounts should be justifiable.

When AGENCY solicits, competes, and awards through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, the solicitation and the contract award should both contain a minimum and maximum quantity that represents reasonably foreseeable needs.

Should AGENCY find that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to other public agencies if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded or contains other appropriate assignment provisions. This process is sometimes referred to as "piggybacking."

1. In cases where AGENCY finds it useful to “piggyback” off of another public entity’s procurement, it first has to determine the contract price remains fair and reasonable and the negotiated contract provisions are adequate for compliance with all federal requirements if the contract will use federal funds. AGENCY need not perform a second price analysis if a price analysis was performed for the original contract in the previous 12 months, however, AGENCY staff will still need to determine whether the contract price or prices originally established are still fair and reasonable before using those rights by performing an analysis. AGENCY is then responsible for ensuring the contractor’s compliance with the FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications, if applicable. AGENCY staff should review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities it is seeking, do not exceed the amounts available under the entity assigning the contract.
2. Piggybacks and assignments may limit choices to specific property and services acquired. AGENCY may choose to instead use joint procurements by combining or “pooling” procurements to obtain better pricing. Joint procurements are often more desirable than assignments because an assignment does not represent the combined buying power of more than one purchaser at the time when prices are established. A joint procurement also may offer the advantage of permitting the parties to acquire property and services more closely responsive to each purchaser’s material requirements than would be available through assignment of existing contract rights. However, if AGENCY and another party jointly solicit and award an IDIQ contract, the joint minimum and maximum quantities are expected to be stated in the solicitation and contract.
3. Non-AGENCY procurements are procurements for which another public entity served as the lead procurement entity and that include provisions that will allow the procurement to be used by AGENCY to contract with one or more specific contractors/vendors using pre-established prices, terms and/or conditions. Examples of such procurements include joint procurements, piggybacks, and state purchasing schedules. When obtaining property or services in this manner, AGENCY staff should ensure that all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included in the master intergovernmental contract or in AGENCY contract as applicable. When buying from a purchasing schedule, and as applicable, AGENCY will obtain Buy America certification before entering into the contract. If the product is not Buy America-compliant, AGENCY should obtain a waiver from the relevant federal agency before proceeding if the procurement will be federally funded.
4. When using the California Multiple Award Schedules (CMAS), AGENCY must follow the specific procedures identified in the California State Contracting Manual.

## Reference

- California State Contracting Manual

## **SECTION 019 COMPETITION**

This section is composed of the following subsections:

- 019A Full and Open Competition
- 019B Advertisement of Solicitations/Distribution of Advertised Solicitation Documents
- 019C Prohibition Against Geographic Preferences
- 019D Written Procurement Selection Procedures
- 019E Pre-Qualification Criteria

### **SECTION 019A FULL AND OPEN COMPETITION**

AGENCY will provide for full and open competition when soliciting bids or proposals. All procurement transactions, excluding approved limited competition or sole source procurements, will be conducted in a manner providing full and open competition consistent with this manual. Some of the situations that may be considered to be restrictive of competition include, but are not limited to:

1. Unreasonable requirements placed on contractors in order for them to qualify to do business;
2. Unnecessary experience and excessive bonding requirements;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to any person or firm on retainer contracts;
5. Organizational conflicts of interest - an organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
6. The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
7. Any arbitrary action in the procurement process.

AGENCY will adhere to these principles of competition:

1. Fundamental to the use of any procurement method is the principle of full and open competition. The availability of suppliers who are willing to compete for a procurement is



essential for the effective use of small purchase procedures, formally advertised procurements (IFBs), or negotiated procurements (RFPs and RFQs).

2. Competition in procurement is defined as a condition where at least three sources are able to compete for a requirement, both in price and technical skills.
3. An attempt to get at least three quotes or bids is required for AGENCY's competitive procurements.
4. AGENCY will not fund procurements that restrict competition by utilizing exclusionary or discriminatory specifications. These include:
  - a. Placing unreasonable requirements on firms by specifying technical features, conditions, or other factors for which there is insufficient operational justification of legitimate need;
  - b. Allowing noncompetitive practices between firms (collusion, price fixing);
  - c. Conflicts of interest within AGENCY; and
  - d. Requiring unnecessary experience and bonding.
5. By working throughout the procurement process to encourage full and open competition among potential contractors, AGENCY will assure that both its interests and those of the state and federal government are protected and that AGENCY is getting a fair return on the expenditure of federal, state, and local tax dollars.
6. Less than full and open competition is not justified based on failure to plan or limited availability of federal assistance to support the procurement (for example, expiration of federal assistance previously available for award). When less than full and open competition is available to AGENCY on a federally-funded procurement, the common grant rule requires AGENCY to:
  - a. Solicit offers from as many potential sources as is practicable under the circumstances;
  - b. Provide a sole source or limited competition justification. If AGENCY decides to solicit an offer from only one source or use a limited competition procurement, it must justify its decision adequately and in writing;
  - c. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits; and
  - d. Submit the proposed procurement for pre-award review if a federal agency so requests.

7. In the event that AGENCY receives less than three responses to an advertised procurement, AGENCY will analyze the circumstances and take remedial action. AGENCY will contact firms sent the solicitation to determine the reasons that firms did not respond. If the reasons for non-response can be addressed by AGENCY, the agency should re-advertise. If the reasons for non-response cannot be addressed, such as remote location, adequate resources at this time, AGENCY can continue, but a justification must be documented to proceed with the procurement. Where AGENCY receives only one response, the justification must be documented and a cost analysis performed. For non-A&E procurements, the justification must include the names and addresses of the firms or individuals solicited for proposals.

#### Appendices

- Section 0231 of this manual
- Sole Source Approval Form (Appendix 1)
- Limited Competition Approval Form (Appendix 26)
- Limited Procurement Response (Appendix 37)

### **SECTION 019B ADVERTISING OF SOLICITATIONS/DISTRIBUTION OF ADVERTISED SOLICITATION DOCUMENTS**

1. All RFPs, RFQs, and IFBs (collectively “solicitations”) will be advertised, at a minimum, as set forth elsewhere in this manual depending on the type and amount of the procurement. If the complexity or the specialized nature of the procurement warrants additional advertising, the Contract Officer should be consulted. All solicitations in excess of the applicable small purchase threshold, which are not sole source or limited competition procurements, will be advertised on AGENCY’s webpage.
2. A notice of solicitation will be sent to all firms identified as interested in the type of project being advertised. If no clear category for the type of project is maintained, then the project manager and Project Manager should use their best judgment in selecting multiple categories to ensure an adequate response to the solicitation.
3. The preferred publication for the advertisement of construction and A&E procurements is the County Trade Journal. Additional publications, in a newspaper of general circulation and at least one DBE/small business directed or trade newspaper published in the county, is required for competitive procurements over \$100,000.
4. All of AGENCY’s solicitation documents for procurements in excess of the applicable small procurement threshold are made available on its website including map, drawings, and other documents. At the time that the solicitation documents are posted, businesses that have requested notice of solicitations of the type being posted via registration on AGENCY’s website, as well as any other qualified business AGENCY staff desires a proposal from, should be sent a solicitation notification.

5. When AGENCY staff provides solicitation documents to someone not currently in AGENCY's online vendor database, AGENCY should request the proposer to register in AGENCY's online vendor database.
6. For construction bids, AGENCY staff will add the contractor to the bidders list and request that the contractor register in AGENCY's online vendor database.

#### Appendices

- Solicitation Notification (Appendix 15)

### **SECTION 019C PROHIBITION AGAINST GEOGRAPHIC PREFERENCES IN FEDERALLY FUNDED PROCUREMENTS**

AGENCY will conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals if federal funds will be used, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt state licensing laws; however, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

#### Appendices

- None

### **SECTION 019D WRITTEN PROCUREMENT SELECTION PROCEDURES**

AGENCY will have written selection procedures in its solicitations. All solicitations should:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description should not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, should set forth those minimum characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used. AGENCY will use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration.

Further, use of “brand name or equal” must carefully identify its minimum needs and clearly set for those salient physical and functional characteristics of the brand name product in the solicitation.

2. Identify all requirements that bidders/offerors must fulfill and all other factors to be used in evaluating bids or proposals, including interview criteria.
3. If a multiple-award on-call procurement is utilized, the solicitation must identify the requirements and criteria that will be used to select a specific firm for a specific project or task order so that notice is provided to competing firms of AGENCY’s selection procedures.

Appendices

- None

## **SECTION 019E PREQUALIFICATION CRITERIA**

AGENCY does not typically use a prequalification process, except in the case of major projects that will exceed \$5,000,000. AGENCY will not, however, preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date, unless a determination has been made based on sufficient evidence that the bidder is not responsible. For procurements in excess of \$5,000,000 that will utilize a prequalification process, AGENCY will take measures to confirm that its list of prequalified persons or firms that are used in acquiring goods and services are current and include enough qualified sources to ensure full and open competition. Firms subject to prequalify will be asked to submit documentation, including a completed Contractor’s Statement of Experience and Financial Condition.

Appendices

- Contractor’s Statement of Experience and Financial Condition (Appendix 4)

## **SECTION 020 BEST VALUE**

AGENCY may award a contract to a proposer who provides the greatest value. “Best Value” describes a competitive, procurement process in which AGENCY reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that it may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest-priced responsive proposal and the one that AGENCY believes offers the best value. AGENCY bases its determination of which proposal represents the best value on an analysis of the tradeoff of qualitative technical factors and price or cost factors. The documentation and analysis establishing best value should be documented in the RFP, if issued, for small procurements. The documentation includes the score sheets

used to evaluate proposers on small procurements and establishes which proposer will provide the best value to AGENCY for all procurements under the applicable small purchase threshold.

For procurements in excess of the small procurement threshold, the contract file should contain documentation in the evaluation factors within the solicitation and relevant score sheets, as well as the record of negotiation (RON) and other written records to establish the best value criteria are met. AGENCY will disclose those factors in its solicitation that will form the basis for award. The evaluation factors for a specific procurement reflect the subject matter and the elements that are most important to AGENCY. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan.

#### Appendices

- Record of Negotiation (Appendix 27)

### **SECTION 021 PROCUREMENT REQUISITIONS**

The procurement process formally begins with the preparation and submission of a procurement initiation packet to the Project Manager. The procurement requisition packet consists of the following forms:

- a. Scope of work/statement of work (SOW)
- b. ICE or Engineer's Estimate
- c. Project schedule
- d. Specification (if available)
- e. RON (for task orders)
- f. Sole Source or Limited Competition Justification form (if applicable)

The project manager will complete the procurement initiation form by providing the following information:

- a. Entering the requestor name, department, project number, procurement value, date the service is needed, justification for procurement, and ICE value, description of services or goods, funding source, (if it will be a sole source or agreement with another government agency) vendor information, and any other applicable information that is required on the procurement requisition.

The procurement will be assigned to the Project Manager who will be responsible for the following:

- a. Completing a draft document such as a task order, amendment, memorandum of understanding (MOU), etc. per the request.
- b. Determining if a DBE/UDBE contract goal needs to be set or re-evaluated and arranging for the goal setting documentation to be prepared internally or by a consultant.
- c. Determining whether a pre-award is required and arranging for an auditor to carry out the audit.
- d. Setting the estimated procurement schedule when a formal procurement method is used.
- e. Reviewing any grants or agreements concerning the funding that will be used for the procurement and incorporating necessary provisions or referencing any pass-through obligations in the draft contract, task order, MOU, etc. so that document provisions can be tailored accordingly.
- f. Sending the final formatted contract to the consultant/contractor for signature.
- g. Once the signed contract is received, routing the signed document for final signature to the Executive Director.
- h. Sending a copy of the executed contract to the consultant/contractor.

When a credit card is used, a sales receipt must be attached with the signature of the person taking possession of the goods attesting to such receipt.

The MOP form is intended to assist project managers in determining the rationale for the selection of procurement method and cost type of a solicitation and should be filled out in accordance with Section 042 of this manual.

#### Appendices

- Procurement Requisition Form (Appendix 2)
- Method of Procurement Selection Form (Appendix 10)
- Limited Competition Approval Form (Appendix 25)
- Sole Source Approval Form (Appendix 1)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23)
- Independent Cost Estimate, Scope of Work, Summary, and Staffing Plan (Appendix 25)

## **SECTION 022 INDEPENDENT COST ESTIMATE (ICE)**

1. In the FTA Circular 4220.1.F, it is specified that grantees should perform a cost or price analysis in connection with every procurement action including change orders, contract modifications and sole source procurements.
2. The intent of the Circular 4220.1.F, with respect to cost and price analysis (which logically begins with an in-house cost estimate) is to capture every procurement, not just “major” procurements. The degree of the analysis and the degree of detail of the in-house cost estimate depend on the size and complexity of the procurement. An ICE or EE should be developed for every procurement and the estimate must be documented using the appropriate standardized AGENCY form. A consultant not otherwise involved in the procurement, who has signed appropriate conflict of interest forms including a Form 700 and does not have a conflict, may prepare and sign the ICE if AGENCY staff member will be involved in negotiating the final price, level of effort, or other cost issues.
3. A cost analysis should be used when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. For example, when the offeror submits elements (such as labor hours, overhead, materials) of the estimated cost, (such as professional consulting and A&E contracts); when price competition is inadequate; when only a sole source is available, even if the procurement is a contract modification or; in the event of a change order. AGENCY, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
  - a. Establishing Indirect Cost Rates. For contracts other than A&E contracts, if the contractor or subcontractor does not have an approved government indirect cost rate agreement, the contract’s dollar value should determine how that rate is verified.
    - I. Contracts of \$5 million or less. The audit recommendations of the contractor’s certified public accountant or indirect cost information in the contractor’s annual statement to their stockholders, shareholders, or owners or examples of acceptance of their rates by other governmental agencies within the last six months should be used.
    - II. Contracts exceeding \$5 million. If federal funding is being used, the Defense Contract Audit Agency, another federal cognizant audit agency, or an accounting firm approved by the federal government to perform audits for the federal government must verify the contractor’s rates.
  - b. Profit. Profit should be negotiated as a separate element of the cost for each contract or task order in which there has been no price competition and in all

acquisitions in which AGENCY performs or acquires a cost analysis. To establish a fair and reasonable profit, AGENCY considers the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

4. If AGENCY determines that competition was adequate, a price analysis (rather than a cost analysis) should be used to determine the reasonableness of the proposed contract price. AGENCY may use an abbreviated price analysis for micro and small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which the Project Manager can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

### **Appendices**

- Procurement Requisition Form (Appendix 2)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23)
- Independent Cost Estimate, Scope of Work, Summary, and Staffing Plan (Appendix 24)

## **SECTION 023 PROCUREMENT THRESHOLDS/METHODS OF PROCUREMENT**

This section is composed of the following subsections:

- 023A Procurement by Micropurchase for Services and Equipment/Supplies (\$10,000 or less)
- 023B Procurement by Small Purchase Procedure for Equipment & Supplies (less than \$25,000)
- 023C Procurement by Small Purchase Procedure for Services other than Architectural & Engineering (less than \$5,000)
- 023D Procurement by Sealed Bids/IFB for Equipment & Supplies and Construction (\$25,000 and above)
- 023E Procurement by Competitive Proposal for Services Other Than A&E (\$5,000 and above)
- 023F Procurement by Non-Competitive Proposals (Sole Source) (With Caltrans or Federal Funds)
- 023G Procurement by Non-Competitive Proposals (Sole Source) (Without Caltrans or Federal Funds)
- 023H Procurement by Limited Competition
- 023I Options
- 023J Contracts with Other Government Entities



- 023K Use of On-Call Multiple Award Procurements
- 023L Unsolicited Proposals

Method of Procurement	Thresholds for Funding Provided Through a State Agency (PCC)	Thresholds for Funding Provided Directly from a Federal Agency (2CFR 200)
SERVICES:		
Micropurchase *	\$10,000 or less	\$10,000 or less
Small Purchase: Equipment and Supplies	\$25,000	
Small purchase: Services other than A&E	Less than \$5,000	\$10,001 -\$250,000
Competitive Proposal: Services other than A&E	\$5,000 and above	\$250,000 and above
EQUIPMENT/SUPPLIES AND CONSTRUCTION		
Small Purchases	Less than \$25,000	\$3,501 to \$250,000
Sealed Bids/IFB: Equipment, Supplies and Construction	\$25,000 and above	\$250,000 and above

\*The California Public Contract Code does not address micro purchases. The Federal Highway Administration has directed CALTRANS to use the federally specified limit.

### **Section 023A Procurement by Micropurchase for Services and Equipment Supplies (\$10,000 or less)**

If the procurement is \$10,000 or less and does not require the use of sophisticated or unique contract terms and conditions due to the low risk of what is being procured, a micropurchase may be used. Purchases within the micropurchase threshold may be made without obtaining competitive quotes, although staff must still document the determination that the price is fair and reasonable using a Micropurchase Justification form prior to purchase or order. If such a determination cannot be made, staff should seek at least three bids, which may be written or oral, to compare prices and terms. There should be equitable distribution among qualified suppliers.

Micropurchases are exempt from Buy America requirements, but not from state, federal or AGENCY requirements.

Splitting of procurements to avoid competition or to be within the Micropurchase threshold is not permitted. The Director of Finance and Administration shall review micropurchases annually to plan additional procurement options to provide for greater competition resulting in more efficient and economic purchases.

## Appendices

- Micropurchase Justification Form (Appendix 31)

### **Section 023B Procurement by Small Purchase Procedure for Equipment & Supplies (less than \$25,000)**

Small purchase procedures are those relatively simple and informal procurement methods for securing equipment, supplies, or other property, which do not cost more than AGENCY's simplified acquisition threshold of \$25,000. If small purchase procedures are used, price or rate quotations should be obtained from an adequate number of qualified sources, with three sources being the minimum number of quotes staff must attempt to obtain. Prior to requesting bids, the project manager will prepare an ICE and the Method of Procurement Selection Form.

1. Staff should attempt to obtain written bids or document oral bids from at least three suppliers in a manner that permits prices and other terms to be compared. This should be accomplished by sending a fax or email request to an adequate number of firms using any combination of AGENCY's bid list, California Unified Certification Program, Caltrans DBE list, or known sources or sources generated from published documents. Staff should recommend the supplier that is determined to be the low responsive and responsible bidder meeting the terms, conditions, and specifications of the solicitation, taking into account the possible range of competing product and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price. Documentation of which vendors were sent quote requests, the responses received, and the low bidder selected should be documented by the project manager using the recommendation memo template.
2. Approved Equal Clause: In order to establish a basis of quality, functionality, and/or performance, certain materials, equipment, or kinds of materials may be specified, either by description of functionality and/or performance or by designating a manufacturer by name and referring to his brand of product designation, make, model, or part number or by specifying a kind of material. The solicitation should not exclude other processes, equipment or materials of equal functionality and/or performance, utility, or merit, which may be approved by AGENCY upon request. Requests for approved equal, clarification of the solicitation specifications, and complaints on specifications must be received by AGENCY, in writing, by the time specified in the solicitation. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

## **Appendices**

- Method of Procurement Selection Form (Appendix 10)
- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23)
- Recommendation for Selection of a Contractor Memo Template (Appendix 6)

## **Section 023C Procurement by Small Purchase Procedure for Services Other Than A&E (less than \$5,000)**

1. Prior approval of the use of this procurement procedure and the evaluation criteria should be obtained from the applicable management staff. The Project Manager also should concur with the use of this procurement method and fill out a Method of Procurement Selection Form to document the appropriateness of this procurement method. An informal competitive process may be followed with price or rate quotations obtained from an adequate number of qualified sources to ensure that AGENCY is obtaining a fair and reasonable price and that the recommended consultant will provide the best value to AGENCY if a best value analysis is utilized. Generally, quotes/proposals must be sought from at least three qualified consultants to meet this requirement. The competitive process should be documented by the Project Manager in the Recommendation template, the RON, or some other written record. In obtaining price or rate quotations, a SOW and evaluation criteria that include cost as a factor should be developed and supplied to all bidders/offerors.
2. Determination of which proposal will provide the best value to AGENCY when the informal solicitation includes options that may be awarded, must include the options in the evaluation and selection process. If the optional work is not used to determine the best value proposal, such options, if exercised, will need to be justified as a sole source.
3. All procurements should have a documented RON that establishes that the project manager made the effort to obtain the best price for AGENCY for the goods or services with quality, level of effort, cost, and other relevant factors taken into consideration. The staff member that takes the lead during negotiations is responsible for signing off on the RON whether it is a Project Manager or other staff person.

## **Appendices**

- Method of Procurement Selection Form (Appendix 10)
- Record of Negotiation (Appendix 27)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)

## **Section 023D Procurement by Sealed Bids/IFB for Equipment & Supplies and Construction (\$25,000 and above)**

Under this procedure, bids are publicly solicited, and a firm-fixed-price contract (lump sum or cost per unit of work with a not-to-exceed amount) is awarded to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. A Method of Procurement Selection Form, Request for Major Construction Procurement Checklist, and ICE/EE must be prepared before an IFB is issued. Board consent in a public meeting may also be required if the procurement is of the type and amount the Board has directed that staff bring it for pre-procurement and/or pre-contracting approval.

### **1. Guidelines for IFBs:**

- a. The IFB includes the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.
- b. IFBs must be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain, in competitive procurements, features that unduly restrict full and open competition. The “brand name or equal” description may be used to define the performance or other necessary requirements of a procurement. When so used, the specific features of the brand name product that must be met by bidders must be clearly identified. Brand names that are known to meet the “or equal” requirements should be listed.
- c. IFBs should be publicized through distribution to prospective bidders, posting on AGENCY website, posting in public places, advertising in newspapers, and such other means as may be appropriate in sufficient time to enable bidders to prepare and submit their best bids before the time set for the public opening of bids.
- d. If the procurement is successful, the contract will be awarded to the responsive and responsible bidder submitting the lowest bid determined on the basis of the specifications set forth in the IFBs.
- e. The IFBs, including specifications and attachments, should permit full and open competition consistent with the requirement for the property or services to be procured. The requirement should represent AGENCY’s minimum needs and be sufficiently described to promote full and open competition.
- f. All bids should be opened publicly at the time and place stated in the IFB.

### **2. In order for sealed bidding to be feasible, the following conditions should be present:**

- a. A complete, adequate, and realistic specification or purchase description is available;
  - b. Two or more responsible bidders are willing and able to compete effectively for the business;
  - c. The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price; and
  - d. There is no price negotiation with bidders before sending out the notice of intent to award.
3. If the sealed bid procurement method is used, the following requirements apply:
- a. The IFB will be publicly advertised, and bids should be solicited from an adequate number of known suppliers or contractors, providing them sufficient time to prepare bids prior to the date set for opening the bids;
  - b. The IFB, which will include any specifications and pertinent attachments, should define the items or services sought in order for the bidder to properly respond;
  - c. All bids will be publicly opened at the time and place described in the IFB;
  - d. Bid amounts will be included in the bid opening documentation;
  - e. A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. For the procurement of tangible items, when specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may be considered in determining which bid is lowest; payment discounts will only be used to determine the low bid when industry practice for the type of project involved indicates that such discounts are usually taken advantage of; and
  - f. Any or all bids may be rejected if there is a sound documented reason.
4. For purchases of equipment or supplies that are better suited for an RFP or purchase on the open market instead of an IFB, approval may be sought from the Project Manager to utilize a different procurement process based on the documentation in the Method of Procurement Selection Form. An alternate procurement process to the IFB may be in AGENCY's best interest in the following example situations:
- a. The purchase may be made at a lower price on the open market.
  - b. Competitive bidding is an inadequate method of procurement because it is necessary to purchase prototype equipment or modifications in order to conduct and evaluate operational testing.

- c. The article(s) to be procured is undergoing rapid technological changes, and it is in the public's interest to issue an RFP so that the broadest possible range of competing product and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price can be taken into consideration.
5. If staff seeks authorization to utilize an alternate procurement process, documentation setting forth the reasons a deviation from the typical competitive bidding process is warranted, and a technical evaluation of the articles, prices, and suppliers should be placed in the contract folder.
6. **Payment Method**

Contracts awarded as a result of IFBs should be fixed price. Escalation may be appropriate where unusual risks for labor or material are present and some flexibility is necessary and feasible. When escalation is necessary, an escalation ceiling must be established and must be the same for all bidders. Payment for unbid items, including items in change orders will not call for payment to the contractor on the basis of cost, plus a fixed percentage of cost. Markup amounts must be negotiated and determined reasonable on each item added to a low bid procurement.
7. **Solicitation of Bids**
  - a. Preparation of IFBs. For supply and construction contracts, IFBs should contain the following information if applicable to the procurement involved:
    - i. Invitation number
    - ii. Name and address of Project Manager
    - iii. Date of issuance
    - iv. Date, hour, and place of bid opening (prevailing local time should be used)
    - v. Number of pages and numbered pages
    - vi. A description of supplies or services to be furnished under each item in sufficient detail to promote full and open competition
    - vii. The time of delivery or performance requirements
    - viii. Statement of whether submission of electronic bids will be permitted
    - ix. The IFB should set forth full, accurate, and complete information, including attachments

- x. Bid guarantee, performance, and payment bond requirements
  - xi. A requirement that all bidders must allow an acceptance period of not less than a specified number of calendar days and that bids offering less than the minimum stipulated acceptance period will be rejected
  - xii. Special experience and/or technical qualifications due to the complexity of the equipment being procured, or for some other special reason
  - xiii. Any authorized special provisions relating to such matters as progress payments, patents, liquidated damages, etc.
  - xiv. Any additional contract provisions or conditions required by state, local, or other jurisdictions
  - xv. All factors to be considered in the evaluation of bids that weigh on price, such as shipping costs. It is essential that the IFB inform vendors of those factors that will be evaluated and exactly how each factor will be evaluated. Bidders must know these factors to properly construct their bid prices. It is imperative that this process be followed to assure that any perception of arbitrary application of the price factors by buyers is eliminated
  - xvi. Directions for obtaining copies of any documents that have been incorporated by reference. All documents incorporated in the IFB by reference must be readily available to all potential bidders
  - xvii. A bid price form should be included that is tailored such that it breaks down all of the appropriate cost elements and options such that AGENCY staff can determine the low bidder and the responsiveness of the bids.
- b. Bidding Time. Consistent with the need for obtaining the supplies or services, all IFBs should allow sufficient bidding time (i.e., the period of time between the date of distribution of an IFB and the date set for opening the bids) to permit prospective bidders to prepare and submit bids. Generally, bidding time should not be less than 21 calendar days when procuring standard commercial articles and services. It should not be less than 30 calendar days when procuring other than standard commercial articles or services. The exception is when the urgency of the need does not permit such delay.
- c. Place and Method of Delivery of Supplies. IFBs specifying free on board origin should state that bids will be evaluated on the basis of bid price plus transportation cost to the buyer from point of origin to one or more designated destinations.

- d. Bid Sample. For the procurement of tangible items, a “bid sample” may be required by the IFB document to assist the buyer in determining whether the bid is an offer to perform exactly as required in the invitation. Such samples, however, may be used solely for the purpose of determining responsiveness and should not be used to determine the bidder’s ability to produce the required items. Bidders should not be required to furnish samples unless there are certain characteristics of the product that cannot be described adequately in the specification or purchase description, thus necessitating inspection of a sample to assure procurement of an acceptable product. Submission of bid samples should be discouraged unless they are absolutely necessary.
- e. Descriptive Literature for the Procurement of Tangible Items
  - i. Definition. The term “descriptive literature” means information, such as cuts, illustrations, drawings, and brochures, which describe or show the characteristics or construction of a product or explain its operation. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment;
  - ii. Use. Bidders should not be required to furnish descriptive literature as a part of their bids unless the project manager determines that such literature is needed to determine whether the product(s) offered meet the specification requirements of the IFB or establish exactly what the bidder proposes to furnish.
- f. Final Review of IFBs. AGENCY Project Manager shall review each IFB allowing adequate review time as necessary to correct any discrepancies or ambiguities that could limit competition unnecessarily.
- g. Contacting Prospective Bidders. Notice of release of the IFBs should be sent via email or otherwise delivered to the maximum number of prospective bidders to promote and ensure maximum full and open competition. Unnecessary restrictions on competition should be avoided. From the time the solicitation is being prepared to the time of contract award, only the Project Manager should have contact with potential or actual proposers in order to reduce the likelihood of any unfair advantage in the competitive process.
- h. Pre-bid Conference. A pre-bid conference may be used as a means of briefing prospective bidders and explaining to them complicated specifications and requirements, including U/DBE information, goals, and documentation as early as possible after the invitation has been issued and before the bids are opened or proposals are due. The pre-bid conference should not be used as a substitute for amending a defective or ambiguous IFB or RFP. If a modification is proposed as a result of the pre-bid conference, such modifications should be made through a formal addendum and not through the pre-bid notes. A DBE interest list or non-inclusive DBE



list of firms is made available with the IFB documents on AGENCY website to assist contractors and subcontractors in locating each other to potentially partner on the project and may be provided again at the pre-bid conference as needed.

- i. Advertising. All IFBs should be advertised in a manner that promotes participation in the bidding by all qualified and capable firms. If there is a U/DBE goal, the goal amount should be advertised. Advertising only in the immediate local news media may not be adequate for large projects needing contractors of a type that are not common locally.
- j. Records of IFBs and Records of Bids. The Project Manager should retain a record of every IFB he/she issues and a copy of each abstract or record of bids. Project Manager should review this record during each subsequent procurement action for the same and, when appropriate, similar items. This should ensure that the information in the file is utilized with the new procurement. The IFB file should show the date of the IFB and the original distribution source list.
- k. Amendment of IFBs. If after issuance of IFBs, but before the time set for bid opening it becomes necessary to make changes or corrections in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, the changes will be accomplished by issuance of an addendum to the IFB at least 72 hours before the bid is due. Distribution of the addendum will be made to each concern to whom the invitation for bids has been furnished and/or placed on AGENCY's website. Before amending an IFB, the period of time remaining to bid opening and the possible need to extend this period should be considered and, if necessary, confirmed in the addendum. Any information given to a prospective bidder concerning an IFB should be furnished promptly to all other prospective bidders as an addendum to the IFB. No award should be made unless the addendum has been issued in sufficient time to permit all prospective bidders to consider the information in submitting or modifying their bids. In this regard, changes to DBE goals or requirements that may require additional time for bidders to conduct a good faith effort to locate DBE firms will be considered in determining whether an extension of the deadline is needed.
- l. Responsiveness of Bids. To be considered for award, a bid should comply in all material aspects with the IFB. Bidders must use AGENCY bid forms in order to be in material compliance with the IFB requirements. This applies to both the method and timeliness of submission and the substance of any resulting contract. It is imperative that all bidders be afforded an equal opportunity so that the integrity of the bidding system is maintained. Bids should be completed, executed, and submitted in accordance with the instructions contained in the IFB.
- m. Time of Bid Submission. Bids should be submitted so as to be received in the office designated in the IFB not later than the exact time set for opening of bids. Late bids must be rejected.

- n. Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written notice. The notice must be received in the office designated in the IFB not later than the exact time set for bid opening. A bid may be withdrawn, in person, by a bidder or his authorized representative provided:
  - i. his/her identity is made known;
  - ii. he/she signs a receipt for the bid; and
  - iii. the withdrawal is prior to the exact time set for bid opening.
- o. Late Modifications and Withdrawals. Modifications and requests for withdrawal of bids that are received after the exact time set for bid opening are considered "late modifications" and "late withdrawals," respectively. A late modification will not be considered.

## 8. Opening of Bids and Award of Contracts

The official designated as the bid opening officer should decide when the time set for bid opening has arrived and so declare to those present. All bids received prior to the time set for opening should be publicly opened, read aloud to the persons present, and be recorded. The name of the bidder and the total amount of each bid should be read and documented in the IFB file. Bidders may obtain copies of the bid documents that must be disclosed pursuant to the California Public Records Act at any time after the bid amounts are publicly read and recorded.

The original copy of each bid should be carefully safeguarded, particularly until an abstract of the bids has been made and its accuracy verified. AGENCY may allow for electronic bidding of IFBs. If electronic bidding is allowed, the electronic process will record all data, and the results will be immediately available on AGENCY website for the public to view.

## 9. Recording of Bids

All hard copy bids must be time and date stamped upon their receipt. A time-and-date stamp should be kept at the desks of the receptionists and administrative staff handling mail, and these staff members should be instructed to place a time-and-date stamp on all proposals/bids. To comply with FTA Circular 4220.1F, all bids received against an IFB will be documented using a bid summary form. The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation should be entered into the bid summary. When the items are too numerous to warrant the complete recording of all bids, an entry should be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The bid summary

should be completed as soon as practicable after the bids have been opened and read. The Project Manager serving as the bid opening officer will certify the accuracy of the information. If the IFB is cancelled before the time set for bid opening, the cancellation should be recorded, together with a statement of the number of organizations invited to bid and the number of bids received.

#### 10. Review of Bids

Review of bids for responsiveness and bidders for responsibility should be conducted by technically qualified staff and/or consultants without financial or organizational conflicts of interest. Consultants or non-employees that assist staff in evaluating and reviewing bids must fill out a declaration concerning conflicts prior to reviewing bids. No oral discussion or written communication should be conducted with bidders except to obtain clarification regarding the bid contents or provide information regarding protests or delays.

#### 11. Cancellation of Invitation After Opening

Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest-priced, responsive bid unless there is a compelling reason to reject all bids and cancel the invitation. An IFB should probably be cancelled if one of the following occurs (this is not an exhaustive list):

- a. All bids contained unreasonable prices;
- b. There is evidence of collusion or bad faith; or
- c. Competition was not adequate to ensure a reasonable price.

The solicitation documents will be corrected, when necessary, before the procedure for re-solicitation may be followed.

#### 12. Rejection of Individual Bids

AGENCY reserves the right to reject any and all bids. Any bid that fails to conform to the essential requirements of the IFB, such as specifications, delivery schedule, or any alternatives to these or other requirements specifically provided for in the IFB should be rejected as nonresponsive. Ordinarily, a bid will be rejected when a bidder imposes conditions that would modify requirements of the IFB or limit its liability to the buyer in a way that gives the bidder an advantage over other bidders. Minor deviations may be waived. A minor deviation is an error that does not go to the substance of a bid. A condition goes to the substance of a bid when it affects the price, quantity, quality, or delivery of the items offered. Waivers of minor deviations should be consistently applied to avoid allegations of favoritism. Any bid may be rejected if AGENCY determines that it is

unreasonable as to price, and the determination is supported by review and analysis of the action. If a bid guarantee is required and the bidder fails to furnish the guarantee in accordance with the requirements of the IFB, the bid must be rejected.

#### 13. Notice to Bidders of Rejection of All Bids

AGENCY reserves the right to reject any and all bids. When it is determined to reject all bids, the Project Manager should notify each bidder in writing that all bids have been rejected, stating the reason(s) for such action if appropriate.

#### 14. Award

Unless all bids are rejected, award should be made by written notice within the time specified for acceptance in the bid or extension thereof. Award should be made to that responsible bidder whose bid, conforming to the IFB, will be most advantageous to AGENCY, price and other factors considered. Determination of the lowest bidder must include the bid amount that includes all options that may be awarded. If the option bid amounts are not used to determine the low bidder, such options, if exercised, will need to be justified as a sole source. Award should not be made until the protest period has ended and all required AGENCY approvals have been obtained. All unsuccessful bidders should be sent a notice of intent to award as soon as possible in order to start the clock running on the protest period.

#### 15. Responsible Bidder-Reasonableness of Price

Before awarding the contract, Project Manager, with the assistance of technical staff or consultants, should determine that prospective contractor is responsible and that the prices offered are reasonable. These determinations should be made in the light of all prevailing circumstances.

#### 16. Discounts

Prior to issuing an IFB (except one for construction), a determination should be made to establish the minimum period for prompt payment discounts to be considered in the evaluation. The minimum period should be stated in the IFB.

#### 17. Delay of Award

If, after bid opening, administrative problems threaten to delay award beyond the bidder's acceptance period, bidders should be requested to extend the bid acceptance period. This request must be made and confirmed in writing prior to the expiration of their bids (with consent of sureties, if any) to avoid the need for re-advertisement.

#### 18. Information to Bidders

When award is made to other than the apparent low bidder, the Project Manager should promptly notify the unsuccessful lower bidders. The notification should state the reason for rejection of their bid. In addition, notification that an award has been made to another firm should be given immediately to all unsuccessful bidders.

#### 19. Technical Evaluation Memorandum

A recommendation memo should be prepared for each IFB procurement. The recommendation memo should include a certifying statement confirming that the low bidder is acceptable with respect to the technical specifications of the IFB. It should be prepared by the project manager in cooperation with the Project Manager to ensure that the apparent low bidder is technically responsive. The memorandum should be supported by documentation and placed in the contract file. Any non-AGENCY employee involved in evaluating bidders or bids will be given AGENCY Evaluator Guidelines and fill out a Declaration Concerning Conflicts for Evaluators.

#### 20. Protests

Protest procedures shall be included in the IFB.

#### Appendices

- Standard of Conduct Policy (Appendix 3)
- Method of Procurement Selection Form (Appendix 10)
- Responsive Bidder/Proposer Checklist for RFP/RFQ (Appendix 11)
- Bid Summary (Appendix 12)
- Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7)
- Declaration Concerning Conflicts for Evaluators (Appendix 8)
- Notice of Intent to Award (Appendix 16A)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)
- Post-Award Notice to Unsuccessful Proposers (Appendix 21)

### **Section 023E Procurement by Competitive Proposal for Services Other Than A&E (\$5,000 and above)**

1. When the project or operating budget or ICE determines that the value of the services to be procured exceeds \$5,000 and the Method of Procurement Selection (MOPS) Form indicates this method is appropriate, the RFP method should be used. This competitive proposal method of procurement is normally conducted with more than one source submitting an offer (i.e., proposal). Either a fixed-price or cost-reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

- a. RFPs will be publicized. All evaluation factors will be identified along with their relative importance.
  - b. Proposals should be solicited from an adequate number of qualified sources.
  - c. The RFP will define the method for conducting technical evaluations of the proposals received and for selecting awardees.
  - d. Awards will be made to the responsible firm whose proposal is most advantageous to AGENCY with price and other factors considered, which is sometimes referred to as best value, as reflected in the scoring criteria.
2. The RFP solicitation is publicized and proposals are requested from a number of sources. Negotiations may be conducted with one or more of the sources submitting offers and a fixed-price or cost-reimbursement type (that identifies specific rates of compensation) of contract is awarded, as appropriate. When the RFP is used, the following procedures apply:
- a. A technical and a cost proposal should be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The RFP should be publicized, and requests for the solicitation by other potential sources as a result of the advertisement should be honored to the maximum extent practicable. The objective is to promote full and open competition.
  - b. Care should be exercised to avoid providing any information to an offeror which would give them a competitive advantage. From the time the solicitation is being prepared to the time of contract negotiations, only the Executive Director, or designee, should have contact with potential or actual proposers in order to reduce the likelihood of any unfair advantage in the competitive process. All questions should be answered in writing only.
  - c. The RFP should disclose a ceiling price or budget range.
  - d. The RFP should identify all significant evaluation factors (criteria) and corresponding point value for each evaluating factor. If a two-step RFP procurement method is used, AGENCY will identify a short-listed group of proposers within the competitive range for the highest-scoring offerors in the first step based on proposal evaluating factors that include price. Then, the short-listed group of proposers will be invited to participate in the second step of the competitive process. More details on the two-step process can be found below. A one-step RFP is used when obtaining a qualified consultant at the lowest price is the primary objective. In order to successfully perform the work, the consultant does not need to be the most qualified competitor. Such an RFP is used when the services are routine. A two-step RFP is used when obtaining the most qualified consultant is the primary objective. Price is a significant factor in the selection, but obtaining the lowest price is not the primary objective. Such an RFP is used when the

services requested are not routine and are complex or highly specialized. AGENCY may elect to negotiate with the highest-scoring short-listed offeror based on proposal evaluating factors alone, including price, and forgo interviews if AGENCY has sufficient information to determine that the offeror provides the best value to AGENCY and the interview process is unnecessary.

- e. Determination of which proposal will provide the best value to AGENCY when the solicitation includes options that may be awarded, must show documented inclusion of the options in the evaluation and selection process. If the optional work is not used to determine the best value proposal, such options, if exercised, will need to be justified as a sole source.
- f. AGENCY may elect to conduct interviews with all responsible offerors who submit proposals within a competitive range, with price and other factors considered.
- g. Upon selection of the most qualified offeror, AGENCY may elect to conduct negotiations with one or more offerors in the competitive range. During the negotiation process, the offeror(s) will be given reasonable opportunity (with a common cutoff date) to support, clarify, correct, improve, or revise its/their proposal(s).
- h. Unsuccessful offerors should be notified at the earliest practicable time that their offer is no longer being considered for award. Upon written request, unsuccessful offerors should be informed (in general terms only) of the reasons for not being awarded a contract, but this should not be done until after the contract has been executed with the awarded consultant in order to preserve the competitive process. After award of a contract, a debrief for the unsuccessful offerors may occur. Before, during, and after contract award, staff should take care to avoid disclosing offerors' proprietary data if it is labeled as such.
- i. Award should be made to the responsible offeror whose proposal will be most advantageous to AGENCY; price, technical, and other factors considered ("other factors" means factors other than price-related factors such as quality of proposal, experience, etc.)

### 3. Solicitation of Proposal

- a. Knowledge of the product or service and its use is essential to sound pricing. The project manager should develop an ICE of the proper price level or value of the product or service to be purchased. For goods, such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, and prior procurement data.

- b. Selection of qualified sources for solicitation of proposals is basic to sound prices. Proposals should be invited from a sufficient number of competent sources to ensure adequate competition.
- c. Failure to determine requirements in sufficient time to allow a reasonable period for preparation of RFP, preparation of quotations, contract negotiation and preparation, and adequate lead time for performance may cause delays in deliveries and increased prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition.
- d. The RFP should contain sufficient information to enable a prospective offeror to properly prepare a proposal. The RFP should be as complete as possible with respect to:
  - i. item description and/or SOW;
  - ii. specifications;
  - iii. buyer furnished property, if any;
  - iv. required delivery schedule;
  - v. general provisions;
  - vi. special provisions;
  - vii. cost and pricing data requirements;
  - viii. contract clauses (standard or special);
  - ix. experience and technical experience;
  - x. project organization and key personnel;
  - xi. duration of agreement;
  - xii. payment method (selection of which is documented in a Contract Payment Type Selection Form);
  - xiii. project schedule; and
  - xiv. any U/DBE requirements.
- e. RFPs should specify a date and time for submission of proposals. Any extension of time should be granted uniformly to all prospective offerors. Each RFP should be available to all prospective offerors at the same time, and no offeror should be given the advantage



of advance knowledge regarding SOW details or evaluation factors that could affect the competitive process.

#### 4. Addenda to the RFP

If after issuance of the RFP, but before the time set for the proposal deadline, it becomes necessary to make changes or corrections in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous language, the changes will be accomplished by issuance of an addendum at least 72 hours before proposals are due. Distribution of the addenda will be via AGENCY's website and sent to original RFP recipients. Before amending an RFP, the period of time remaining until the proposal deadline and the possible need to extend this period should be considered and, if necessary, confirmed in the addendum. Any information given to one proposer should be furnished promptly to all other prospective proposers as an addendum. No award should be made unless the addendum has been issued in sufficient time to permit all prospective sufficient time to submit or modify their proposals. In this regard, changes to DBE goals or requirements that may require additional time for proposers to conduct a good faith effort to locate DBE firms will be considered in determining whether an extension of the deadline is needed.

#### 5. Pre-Proposal Meeting

A pre-proposal meeting may be used as a means of briefing prospective offerors and explaining to them complicated specifications and requirements, including U/DBE information, goals, and documentation as early as possible after the solicitation has been issued and before the proposals are due. The pre-proposal meeting should not be used as a substitute for amending a defective or ambiguous solicitation. After a pre-proposal meeting is held, question-and-answer notes should be taken and posted on the website. If a modification is proposed as a result of the pre-proposal meeting, such modifications should be made through a formal addendum and not through the question-and-answer notes. A list of interested small and U/DBE firms should be prepared and posted within three days after the pre-proposal meeting on AGENCY website to assist contractors and subcontractors in locating each other to potentially partner on the project.

#### 6. Evaluation Committee

Evaluation of proposals should be conducted by one or more committees of technically qualified personnel concerned with the procurement and should include at least one non-AGENCY staff member. All non-staff members must receive the evaluation committee guidelines and complete a declaration concerning conflicts of Interest before taking part in the evaluation. Selection of evaluation committee members should be approved by the Executive Director using the evaluation committee selection memo. Evaluation Committee members will evaluate and provide their individual ratings of the technical component of the proposals. The Project Manager will analyze the cost proposals and provide the analyses to the Evaluation Committee members. If an Evaluation Committee member

prepared the Independent Cost Proposal, he/she should not take the lead in negotiations but may assist Contracts Staff in preparing the negotiation strategy.

## 7. Selection of Offerors for Negotiation and Award

The objective of contract negotiation is to obtain complete agreement on all the basic issues. Oral discussion or written communication should be conducted with offerors, to the extent necessary, to resolve uncertainties relating to the technical and nontechnical issues. Basic questions should be resolved when they arise and not be left for later agreement during subsequent proceedings.

Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described below. The approach and procedures are those that are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with offerors within the competitive range after which best and final offers (BAFOs) may be requested. However, AGENCY may select a proposal for award without any discussions or negotiations or request for any BAFO(s). Subject to AGENCY's right to reject any or all proposals, the offeror will be selected whose proposal is found to be most advantageous to AGENCY. Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures included in the RFP. Proposals may not be evaluated on the basis of criteria that were not included in the RFP. After receipt of initial proposals, written or oral discussion may be conducted with all responsible offerors who submitted proposals within a competitive range, price and other factors considered. Exceptions to this requirement are:

- a. procurements in which rates or prices are fixed by law or regulation; and
- b. procurements in which it can be clearly demonstrated (from the existence of adequate competition or accurate prior cost experience with the product or service) that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price. In such procurements the RFPs must contain a notice that award may be made without discussion of proposals received and that proposals should be submitted initially on the most favorable terms possible from a price and technical standpoint. When there is uncertainty, however, as to the pricing or technical aspects of any proposal, the project manager and Project Manager should not make award without further exploration and discussion. When the project manager and Project Manager deem a proposal to be the most favorable and that proposal involves a material departure from the requirements stated in the RFP, all offerors should be given an opportunity to submit new proposals on a basis comparable to that of the offeror tentatively selected.

## 8. Confidentiality of Negotiations

In competitive negotiations, offerors should not be given any indication of a “target” price that must be met to ensure further consideration for contract award. Such practice constitutes an auction technique that may violate the integrity of the procurement process and must be avoided. Additionally, the RFP boilerplate should state that proposals (minus the cost proposal/estimate until the time of award) will not be treated as confidential documents unless they are marked as such by the bidder/offeror and the bidder/offeror is able to demonstrate the documents contain the type of information protected by law as confidential or trade secret. Large portions of proposals are typically public records. They should not, however, be released during the procurement or contract negotiation process without the approval of the Executive Director in consultation with Legal Counsel.

## 9. Opening of Proposals

Proposals will not be publicly opened. All detailed cost estimates (“cost proposals”) and evaluations related to costs will be kept strictly confidential throughout the evaluation, negotiation, and selection process. Only the members of the evaluation committee and AGENCY officials, employees and agents having a legitimate interest will be provided access to the cost proposals and cost evaluation results during this period.

## 10. Negotiations

All negotiated procurements over \$5,000 must have a documented RON that establishes that staff made the effort to obtain the best price for AGENCY for the goods or services with price, quality, level of effort, and other relevant factors taken into consideration. A template exists for documenting the RON. The project manager should take the lead on preparing the RON when he/she leads the contract negotiations if he/she did not take the lead on preparing the ICE. The Project Manager is responsible for documenting negotiations in the RON or in other records when it takes the lead on the contract negotiations.

## 11. Protests

Protest procedures shall be included in the RFP.

## 12. Normally, a “one-envelope” selection procedure will be used for service contracts. The “one-envelope” competitive process is as follows:

- a. Notice of the professional services required should be published at least once in a newspaper of general circulation in the county and in community newspapers, as appropriate, at least three weeks before the proposal due date. For federally funded projects, notice also should be published in one or more minority newspapers in the county. The notice should state that AGENCY is interested in receiving responses from

qualified firms and indicate how additional information can be obtained and the time and place for receiving responses.

- b. Notice also should be sent to firms or individuals known to be interested in providing the required services, including small and emerging businesses on AGENCY's various interested party lists and to appropriate DBE firms or individuals registered with AGENCY.
- c. The RFP should include:
  - i. Pass/fail criteria to be used as an initial screening of responses. Such criteria should include, but not be limited to, insurance requirements, licensing, and any other consideration which would make the proposer ineligible to perform the work.
  - ii. Evaluation factors.
  - iii. Any standard contract language that the successful offeror will be required to comply with, including all applicable federal clauses and certifications.
- d. Responses to an RFP shall list all proposed subconsultants and subcontractors, their area of the work and certified U/DBEs. A cost proposal shall be submitted along with the technical proposal and will be used as an evaluation factor by the evaluation committee.
- e. The Project Manager will document the receipt of all proposals. A time-and-date stamp shall be kept at the desks of the receptionists and administrative staff handling mail, and these staff members shall be instructed to place a time-and-date stamp on all proposals. AGENCY's procedure for determining whether a proposal is disqualified for being submitted to AGENCY after the deadline for proposals or statements of qualification will be stated in the solicitation document.
- f. The responses should be evaluated by an evaluation committee appointed by the project manager with the approval the Executive Director. The evaluation committee should consist of AGENCY staff and should include at least one person from outside the agency. Care should be taken to avoid using direct supervisors and their reports as the sole staff scoring evaluators. Additional staff members/advisers, who do not participate in scoring, may sit in on evaluation panels if needed to provide expertise.
- g. The firm(s) that are deemed responsible and responsive and who receive the highest scores will be short-listed. Short-listed proposers should be sent a notice to short-listed proposers and those who have not made the short-list should be sent a notice to proposers not making short-list. This notice will trigger the protest period.
- h. The top-ranked firm(s) may then be interviewed, if deemed necessary. The final list of qualified firms shall be based on the response to the RFP references, the interview, and other relevant factors. The project manager should summarize the findings of the

evaluation committee in a recommendation memo to the Executive Director. The memo should include the evaluation committee's recommendation for negotiations with one or more firms in the competitive range.

- i. The Executive Director will approve or reject the recommendation based upon information provided by the evaluation committee and other factors as deemed appropriate, including, but not limited to, qualifications, ability to meet schedule and budget, cost of work, and meeting insurance requirements. The Executive Director also may interview one or more of the firms prior to making a selection.
  - j. Approval by the Executive Director of the recommendation shall be deemed approval to enter into negotiations with one or more firms in the competitive range. After one or more offerors are selected for contract negotiations, they should be sent a notice of intent to award. This notice is not a commitment by AGENCY to award a contract; it is just notice that AGENCY intends to negotiate. At this stage any necessary certificates of insurance should be requested from offerors with whom AGENCY will negotiate. Proposers who are not selected for negotiation should be sent a notice of intent to enter negotiations with another consultant in order to trigger their protest period. A contract should not be finalized until a sufficient number of days have passed from the time the notice of intent to enter negotiations with another proposer is sent to the unsuccessful proposers for the protest period to have expired.
  - k. The cost proposals from the firm(s) in the competitive range should be used as a basis for negotiation. Negotiations will be conducted by the Project Manager and the Executive Director and can include factors in addition to cost, such as staffing levels, project schedule, etc. If negotiations are conducted with more than one firm in the competitive range, then staff attempt to obtain the most favorable terms by negotiating with all of the firms. Should negotiations fail, the Executive Director may issue a Best and Final Offer (BAFO) to the qualified firms. Once negotiations are complete, a contract incorporating the negotiated terms and conditions will be prepared for the approval of the Executive Director or his/her designee. A post-award notice should be sent to all of the unsuccessful firms at this point in time to notify them that a final selection has been made and trigger their protest period.
12. For services that have a very explicit SOW containing detailed, straight-forward specifications that will allow consistent responses and offerors can be considered qualified or not qualified based on predetermined criteria, the low-bid IFB process may instead be used. The Project Manager can assist the project manager in determining whether the nature of any of the services is appropriate for using this low-bid process.
13. Cost must be used as a factor in evaluating all proposals for services pursuant to this section.

14. As mentioned above, if desired, a “two-envelope” selection process may be followed, as follows:
- a. Requests for information/letters of interest/statements of qualifications (RFIs/LOIs/SOQs) may be solicited from the current AGENCY on-line vendor database and any other applicable list, for the particular services specialty.
  - b. Notice of the professional services required should be published at least once in a newspaper of general circulation in the county and in one or more minority newspapers in the county at least three weeks before the proposal due date. The notice should state that AGENCY is interested in receiving RFIs/LOIs/SOQs from qualified firms, indicate how additional information can be obtained, and indicate the time and place for receiving responses.
  - c. An RFI or RFP may be sent to firms or individuals previously known to be interested in or capable of providing the required services. Reasonable effort should be made to send requests to minority firms known to be capable of providing the required services.
  - d. “Pass/fail” criteria will be established by staff and clearly stated in the RFIs/RFP to be used as a screening of responses for responsiveness to the RFP/RFP. Such criteria may include, but are not limited to, adherence to project budget, insurance requirements, and DBE compliance (if DBE is applicable).
  - e. An evaluation committee will be formed by the project manager with the approval the Executive Director, which should consist of AGENCY staff and should include at least one person from outside the agency.
  - f. The evaluation committee will evaluate the technical component of the SOQs, and the Project Manager will analyze the cost proposals and provide the analyses to the evaluation committee members. The Project Manager should prepare a recommendation memo to the Executive Director summarizing the evaluation committee’s findings and recommending one or more qualified firms to be invited to receive an RFP. The firm(s) in the competitive range that is deemed responsible and responsive will be short-listed. Short-listed proposers should be sent a notice and those who have not made the short-list should be sent a notice of failure to make short-list. Following approval by the Executive Director or designee, the Project Manager may then issue the final version of the RFP to the qualified firm(s).
  - g. From this point, the steps above for a one-envelope procurement should be followed.

#### Appendices

- Standard of Conduct Policy (Appendix 3)
- Method of Procurement Selection Form (Appendix 10)
- Contract Payment Type Selection Form (Appendix 30)

- Independent Cost Estimate Scope of Work, Summary and Staffing Plan (Appendix 24)
- Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7)
- Declaration Concerning Conflicts for Evaluators (Appendix 8)
- Responsive Bidder/Proposer Checklist for RFP (Appendix 11)
- Subconsultant List (Appendix 13)
- Notice to Short-Listed Proposers (Appendix 18)
- Notice to Proposers Not Making Short-List (Appendix 19)
- Request for Cost Proposal (Appendix 20)
- Notice of Intent to Enter Negotiations with Another Proposer (Appendix 17)
- Record of Negotiation (Appendix 27)
- Notice of Intent to Award (Appendix 16B)
- Recommendation for the Selection of a Contractor Memo Template (Appendix 6)
- Post-Award Notice to Unsuccessful Proposers (Appendix 21)

### **Section 023F Procurement by Non-Competitive Proposals (Sole Source) (With Caltrans or Federal Funds)**

When AGENCY requires supplies or services available from only one responsible source and no other supplies or services will satisfy its requirements, AGENCY may make a sole source award following documentation of an adequate justification. When AGENCY requires an existing contractor to make a change to its contract that is beyond the scope of that contract, it may be a sole source award that must be justified. AGENCY staff should work with the Project Manager to determine if a particular contract amendment could be considered a sole source. A sole source cannot be justified when the need for the sole source is due to either a failure to plan or a lack of advance planning or due to concerns about the amount of assistance available to support the procurement (for example, expiration of federal assistance available for award). Board consent in a public meeting may also be required if the procurement meets pre-designated thresholds. Procurement via the limited scope procurement method described in Section 022I also should be explored prior to utilizing the sole source method. The following requirements apply to a sole source procurement that falls within the parameters of this section:

1. A cost analysis (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit (ICE), is required.
2. The Project Manager should not commence a sole source unless the Method of Procurement Selection Form indicates a sole source is appropriate and the procurement requisition includes a sole source approval form that:
  - a. justifies the use of such actions in writing based on one or more of the justifications permitted by the federal funding agency(ies);

- b. certifies the accuracy and completeness of the justification; and
  - c. approval by the Executive Director is received.
3. The project manager is responsible for providing and certifying as accurate and complete necessary data to support his/her recommendation for a noncompetitive procurement.
  4. The sole source justification form must accompany each procurement requisition requesting a sole source procurement.
  5. When the acquisition will be paid for in whole or in part by federal funds, one of the following conditions must be met:
    - a. Staff solicited competitive bids and was unable to obtain a responsive bidder.
    - b. The grantor agency providing the federal funds has approved sole source procurement.
    - c. The service is only available from a single source because the contractor will be required to use confidential information, intellectual property, or trade secrets owned by the contractor.
    - d. The federal grantor agency made the award of funds being used based on AGENCY's use of a particular team of contractors, and the contractor to be sole sourced is one of the team members identified in the funding application.
    - e. The work is necessary to continue development or production of highly specialized equipment or components thereof, and it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition or when it is likely that award to another contractor would result in unacceptable delays in fulfilling AGENCY's needs.
    - f. The sole source is authorized by statute, or only one contractor can comply with specific statutory requirements.
    - g. A national emergency exists and a particular facility or contractor is needed to achieve mobilization.
    - h. The disclosure of AGENCY's needs in a public procurement process would compromise national security.
    - i. A particular expert or neutral person's services are needed for a current protest, dispute, claim, or litigation.



- j. A competitive procurement is precluded by the terms of an international agreement or treaty or the written directions of a foreign government providing reimbursement for the cost of the supplies or services.
  - k. To establish or maintain an educational or other nonprofit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.
6. All procurements over \$5,000 must have a documented RON that establishes that the project manager made the effort to obtain the best price for AGENCY for the goods or services with quality, level of effort, and other relevant factors taken into consideration. The Project Manager is responsible for documenting the RON when it takes the lead on the negotiations, and the project manager is responsible for the RON if he/she takes the lead on negotiating with the contractor.
  7. Sole source procurements require approval by the Executive Director.

#### Appendices

- Procurement Requisition Form (Appendix 2)
- Method of Procurement Selection Form (Appendix 10)
- Sole Source Approval Form (Appendix 1)
- Record of Negotiation (Appendix 27)

### **Section 023G Procurement by Non-Competitive Proposals (Sole Source) (Without Caltrans or Federal Funds)**

1. Regardless of funding, sole source procurements are accomplished through solicitation or acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract also is considered a sole source procurement that must comply with this section. A sole source cannot be justified when the need for the sole source is due to either a failure to plan or a lack of advance planning, or due to concerns about the amount of assistance available to support the procurement (for example, expiration of funding assistance available for award). Board consent in a public meeting may also be required if the procurement is of the type and amount the Board has directed that staff bring it for pre-procurement and/or pre-contracting approval. AGENCY staff should work with the Project Manager to determine if a particular contract amendment could be considered a sole source. Procurement via the limited scope procurement method described in Section 022J also should be explored prior to utilizing the sole source method.
2. When there are no federal funds involved, one of the following additional factors may be utilized to justify a sole source acquisition in addition to the factors in Section 022I:

- a. Only one (1) contractor/consultant/vendor who can provide unique/highly specialized item/ service.
  - b. Economy or efficiency supports award to existing contractor/consultant as a logical follow-on to work already in progress under a competitively awarded contract.
  - c. Cost to prepare for a competitive procurement exceeds the cost of the work or item.
  - d. The item is an integral repair part or accessory compatible with existing equipment.
  - e. The item or service is essential in maintaining research or operational continuity.
  - f. The item/service is one with which staff members who will use the item/service have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.
3. A cost analysis (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit (ICE) is required.
  4. The Project Manager should not commence noncompetitive negotiations unless a Method of Procurement Selection Form indicates a sole source is needed and the procurement requisition includes a sole source approval form that:
    - a. justifies the use of such actions in writing;
    - b. certifies the accuracy and completeness of the justification; and
    - c. approval by the Executive Director.
  5. The project manager is responsible for providing and certifying as accurate and complete necessary data to support their recommendation for noncompetitive procurements.
  6. All procurements must have a documented RON that establishes that staff made the effort to obtain the best price for AGENCY for the goods or services with quality, level of effort, and other relevant factors taken into consideration. A template exists for documenting the RON for task orders. The Project Manager is responsible for documenting the RON when it takes the lead on the negotiations, and the project manager is responsible for the RON if he/she takes the lead on negotiating with the contractor.
  7. The sole source approval form must accompany each procurement requisition requesting a sole source procurement.

## Appendices

- Procurement Requisition Form (Appendix 2)
- Method of Procurement Selection Form (Appendix 10)
- Sole Source Approval Form (Appendix 1)
- Record of Negotiation (Appendix 27)

## Section 023H Procurement by Limited Competition

1. Generally, AGENCY must provide for full and open competition in solicitations. The Common Grant Rule for governmental recipients of federal funding, however, permits AGENCY to limit the number of sources from which it solicits bids or proposals when AGENCY has such an unusual and urgent need for the property or services that it would be seriously injured unless it were permitted to limit the solicitation. A limited competition procurement cannot be justified when the need for foregoing the full and open competition requirement is due to either a failure to plan or a lack of advance planning or due to concerns about the amount of assistance available to support the procurement (for example, expiration of federal assistance available for award). Only under certain circumstances can AGENCY conduct a procurement using limited competition requirements. A small purchase procurement procedure in which only three quotes are sought on a shorter time frame could be used even for a procurement exceeding the normal applicable thresholds if a justification for limited competition exists. Prior consultation with the Project Manager is required in order to utilize a limited competition procurement method. The justifications in Sections 022G and 022H may be sufficient. Additionally, one of the justifications below may be sufficient.
  - a. Documentation is provided establishing that full and open competition in connection with a particular acquisition is not in the public interest.
  - b. Documentation is provided establishing that an unusual and urgent need for the services exists and AGENCY would be seriously injured unless it is permitted to limit the competition.
  - c. Documentation is provided establishing that public exigency or emergency will not permit a delay resulting from a full formal competitive procurement for the supplies or services.
  - d. Acquisition of an expert or neutral person's services is needed for a current or potential protest, dispute, claim, or litigation.
2. The Project Manager should not commence a limited competition procurement unless the procurement requisition justifies the use of limited competition, certifies the accuracy and completeness of the justification, and is approved by a department director or higher level

of authority. The project manager is responsible for providing and certifying as accurate and complete necessary data to support the recommendation for limited competition procurements.

3. The limited competition request form must accompany each procurement requisition requesting this kind of procurement.
4. All procurements over must have a documented RON that establishes that the project manager made the effort to obtain the best price for AGENCY for the goods or services with quality, level of effort, and other relevant factors taken into consideration. A template exists for documenting the RON for task orders. The Project Manager member is responsible for documenting the RON when it takes the lead on the negotiations, and the project manager is responsible for the RON if he/she takes the lead on negotiating with the contractor.
5. Limited competition procurements require approval by the Executive Director

### **Appendices**

- Procurement Requisition Form (Appendix 2)
- Limited Competition Approval Form (Appendix 25)
- Record of Negotiation (Appendix 27)

### **Section 023I Options**

1. In compliance with FTA Circular 4220.1F options must be evaluated as part of the price evaluation of offers before award is made on FTA-funded procurements if an option will be included in the solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, AGENCY may elect to purchase additional equipment, supplies, or services called for by the contract or may elect to extend the term of the contract. If AGENCY chooses to use options, the requirements below apply:
  - a. Evaluation of Options: The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
  - b. Exercise of Options
    - i. The project manager and the Project Manager must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

- ii. An option may not be exercised unless the project manager has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
2. The terms for the options and for the exercising of them should be defined in each contract. For service contracts the basic plus option periods should not exceed five years unless a documented justification is approved by the Project Manager.
3. The bid price form used in an IFB and the cost proposal form used in an RFP should state that the option prices will be included in the total price for evaluation purposes.

### **Appendices**

- Sample Cost Proposal (Appendix 9)

### **Section 023J Contracts with Other Government Entities**

Pursuant to PCC 10340, three competitive bids are not required when the contract is with departments or agencies of the State of California, local governmental entities, auxiliary organizations of the California State University or Community College, foundations organized to support the Board of Governors of the California Community Colleges or auxiliary organizations of the Student Aid Commission, established pursuant to the section 69522 of the Education Code. Such contracts are known as “intergovernmental agreements” and do not require a competitive procurement process.

### **Appendices**

- None

### **Section 023K Use of On-Call Multiple Award Procurements**

When AGENCY has a need to procure services within a particular genre, such as A&E, transit planning, environmental, or legal services, but the specific project assistance that will be needed from consultants is not known in a sufficient amount of detail, an RFQ can be used to select a short-list of prequalified firms for a specific period of time. The procedure used is similar to that of a two-envelope RFQ procurement, for which more details are provided in Section 22D of this manual. In addition to those procedures, the following additional items should be considered:

1. A determination of whether any applicable DBE goal should be set at the [master] contract stage or at a later point in time when task orders are issued will need to be made prior to issuance of the RFQ. The Small Business Manager and Office of General Counsel should be

consulted for advice on DBE goals and the timing of DBE documentation deadlines that will be applicable to proposers.

2. Within the RFQ, AGENCY will need to identify the criteria that will be used to select from among the firms on the on-call list and an on-call consultant selection form including those criteria will need to be prepared prior to issuance of each task order.

## **Appendices**

- On-Call Consultant Selection Form Sample (Appendix 28)

## **Section 023L Unsolicited Proposals**

An unsolicited proposal is a written proposal that is submitted to AGENCY on the initiative of the submitter, to develop a partnership that is not in response to a formal or informal request issued by AGENCY.

An Unsolicited Proposal is distinguishable from a project already part of AGENCY's long-term budget planning process and plan if it uses innovative but pragmatic solutions that offer added value, such as enhanced financing options, improved customer service outcomes or advanced delivery dates. Sales tax bonds and certificates of participation are not unique and innovative financing tools.

An Unsolicited Proposal is not an offer responding to AGENCY's previously published expression of need or request for proposals, an advance proposal for property or services that AGENCY could acquire through competitive methods, or a replacement for an existing contract that is already in effect.

All Unsolicited Proposals shall be submitted to the AGENCY Executive Director for review. AGENCY will evaluate the proposal using a two-phased approach. In Phase One, Conceptual Proposals are evaluated. If there is interest in a Conceptual Proposal, the proposer may be asked to submit a Detailed Proposal for evaluation in Phase Two. If the project proceeds beyond Phase Two, or otherwise involves a competitive procurement or sole source procurement, AGENCY's procurement policies and procedures will apply. AGENCY may, at any time, choose not to proceed further with any Unsolicited Proposal.

1. The conceptual proposal is Phase One of the process. The purpose of Phase One is for AGENCY to receive a written, concept-level proposal to determine whether to request additional and detailed information for Phase Two.
  - a. Before initiating a Phase One evaluation, AGENCY staff will determine if the Conceptual Proposal meets threshold requirements outlined in Exhibit B. Furthermore, if the proposal meets the threshold requirements, AGENCY will follow the procedures outlined in Exhibit A.

- b. Conceptual Proposals should include the information identified in the Conceptual Proposal Form made available by AGENCY.
- c. Conceptual Proposals will be evaluated promptly in accordance with the criteria set out in this section. The evaluation process will include a financial evaluation team. The proposer(s) will not initiate any interaction with the evaluation team.

The evaluation team will determine the evaluation criteria, as necessary, to address the specific proposal, but generally will consider the following factors:

- I. offers direct or anticipated benefits to AGENCY, its partners and the public;
  - II. consistency with AGENCY's planning and programming goals and objective;
  - III. satisfies a need for AGENCY that can be reasonably accommodated in AGENCY's annual long-term budget, or through grants, without significant change to planned expenditures, projects or costs;
  - IV. offers goods or services that AGENCY may not have intended to procure or provide through the normal AGENCY procurement process; and
  - V. Other factors appropriate to the proposal.
2. The detailed proposal is Phase Two of the process. The purpose of Phase Two is for AGENCY to receive more detailed technical and financial information to fully understand and evaluate the proposal. If AGENCY desires to proceed to Phase Two, AGENCY will request a Detailed Proposal.

Once the Detailed Proposal is received, AGENCY will retain a record of the persons on the evaluation team and record the final disposition of the proposal. Outside advisors will be consulted only if the AGENCY evaluation team deems it necessary and beneficial. In addition to the information provided in Phase One, a Detailed Proposal must, at a minimum, include information outlined in Exhibit B.

Detailed Proposals will be evaluated promptly, in accordance with the criteria set out in Exhibits A and B, as well as any other evaluation criteria identified in the request for Detailed Proposal.

AGENCY's Executive Director will consider the proposal for review and approval. If AGENCY Board of Directors' or Finance Committee approval is required, the proposer will be notified of the date of the meeting when the proposal will be discussed.

3. AGENCY's receipt of an Unsolicited Proposal does not, by itself, justify a contract award without full and open competition. If the Unsolicited Proposal offers a proprietary concept

that is essential to contract performance, it will be deemed a Sole Source (see section below). If not, AGENCY will pursue a competitive procurement.

- a. If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, as determined by AGENCY, AGENCY may make a sole source award, as provided in in Sections 023 F & G.
  - b. If the Unsolicited Proposal does not meet the criteria of a sole source award, AGENCY will proceed with steps outlined in Exhibit A before entering into a contract resulting from an Unsolicited Proposal.
  - c. Nothing in this policy or otherwise requires AGENCY to act or enter into a contract based on an Unsolicited Proposal. AGENCY, at its sole discretion, may return and/or reject an Unsolicited Proposal at any time during the process.
4. The AGENCY Contracting Officer or other duly authorized AGENCY representative(s) may commence negotiations only after the following prerequisites have been met:
- a. An Unsolicited Proposal has received a favorable comprehensive evaluation, including in comparison to any proposals received following publication as provided in this policy; and
  - b. The AGENCY Board of Directors furnishes the necessary funds, and provides a sole-source justification (if applicable).
5. If AGENCY pursues a competitive procurement, AGENCY personnel shall not use any data, or any confidential patented, trademarked, or copyrighted part of an Unsolicited Proposal or confidential technical or financial proprietary information as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the proposer is notified of and agrees to the intended use. Concepts or ideas are not considered proprietary by AGENCY but specific implementing methodologies that are unique to the proposer will be recognized. AGENCY staff shall place a cover sheet on the proposal expressing limitations, unless the proposer clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal.
6. Public Records Act
- a. Unsolicited Proposals are subject to the provisions of the California Public Records Act (California Code Government Code §6250 et seq.). Public Contract Code Section 22164 provides that: information that is not otherwise a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) shall not be open to public inspection. Any documents provided by the proposer to AGENCY marked "Trade Secret," "Confidential" or "Proprietary," or any financial records provided by the proposer to AGENCY, shall be



clearly marked with the proposer's name. AGENCY will use its best efforts to inform the proposer of any request for any financial records or documents marked "Trade Secret," "Confidential" or "Proprietary" provided by proposers to AGENCY. AGENCY will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

- b. In the event of litigation concerning the disclosure of any records, AGENCY's sole involvement will be as a stakeholder, retaining the records until otherwise ordered by a court. The proposer, at its sole expense and risk, shall be fully responsible for any, and all, fees for prosecuting or defending any action concerning the records and shall indemnify and hold AGENCY harmless from all costs and expenses, including attorney's fees, in connection with, any such action.

## Exhibit B

### 1. Conceptual Proposal Threshold Requirements

- a. Promptly acknowledge receipt of the proposal (email or letter to proposer); and
- b. Determine whether the proposal meets the threshold requirements of an Unsolicited Proposal.
- c. Before initiating a Phase One evaluation, AGENCY staff will determine if the Conceptual Proposal meets the following threshold requirements:
  - i. Satisfies the definition of an Unsolicited Proposal;
  - ii. Includes all required content and attachments;
  - iii. Contains sufficient detail to enable AGENCY to perform an adequate evaluation;
  - iv. Has been approved by a responsible official or other representative authorized to contractually obligate the proposer; and
  - v. Complies with the marking requirements for use and disclosure of data.
- d. Log the proposal and assign it a number;
- e. Set and notify the proposer of the schedule for internal evaluation;
- f. Assemble an evaluation team;
- g. Schedule a meeting with the proposer, if it's determined that a meeting would be helpful to more fully understand the proposal;
- h. Facilitate the evaluation process as needed; and
- i. Notify the proposer of AGENCY's decision. The possible outcomes may be to discontinue the process, proceed to Phase Two, or pursue a competitive procurement. AGENCY will provide a general explanation of the reasons for the decision.

## 2. Phase Two Detailed Proposal

- a. Essential terms and conditions that could be part of a subsequent agreement between AGENCY and the proposer;
- b. A goal for participation of disadvantaged business enterprises (DBE);
- c. Schedule and important deadlines for the proposer;
- d. Evaluation criteria; and
- e. Requests for specific modifications or clarifications to the scope of the original proposal.
- f. Technical Information:
  - i. Names and professional information of the proposer's key personnel who would be committed to the project;
  - ii. Type of support needed from AGENCY; e.g., facilities, equipment, materials, or personnel resources; and
  - iii. Type of support being provided by the proposer;
  - iv. A sufficiently detailed description of the scope of work being offered to allow AGENCY to evaluate the value received for the price proposed;
  - v. Proposed price or total estimated cost for the effort and/or the revenue generated in sufficient detail for meaningful evaluation and cost analysis, including an annual cash flow for the project and annual or future costs to operate and maintain;
  - vi. A schedule for the implementation, including specific details for any services to be provided by AGENCY; and
  - vii. Proposed duration of effort.
- g. Supporting Information:
  - i. Type of contract being sought by the proposer (the final determination on type of contract shall be made by AGENCY, should AGENCY decide to proceed with a contract);
  - ii. Description of the proposer's organization, previous experience in the field, and facilities to be used;
  - iii. Required statements and disclosures, if applicable, about organizational conflicts of interest or other potential issues; and
  - iv. Information, in the form of AGENCY's Pre-Qualification Application demonstrating to AGENCY that the proposer has the necessary financial resources to complete the project, as determined by AGENCY staff. Such

information may include (i) financial statements, including an Auditor's Report Letter or an Accountant's Review Letter, Balance Sheets, Statements of Income and Stockholder's Equity, and a Statement of Change in Financial Position; (ii) unaudited balance sheets; (iii) names of banks or other financial institutions with which the proposer conducts business; and (iv) letter of credit commitments.

### 3. Detailed Proposal Evaluation Criteria:

- a. At Phase Two, the evaluation team will confirm the proposal meets the same evaluation criteria set forth in Phase One, in addition to the following minimum factors, and any additional criteria set out in the Request for Detailed Proposal:
  - i. The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives;
  - ii. The proposer's financial capacity to deliver the goods or services defined in the proposal;
  - iii. Viability of the proposed schedule and AGENCY's ability to meet activities required;
  - iv. AGENCY's capacity to enter into a contract under its current debt authorization;
  - v. The qualifications, capabilities, and experience of key personnel who are critical in achieving the proposal objectives;
  - vi. The relative costs and benefits of the proposal with respect to improving mobility, accessibility, and/or strategic growth initiatives in the Shasta Region;
  - vii. The specific details of the cost/revenue generated; and
  - viii. Any other factors appropriate for the proposal.

### 4. Detailed Proposal Competitive Solicitation Process

- a. Receipt: AGENCY will publicize its receipt of the Unsolicited Proposal by posting on AGENCY's website for purchasing opportunities.
- b. Adequate Description: AGENCY's publication of its receipt of the Unsolicited Proposal will include an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.
- c. Interest in the Property or Services: AGENCY also will publicize its interest in acquiring the property or services described in the proposal using the same or similar methods provided above.

- d. Adequate Opportunity to Compete: AGENCY will provide an adequate opportunity for interested parties to comment or submit competing proposals, and/or requests for an opportunity to respond within a time frame (minimum of 14 days).
5. Contract Award Based on Proposals Received: Finally, AGENCY will publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication using the same or similar methods provided above.

## **SECTION 024 COST AND PRICE ANALYSIS**

1. AGENCY staff should perform a cost or price analysis in connection with every procurement action that will result in expenditure of funds, including contract modifications and amendments that call for additional funds, sole sources, change orders, exercise of options, use of a purchasing schedule or the piggybacking method and must be completed prior to the procurement. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the procurement requisition originator must create an ICE before receiving bids, cost estimates or proposals.
2. Task Order Contracts. If the ICE prepared prior to the solicitation was sufficiently detailed by task to allow a determination of the reasonableness of the price for a particular task, an additional ICE may not be required. If, however, the level of detail in the original ICE is insufficient or there is a reason to believe the amounts used in the original ICE are no longer reasonable or accurate, an ICE should be completed by the Project Manager considering the level of effort needed as well as other factors such as direct materials needed before a cost estimate or proposal is requested from the contractor in order to ensure the ICE is independently prepared and the Project Manager has not relied on the contractor to determine the starting point for negotiations.
3. Cost Analysis. A cost analysis must be performed when the bidder is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and A&E services contracts. A cost analysis will also be necessary when adequate price competition is lacking and for sole source procurements, limited competition procurements, and contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
4. Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

5. Profit/Fee. AGENCY will negotiate profit/fee as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis should be performed, including amendments, task orders, job orders and change orders. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
6. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles on federally funded procurements.
7. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used on federally funded procurements. This includes fixed mark-ups on equipment rentals and subcontractors. A maximum mark-up amount may be specified which should be negotiated based upon the risk involved, level of supervision needed, complexity of the work, and other factors. Documentation of this decision making should be included in the contract file in each instance.
8. Establishing Indirect Cost Rates. For contracts other than A&E contracts that are federally funded, if the contractor or subcontractor does not have an approved government agency indirect cost rate agreement, the contract's dollar value should determine how that rate is verified.
  - a. Contracts of \$5 Million or Less. The audit recommendations of the contractor's certified public accountant or indirect cost information in the contractor's annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other governmental agencies within the last six months may be accepted.
  - b. Contracts Exceeding \$5 Million. The Defense Contract Audit Agency, another federal cognizant audit agency, or an accounting firm approved by the federal government to perform audits for the federal government, must verify the contractor's rates.

## Appendices

- Independent Cost Estimate (ICE) Justification for Small Procurements (Appendix 23)
- Cost Analysis Form (Appendix 32)
- Price Analysis (Appendix 35)

## SECTION 025 BONDING REQUIREMENTS

1. For non-federally funded construction or facility improvement contracts or subcontracts less than \$50,000 in value, bonding may be required at the discretion of the Executive Director. For construction or facility improvement contracts or subcontracts exceeding \$100,000, it is the policy of AGENCY to impose these minimum requirements:
  - a. A bid guarantee from each bidder equivalent to ten (10) percent of the bid price must be issued by a bonding company registered in California and acceptable to AGENCY in AGENCY's sole discretion. The "bid guarantee" shall consist of a firm commitment such as a bid bond executed by an admitted surety insurer and made payable to AGENCY, cash, cashier's check, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid shall not be considered unless accompanied by one of the forms of bidder's security. On the failure or refusal of any bidder to execute the contract, its bidder's security shall be forfeited to AGENCY. AGENCY may withhold the bidder's security of the second- and third-lowest, responsive and responsible bidders until the contract has been finally executed. AGENCY shall, upon request, return cash, cashier's checks, and certified checks submitted by all other unsuccessful bidders within ten (10) days after the contract is awarded, and their bidder's bonds shall be of no further effect.
  - b. A performance bond on the part of the contractor for at least 50 percent of the contract amount for contracts without federal funds, 100 percent of the contract price for federally funded contracts, or for such percentage as may be required by law or funding agencies. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond in the amount of 100 percent of the contract price is required unless the award is less than \$100,000 or the Board grants a variance.
  - d. A cash deposit, certified check, or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of the grantor agency is adequately protected.
2. At the discretion of the Project Manager and project manager, bonding of higher limits than the minimum may be imposed if the project risk warrants such.

## Appendices

- Responsive Bidder/Proposer Checklist for RFP/RFQ (Appendix 11)

## SECTION 026 PAYMENT PROVISIONS IN THIRD-PARTY CONTRACTS

1. Advance Payments
  - a. For non-federally funded contracts, the use of advance payments is strongly discouraged and will only be agreed to if no other option is available.
  - b. For federally-funded contracts, the federal funding agencies do not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from the federal funding agency(ies).
2. Progress Payments. The risk associated with use of progress payments is that AGENCY may make payment for contract work that has not been completed. AGENCY should only use progress payments if the following conditions are met, as applicable:
  - a. The percentage of completion method for progress payments can only be used on construction contracts if the procurement is FTA funded.
  - b. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
  - c. AGENCY obtains adequate security for the progress payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment.
  - d. AGENCY obtains sufficient documentation to demonstrate completion of the amount of work for which progress payments are made.
3. Pursuant to prompt payment provisions in state law, terms and conditions in grants to AGENCY from state and federal agencies, and federal regulations applicable to procurements with DBE requirements, payment is typically required by AGENCY prime contractors to their subcontractors within 15 days. AGENCY monitors payments to DBE subcontractors through use of monthly progress reports from contractors.

## Appendices

- Final Report Utilization of U/DBE and Small Business, 1<sup>st</sup> Tier Subs (Appendix 26C)

## **SECTION 027 LIQUIDATED DAMAGES PROVISIONS**

1. AGENCY may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine.
2. The use of liquidated damage provisions is at the discretion of the Executive Director.
3. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time, and the rate must be specified in the third-party contract. Any liquidated damages recovered shall be credited to the project account involved unless the grantor agency permits otherwise. Documentation establishing how the liquidated damages amount was determined will be provided by the project manager for the contract file.

### **Appendices**

- None

## **SECTION 028 CONTRACT AWARD ANNOUNCEMENT**

Once the contract terms have been negotiated, a post-award notice should be sent to those bidders/offerors who were not selected for the award. The Project Manager will send a notice to proceed to the successful proposer/bidder following execution of a contract. If AGENCY implements a contract award announcement procedure for federally funded procurement for goods or services (including construction services), the announcement should specify the amount of federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services.

### **Appendices**

- Post-Award Notice to Unsuccessful Proposers (Appendix 21)
- Notice to Proceed (Appendix 22)

## **SECTION 029 CONTRACT PROVISIONS**

All contracts should include provisions to define a sound and complete agreement. In addition, contracts and subcontracts should contain contractual provisions or conditions that allow for:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate, for all contracts in excess of the small purchase threshold.



2. Termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.

## Appendices

- None

## SECTION 030 CARDINAL CONTRACT CHANGE

1. A cardinal contract change is a significant change in contract work (goods or services) that causes a major deviation from the original purpose of the work or the intended method of achievement or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Such practices are sometimes informally referred to as “tag-ons.” A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a tag-on or a cardinal change.
2. A cardinal change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases. The following guidance should be used, however, in order to determine if a change is a cardinal change and if such a change will therefore constitute a sole source. Legal Counsel should be consulted to make a final determination regarding whether a particular contract change will constitute a cardinal change.
  - a. Changes in Quantity. To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an “out-of-scope” change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. The U.S. Supreme Court decision in *Freund v. United States*, 260 U.S. 60 (1922) supports this policy.
  - b. Customary Marketing Practices. Marketing practices can influence the determination of which changes will be “cardinal.”
  - c. Balancing Test. Based on the nature and extent of the work to be performed; the amount of effort involved; whether the change was originally contemplated at the time the original contract was entered into; or the cumulative impact on the contract’s quantity, quality, costs, and delivery terms, is the change significant? Generally, a change that causes the contract value to exceed the advertised potential contract value by more than 25 percent will be considered a cardinal change.
  - d. Rolling Stock. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place

would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.

- e. Federal Procurement Standards. The broader standards applied in federal contracting practice reflected in Federal court decisions, federal boards of contract appeals decisions, and comptroller general decisions provide guidance in determining whether a change would be treated as a cardinal change. AGENCY will not necessarily treat these federal procurement decisions as controlling, however, AGENCY intends to consider the collective wisdom within these decisions in determining the nature of third-party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes.
- f. Managing A&E Contracts and Task Orders. When maximum values are set forth in a contract or Task Order (TO), the contract manager must carefully track the dollar value capacity to avoid exceeding the stated maximum amount(s). The Project Manager will verify capacity of funds and time prior to preparation of the amendment or TO. Amendments or task orders issued in excess of the stated maximum time or amount in the contract may be treated as sole source procurements. The intent of the parties at origination of a contract or TO that is intended to cover a phased project should contain a description of the plan for future deliverables or services by amendment or additional TOs in order to avoid the need for sole source documentation. Such a plan should be described in the contract or TO so as to clearly establish that such future deliverables and/or services are conditioned upon applicable matters within AGENCY's discretion such as availability of funds, budget, contractor performance, and AGENCY's best interest.

## Appendices

- None

## SECTION 031 STATUTORY AND REGULATORY REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS

1. A current (but not all-inclusive) list of statutory and regulatory requirements applicable to AGENCY procurements (such as Davis-Bacon Act, DBE, Clean Air, and Buy America) is contained in AGENCY contract templates. AGENCY is responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel, and manufactured goods will be subject

to the “Buy America” requirements in 49 C.F.R. Part 661 if there is FTA funding, but different Buy America provisions will apply if there is FHWA funding in a procurement.

2. It is the responsibility of each person in the procurement process to ensure that all required clauses specific to the type of procurement and funding type are included in the contract boilerplate, that those federal clauses accompany all bid or proposal documents, that the bidder/offeror completes the required certifications and that the PO or contract includes reference to the clauses and contains signed certifications.

#### **Appendices**

- None

### **SECTION 032 PROCUREMENT CARDS**

AGENCY will maintain credit cards under the control of the Director of Finance and Administration and Administration which will allow for cost- and time-effective procurements. Use of credit cards is subject to the procurement requirements applicable to micro and small purchases as detailed in Section 22.

#### **Appendices**

- Credit Card Purchase Form (Appendix 36)

### **SECTION 033 CLOSEOUT OF CONTRACT AND TASK ORDERS**

At the conclusion of the work assigned to a contractor in a contract or task order, the project manager is responsible for notifying the Project Manager that the contract or task order is being closed out. An evaluation of the contractor should also be completed by the project manager and a copy provided to the Project Manager to include in AGENCY’s records. When a contract or task order is being terminated, the project manager also must notify Director of Finance and Administration that the remaining funds in the contract or task order can be liquidated and unencumbered.

#### **Appendices**

- None

## **SECTION 034 DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL OPPORTUNITY**

1. DBEs should have the maximum opportunity to participate in the performance of AGENCY's federally funded procurements and contracts. AGENCY will fulfill its DBE obligations in its DBE plan by ensuring fair and full utilization of DBEs in the purchase of equipment, materials, and supplies and in the performance of contracts and subcontracts.
2. The required DBE clauses will be included in any and all DOT-financed agreements executed by AGENCY. It is the policy of the DOT and AGENCY that DBEs as defined in 49 CFR Part 26 should have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to such procurements. Contractors must agree to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. Contractors must not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
3. DBE Accountability
  - a. AGENCY should monitor DBE payments under POs, contracts, or any other method used to expend funds with a certified DBE firm.
  - b. A DBE directory should be maintained.
  - c. The Project Manager will request a listing of DBE vendors from the directory for all federally funded procurements when a formal solicitation is used. The Project Manager is to supplement AGENCY's bid list by adding a sufficient number of DBE firms so that the notice to offerors/bidders can be distributed to all firms on the bid list created for the specific procurement activity. When there is a subcontract opportunity or it is deemed appropriate, a contract goal should be defined and documented.
  - d. AGENCY will monitor POs and contracts on an ongoing basis to assure compliance with the applicable DBE program(s).
  - e. The establishment of one or more contract goals for a formalized procurement will be documented by the Project Manager based on the availability of the Underutilized DBEs (UDBEs) in the geographical area for the specific type of procurement and the judgment that the goal can reasonably be met by the bidder/proposer.
  - f. If at the time of bid or proposal submittal the DBE/UDBE goal is not met and if required by law, the bid or proposal will be requested for review by the Project Manager or a consultant to assure that a good faith effort has been met. The Project Manager will

document that the bidder/proposer was either found responsive to the DBE/UDBE requirements of the RFP/IFB or has been deemed non-responsive by completing the “responsive checklist” if DBE/UDBE provisions are applicable.

## 6. Records and Reports

AGENCY provides data about its DBE programs as directed by DOT operating administrations. AGENCY creates and maintains a bidders list by collecting the data from bidders or through surveys. This list provides accurate data about DBE/UDBE and non-DBE contractors and subcontractors who seek to work on AGENCY’s federally assisted contracts for use in setting overall goals. AGENCY will obtain the following information about these DBE/UDBE and non-DBE contractors and subcontractors:

- a. Firm name;
- b. Firm address;
- c. Firm's status as a DBE/UDBE or non-DBE;
- d. Age of the firm; and
- e. The annual gross receipts of the firm – information is obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000 to \$1 million; \$1 to 2 million; \$2 to 5 million; etc.) rather than requesting an exact figure.

## 7. DBE Requirements

- a. AGENCY has to fulfill the DBE requirements for all DOT-funded projects receiving planning, capital, and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in funds in a federal fiscal year.
- b. AGENCY must submit a DBE program to the concerned operating administration. Once the operating administration has approved the program, the approval counts for all DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for DOT-assisted contracts). AGENCY also will enter into an implementation agreement for its DBE program when required by a funding agency.
- c. Additional information regarding AGENCY’s DBE programs can be found in its FTA and FHWA DBE programs documentation.

## Appendices

- Responsive Bidder/Proposer Checklist for RFP/RFQ (Appendix 11)
- Subconsultant List (Appendix 13)

- Bidders List (Appendix 14A)
- Local Agency U/DBE Commitment Form (Appendix 14B)
- DBE/UDBE Information – Good Faith Efforts Form (Appendix 14C)
- Final Report – Utilization of U/DBE and SB, First-Tier Subconsultants (Appendix 26C)

## **SECTION 035 INSURANCE REQUIREMENTS**

It is the policy of AGENCY to require that third-party contractors or consultants maintain insurance coverage to meet insurance standards contained in specific contract boilerplate. Proof of insurance coverage shall be documented by the Project Manager.

### **Appendices**

- None

## **PART III APPENDICES, REFERENCES AND DEFINITIONS**

### **APPENDICES**

1. Sole Source Approval Form
2. Procurement Requisition Form
3. Standard of Conduct Policy
4. Contractor's Statement of Experience and Financial Condition
5. Protest Procedures for Procurements
6. Recommendation for the Selection of a Contractor Memo Template
7. Evaluator (Consultant/Contractor Evaluation Committee) Guidelines
8. Declaration Concerning Conflicts for Evaluators
9. Sample - Cost Proposal
10. Method of Procurement Selection Form
11. Responsive Bidder/Proposer Checklist for RFP/RFQ
12. Bid Summary

13. Subconsultant List
14. U/DBE Information
  - 14A Bidders List
  - 14B Local Agency U/DBE Commitment Form
  - 14C DBE/UDBE Information – Good Faith Efforts Form
15. Solicitation Notification
16. Notice of Intent to Award
  - 16A IFB Notice of Intent to Award
  - 16B Notice of Intent to Award RFP's
17. Notice of Intent to Enter Negotiations with Another Proposer
18. Notice to Short-Listed Proposers
19. Notice to Proposers Not Making Short-List
20. Request for Cost Proposal
21. Post-Award Notice to Unsuccessful Proposers
22. Notice to Proceed
23. Independent Cost Estimate (ICE) Justification for Small Procurements
24. Independent Cost Estimate Scope of Work, Summary, and Staffing Plan
25. Limited Competition Approval Form
26. Procurement Closeout and Encumbrance Liquidation
  - 26A Contracts, Task Orders and Job Orders - Close-Out Instructions
  - 26B Consultant Performance Evaluation Tool
27. Record of Negotiation

28. On-Call Consultant Selection Form Sample
29. Purchasing Schedule Worksheet
30. Contract Payment Type Selection Form
31. Micro-purchase Justification Form
32. Purchase Order Checklist
33. DBE Complaint Procedures and DBE Complaint Process Description for Staff
34. Cost Analysis Form
35. Price Analysis
36. Credit Card Purchase Form
37. Procurement Process Flow – One Envelope
38. Procurement Process Flow – Two Envelope

## **REFERENCES**

The following federal and state statutes and regulations are incorporated by reference in this manual to the extent required by law. This is not an exhaustive list of the statutes and regulations:

1. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), P.L. 102-240
2. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
3. Fixing America's Surface Transportation (FAST) Act P.L. 114-94
4. Administrative Requirements, Cost Principles, and audit requirements for Federal Awards (OMB CFR Part 200 – Super Circular)
5. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively
6. OMB Circular 2CFR
7. Executive Order 12612, "Federalism," dated 10-26-87



8. Applicable provisions of the State of California Public Contract Code
9. Applicable provisions of the State of California Labor Code
10. Disadvantaged Business Enterprises (DBE) - 49 C.F.R. Part 26
11. Federal Brooks Act and State Mini-Brooks Act (40 U.S.C.§541 and CA Gov. Code §4525)
12. Federal Funding Accountability and Transparency Act of 2006 (FFATA)
13. 49 USC 53, as amended by MAP-21
14. The Caltrans Master Fund Transfer Agreement
15. Caltrans Local Assistance Programs Manual
16. 2CFR Part 200, Appendix XI, Compliance Supplement, Office of the President- Office of Management and Budget, page 4-20.000-3
17. California State Contracting Manual

## **DEFINITIONS**

All definitions in 49 U.S.C. § 5302 are applicable. For purposes of the manual, the following additional definitions are provided:

1. “Approval, Authorization, Concurrence, Waiver” means a deliberate written statement of an official authorized to permit AGENCY to take or omit action required by a contract, Board Policy or FTA Circular 4220.1F, which action may not be taken or omitted without additional permission. An oral permission or interpretation has no legal force, authority, or effect.
2. “Best Value” is a competitive, negotiated procurement process in which AGENCY reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that it may acquire technical superiority, even if it must pay a premium price. A “premium” is the difference between the price of the lowest-priced proposal and the one that AGENCY believes offers the best value. AGENCY should disclose these factors in its solicitation.
3. “Bidder” refers to a respondent to a AGENCY solicitation document, such as an invitation for bids (IFB) or request for quotes (RFQ), which will lead to a selection based on cost.
4. “Board,” “Commission,” “Owner,” “Grantee,” or “AGENCY” means AGENCY.
5. “Cardinal Change” means a major deviation from the original purpose of the work or the intended method of achievement or a revision of contract work so extensive, significant, or cumulative that the contractor is required to perform very different work from that described in the original procurement document/contract.
6. “Change Order” means an order authorized by AGENCY directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.

7. "Common Grant Rules" means Department of Transportation (DOT) regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which apply to federally funded agreements.
8. "Constructive Change" means an act or omission that, although not identified by a "change order," does in fact cause a change in the contract work.
9. "Contract Documents" means all of the contents of the solicitation documents and associated addenda, contract drawings, technical reports, technical specifications, and documented agreements. Said documents shall be considered as part of any contract made pursuant to a solicitation.
10. "Contractor," "consultant," "vendor," or "seller" is the successful bidder or offeror to whom a contract is awarded.
11. "Project Manager" means the individual assigned to the procurement who serves as the single point of contact for all correspondence during the procurement and/or contract administration process. This person also is responsible for relating to commercial terms and conditions during the period of performance of the agreement to the consultant or contractor.
12. "Cooperative Agreement" means an instrument by which FTA awards federal assistance to support a project in which it takes an active role or retains substantial control.
13. "Days" means business days unless otherwise specified.
14. "DBE" is the acronym for Disadvantaged Business Enterprise and means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5 of the Code of Federal Regulations (CFR).
15. "Design-Bid-Build Project" means a construction project under which an architect or engineer is commissioned to prepare drawings and specifications under a design services contract, and a separate contract is let for construction by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.
16. "Electronic Commerce (E-Commerce)" consists of electronic techniques, including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data interchange.
17. "Executive Director" refers to AGENCY Executive Director or designee.
18. "FHWA" refers to the Federal Highway Administration.
19. "FTA" refers to the Federal Transit Administration.
20. "Full and Open Competition" means that all responsible sources are permitted to compete.

21. "Governmental Recipient" means a state or local government, such as AGENCY, that receives federal funding and therefore must comply with the Common Grant Rule at 49 CFR Part 18.
22. "Grand Total Bid Price" means the grand total price and shall include all direct and indirect labor and material costs, taxes, duties, fees, and any other charges applicable to complete the total requirements as specified in the solicitation document, including all addenda, contract drawings, and technical specifications.
23. "Grant" means the instrument by which the FTA awards federal assistance to support a particular project in which the FTA does not take an active role or retain substantial control.
24. "Grantee" means the public or private entity to which a grant or cooperative agreement is awarded. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document. For the purposes of this policy, "grantee" also includes any subgrantee of the grantee. Furthermore, a grantee is responsible for assuring that its subgrantees comply with the requirements and standards of this policy and that subgrantees are aware of the requirements imposed upon them by federal statutes and regulations.
25. "Hazardous Substances" and/or "Contaminated Materials" means any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25281, et seq., as may be hereinafter amended.
26. "Intergovernmental Agreement" means a contract between AGENCY and another governmental entity, such as a Memorandum of Understanding with a municipality, Native American tribe, or public university.
27. "Invitation for Bid" invitation for a firm to provide a firm fixed priced proposal.
28. "Joint Procurement" (sometimes referred to as "cooperative procurement") means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity. A joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract as such a contract is merely assignable to third parties to the extent the parties agree and the original procurement scope and amount are sufficient.

29. "Local Government" means a county, municipality, city, town, township, local public authority, or any agency or instrumentality of a local or regional government. This term does not include a local public institution of higher education.
30. "Master Agreement" means the document incorporated by reference that contains the standard terms and conditions governing the administration of a project supported with state and federal assistance.
31. "Non-AGENCY Procurement" means a procurement for which another public entity served as the lead procurement entity and that includes provisions that will allow it to be used by AGENCY to contract with one or more specific contractors/vendors using pre-established prices, terms and/or conditions. Examples of such procurements include joint procurements, piggybacks, and state purchasing schedules.
32. "Notice To Proceed (NTP)" is a written notice from the Project Manager to a contractor authorizing the contractor to commence work and to start the performance period.
33. "Offeror" or "Proposer" refers to a respondent to a AGENCY solicitation document, which will lead to a selection based on qualifications and possibly cost.
34. "Piggybacking" is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.
35. "Property" includes real property consisting of land and buildings, structures, or appurtenances on land, equipment, supplies, other expendable property, intellectual, and intangible property.
36. "Public Transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, sightseeing, or intercity bus transportation (operated by a non-governmental entity), or intercity passenger rail transportation provided AMTRAK, (or a successor to such entity).
37. "Recipient" means the public or private entity to which the FTA or FHWA awards federal assistance through a grant, cooperative agreement, or other agreement. The term "recipient" includes "grantee," each member of a consortium, joint venture, team, or partnership awarded FTA or FHWA assistance. Neither a contractor nor a subcontractor is a "recipient."
38. "Responsible" (Bidder/Offeror) is a contractor, business entity or individual who is fully capable to meet all the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.
  - a. FTA defines "responsibility" to be a contractor/consultant who can demonstrate that it possesses the ability to perform successfully under the terms and conditions of the proposed procurement.

39. "Responsive" (Bidder/Offerer) is a contractor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the IFB/RFP and all of its requirements, including all form and substance.
  - a. FTA defines "responsive" – if an offer conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the offerer other than on matters that may be deemed inconsequential in nature, the offer is responsive.
40. "Revenue Contract" means a contract with the primary purpose of producing revenues or creating business opportunities involving the use of FTA- or FHWA-assisted property.
41. "Solicitation Documents" refers to the packet of materials provided to prospective consultants or contractors in the form of an IFB, request for proposal (RFP), and RFQ, etc., requesting a responsive bid, proposal, or a statement of qualifications.
42. "State" means any of the several states of the United States, District of Columbia, the Commonwealth of Puerto Rico, any territory of the United States, or any agency or instrumentality of a state exclusive of local governments. "State" does not include a county, municipality, city, town, township, local public authority (which includes any public and Indian housing agency under the United States Housing Act of 1937), school district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity (such as a regional transit authority), or any agency or instrumentality of a local government.
43. "State or Local Government Purchasing Schedule or Purchasing Contract" means an arrangement between state or local government with multiple vendors in which vendors agree to provide an option to the state or local government entities to acquire specific property or services in the future at established prices.
44. "Task Order" means a contract document that is issued under a master or umbrella contract to dole out work to a consultant in phases, or in the case of an on-call contract, for severable projects.
45. "Third-Party Contract" refers to any purchase order (PO) or contract awarded by AGENCY to a consultant, vendor, or contractor.
46. "UDBE" is the acronym for Underutilized Disadvantaged Business Enterprise and are the DBE groups that have been determined in an applicable disparity study to have a statistically significant disparity in their utilization in previously awarded transportation contracts.
47. "U/DBE" is the acronym used when DBE and UDBE groups are being referred to collectively or interchangeably.
48. "Written Order" means a written order signed by the Executive Director, or properly authorized representative or agent, mailed to the contractor at the address designated in his bid or to such other address he may designate in writing as its official place of business.

# SHASTA REGIONAL TRANSPORTATION AGENCY PROCUREMENT MANUAL

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Procurement Steps



# Appendix 1

## Sole Source Approval

Project Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor/Consultant/Vendor: \_\_\_\_\_

Project Number: \_\_\_\_\_ Contract Amount: \$ \_\_\_\_\_

Project Description:

**Notice: Contracting without providing for full and open competition is prohibited unless justified on one or more of the bases below. A requisition must be attached to this form.**

### THE FOLLOWING MUST BE ANSWERED AFFIRMATIVELY (W/EITHER TYPE OF FUNDING)

BY MARKING THE BOXES BELOW, YOU ARE AFFIRMING THAT THE FOLLOWING STATEMENTS ARE TRUE.

The need for a sole source is not due to a failure to plan or a lack of advanced planning.

The need for a sole source is not due to concerns about the amount a federal assistance available to support the procurement (for example, expiration of Federal assistance available for award).

### JUSTIFICATION FOR AWARD OF SOLE SOURCE CONTRACT (W/FEDERAL FUNDING)

- Staff solicited competitive bids and was unable to obtain a responsive bidder.
- The grantor agency providing the federal funds has approved sole source procurement.
- The service is only available from a single source because contractor will be required to use confidential information, intellectual property, or trade secrets owned by contractor.
- The federal grantor agency made the award of funds being used based on [AGENCY's] use of a particular team of contractors, and the contractor listed above is one of the team members identified in the funding application.  
The work is necessary to continue development or production of highly specialized equipment or components thereof, and it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition or when it is likely that award to another contractor would result in unacceptable delays in fulfilling [AGENCY's] needs.
- Sole source is authorized by statute, or only one contractor can comply with specific statutory requirements.

- A national emergency exists, and a particular facility or contractor is needed to achieve mobilization.
- The disclosure of [AGENCY's] needs in a public procurement process would compromise national security.
- A particular expert or neutral person's services are needed for a current protest, dispute, claim, or litigation.
- A competitive procurement is precluded by the terms of an international agreement or treaty or the written directions of a foreign government providing reimbursement for the cost of the supplies or services.
- To establish or maintain an educational or other nonprofit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.

**ADDITIONAL JUSTIFICATIONS FOR AWARD OF SOLE SOURCE CONTRACT (W/NO FEDERAL FUNDING)**

- Only one contractor/consultant/vendor who can provide unique/highly specialized item/service.
- Economy or efficiency supports award to existing contractor/consultant as a logical follow-on to work already in progress under a competitively awarded contract.
- Cost to prepare for a competitive procurement exceeds the cost of the work or item.
- The item is an integral repair part or accessory compatible with existing equipment.
- The item or service is essential in maintaining research or operational continuity.
- The item/service is one with which staff members who will use the item/service have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.

**EXPLANATION:**

# Appendix 2

## PROCUREMENT REQUISITION

(STARTS THE PROCUREMENT PROCESS FOR A PURCHASE OR CONTRACT)

Contract #:		Contract Amendment # (If applicable)		<b>CONTRACTS USE ONLY</b> Date Complete Package is Received by Contracts Officer Procurement Type: Purchase Order #: Vendor ID:	
Task Order # (if applicable):		Task Order Amendment # (If applicable)			
Is this procurement a sole source? <input type="checkbox"/> YES <input type="checkbox"/> NO					
<b>COMPLETE ALL APPLICABLE FIELDS BEGINNING HERE DOWN TO THE CONFIRMATION SIGNATURE SECTION</b>					
Requestor Name:		Date:			
Department:		Extension:			
OWP Number(s):		Cost Code:			
Total Contract: \$	<input type="checkbox"/> UDBE ____%	<input type="checkbox"/> DBE ____%	<input type="checkbox"/> Not Applicable		
This Task Order: \$	<input type="checkbox"/> UDBE ____%	<input type="checkbox"/> DBE ____%	<input type="checkbox"/> Not Applicable		
Procurement Justification:					
Independent Cost Estimate (ICE): \$					
Every procurement requires a cost or price analysis that begins with an ICE. Procurements less than \$5,000 may use a simplified ICE form. Procurements over \$50,000 should use a standard ICE form listing hours, classifications, and rates by tasks. By approving this requisition, the requester attests that the ICE is a fair and reasonable estimation of costs that was independently prepared prior to solicitation.					
QTY - use "1" U/M - use "lot" DESCRIPTION - describe services or product UNIT COST - individual cost EXTENDED COST - QTY multiplied by UNIT COST					
QTY	U/M	DESCRIPTION	UNIT COST	EXTENDED COST	
					\$0.00
					0.00
					0.00
					0.00
				<b>SUBTOTAL</b>	\$0
<b>ATTACHMENTS</b> (as applicable): <input type="checkbox"/> Scope of Work and Schedule <input type="checkbox"/> Payment/Fee Schedule <input type="checkbox"/> Quotes <input type="checkbox"/> ICE <input type="checkbox"/> RON <input type="checkbox"/> Sole Source Justification <input type="checkbox"/> Other (SPECIFY):				<b>TAX</b>	
				<b>FREIGHT</b>	
				<b>TOTAL PRICE</b>	\$
Funding Source: (CHECK/DEFINE ALL THAT APPLY)					
Federal	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> FTA <input type="checkbox"/> FHWA <input type="checkbox"/> Other (DEFINE):			
State	<input type="checkbox"/> YES <input type="checkbox"/> NO	Caltrans or Other State Funding Description:			
Local	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Other (DEFINE):			
Grant	<input type="checkbox"/> YES <input type="checkbox"/> NO	Contract Number (for grant):	Grant Number:	\$ Amount:	
		Grant Description:			
		Grantor Pass-Thru Funding Obligations? <input type="checkbox"/> YES <input type="checkbox"/> NO			
<b>VENDOR INFORMATION</b>			<b>DELIVERY ADDRESS</b>		
Name: _____					
Address: _____					
Tax ID: _____					
Phone: _____		Fax: _____			
Contact: _____		Email: _____			
<b>CONFIRMATION/APPROVAL SIGNATURE(S)</b>					
*By approving the requisition, project manager asserts that the SOW for this procurement is within the SOW of the underlying agreement.					
Project Manager: _____		Date: _____			
Finance Director: _____		Date: _____			
Executive Director: _____		Date: _____			

## Appendix 3

# AGENCY Standard of Conduct

## I. Introduction and Applicability

This document established the standard of conduct applicable to all AGENCY staff.

## II. Definitions

- **Compensation:** The receipt of any monetary or non-monetary payment for the services or time of a person. Compensation includes, but is not limited to, salary, wages, fees, and any discount or economic opportunity not made available in the regular course of business to members of the public.
- **Confidential Information:** (a) At the time of the use or disclosure of the information, the disclosure is prohibited by a statute, regulation, or rule which applies to AGENCY; or (b) the information is not general public knowledge and will have, or could reasonably be expected to have, a material financial effect on any source of income, investment, or interest in the real property of AGENCY; or (c) the information pertains to pending contract, labor, or real property negotiations and disclosing the information could reasonably be expected to compromise the bargaining position of AGENCY; or (d) the information pertains to pending or anticipated litigation and disclosing the information could reasonably be expected to compromise the ability of AGENCY to successfully defend, prevail in, or resolve the litigation.
- **Designated Staff:** Any AGENCY staff member who is required to file a statement of economic interests pursuant to the California Political Reform Act of 1974 (Form 700), as amended.
- **Person:** Means any individual, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert, whether for profit or not for profit.
- **Public Agency:** Means the United States or any of its agencies; the State of California; a city; any political subdivision of the State, including counties and districts; or any public corporation, agency, or commission.
- **Position of Substantial Responsibility:** Means a position in which a person took part personally and substantially by rendering a decision, approval, or disapproval for a department's projects; by making a formal written recommendation; by conducting an

investigation; by rendering advice on a significant basis; or by using confidential information.

- **AGENCY Decision:** (a) The drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution; and (b) the amendment of any ordinance or resolution; and (c) a report by AGENCY staff to the Board or a committee; and (d) contracts; and (e) quasi-judicial decisions, including: (1) any decision on a land development permit, map, or other matter; or (2) any declaration of debarment; and (f) any other decision of the Board or a AGENCY committee.

### **III. Goals And Objectives**

AGENCY staff, Board members and the community at large have a right to expect the business of AGENCY to be conducted with efficiency, fairness, impartiality, and integrity. Employment at AGENCY carries with it an obligation to the public interest. It requires standards of professional behavior from staff that promote and maintain public confidence and trust. At the same time, staff should not be subject to unnecessary restrictions simply because they work for AGENCY. Staff have all the normal rights of persons under state and federal law. Although no one set of rules can answer all ethical questions, this Standard of Conduct provides AGENCY staff with an ethical framework for their decisions, actions, and behavior. In this regard, it explains the principles covering appropriate conduct in a variety of contexts and outlines the minimum standard of behavior expected of staff. Staff are expected to comply with this policy as well as all other state and federal laws regarding employment by public agencies including, but not limited to, conflict of interest laws.

### **IV. General Principles**

Staff must abide by the following principles when doing their work:

1. Staff are to implement the policies and decisions of AGENCY in an impartial manner. In particular, staff shall comply with all applicable laws regarding conflicts of interest, including, but not limited to, the California Political Reform Act, and the provisions of the California Government Code regarding Prohibited Interests in Contracts, as these laws may be amended from time to time.
2. Staff are to treat their colleagues and members of the public fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations. In this regard, staff should perform their duties in a professional and responsible manner. They should ensure that their decisions and actions are reasonable, fair, and appropriate to the circumstance, based upon consideration of all the relevant facts and supported by adequate documentation.
3. Staff are to promote confidence in the integrity of AGENCY and always act in the public interest and not in their private interest while conducting AGENCY business. Staff should

protect the reputation of AGENCY. They should not engage in activities, at work or outside work, that would bring AGENCY into disrepute.

4. Staff are to provide relevant and responsible service to the public and other staff, providing necessary and appropriate assistance. They should provide information promptly and in an appropriate format that is easy for the recipient to understand. The information should be clear, accurate, and complete.
5. Staff should keep up to date with advances and changes in their area of expertise and look for ways to improve performance and achieve high standards of work. They should use their authority, available resources, and information only for the work-related purpose intended.

## **V. Guide to Ethical Decision Making**

To assist in fostering a climate of ethical awareness, conduct, and decision making at AGENCY, staff may find it useful to refer to or consider, either by themselves or if they are uncertain, in conjunction with the Executive Director and AGENCY legal counsel, the following five questions:

1. Is the decision or conduct lawful?
2. Is the decision or conduct consistent with AGENCY's policies and goals?
3. Can the decision or conduct be justified in terms of public interest and would it withstand public scrutiny?
4. What will the outcome be for the staff member, other staff, AGENCY, and others?
5. Do these outcomes raise a conflict of interest or lead to private gain to the staff member or the staff member's family at AGENCY expense?

### **Recognizing a Conflict of Interest**

1. In addition to the provisions of the Political Reform Act, as enforced by the Fair Political Practices Commission, conflict of interest exists when it is likely that a staff member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their duties of employment. Conflict of interest that leads to biased decision making may constitute corrupt conduct.
2. No staff member shall participate in the selection, or in the award or administration of, a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the staff member, any member of his or her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
3. Some related interests that may give rise to a conflict of interest include:
  - a. Personal beliefs or attitudes that influence the impartiality of advice given;

- b. Personal relationships with the people AGENCY is dealing with that go beyond the level of a professional working relationship;
  - c. Secondary employment that compromises the integrity of the employee and AGENCY.
- 4. In all purchases for AGENCY, any practices which might result in unlawful activity are prohibited including, but not limited to, rebates, kickbacks, or other unlawful considerations. AGENCY staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or business relationship with a person or business entity seeking a contract. An individual employee may often be the only person aware of the potential for conflict. It is, therefore, their responsibility to avoid any financial or other interest that could compromise the impartial performance of their duties, and disclose any potential or actual conflict of interest to the Executive Director.
- 5. If a staff member is uncertain whether a conflict exists, he/she should discuss the related interest matter with the Executive Director and attempt to resolve any conflicts of interest that may exist. To resolve any conflict of interest that occurs, or could occur, a range of options is available, depending upon the significance of the conflict. These options include:
  - a. Recording the details of the disclosure and taking no further action because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision;
  - b. The staff member relinquishing the personal interest;
  - c. The staff member being removed from the task/activity/situation where the conflict could occur.
- 6. Disputes over alleged conflicts of interest should be resolved by the Executive Director.

#### **Prohibition Against Financial Interest in a Contract**

- 1. It is unlawful for any Designated Staff to be financially interested in any contract made by them in their official capacity.
- 2. It is unlawful for any contract to be made by the AGENCY Board or any committee established by AGENCY's Board or a committee if any individual member of the body has a financial interest in the contract.
- 3. For purposes of the prohibitions set forth above in subsections 1 and 2 of this section, the term financial interest means any interest, other than a remote interest as prescribed in California Government Code section 1091 or a non-interest prescribed in California

Government Code section 1091.5, which would prevent the Designated Staff involved from exercising absolute loyalty and undivided allegiance to the best interests of AGENCY.

4. Any Designated Staff with a remote interest in a prospective contract of AGENCY's must disclose the existence of the remote interest to the committee or other body on which the Designated Staff is a member if that committee has any role in creating, negotiating, reviewing, or approving the contract; and the Designated Staff must abstain from influencing or anticipating in the creation, negotiation, review, or approval of the contract.

#### **Prohibition Against Influencing AGENCY Decisions Affecting Economic Interests**

1. It is unlawful for any Designated Staff to knowingly influence a AGENCY decision if it is reasonably foreseeable that the AGENCY decision will have a material financial effect on:
  - a. the Designated Staff or a member of his or her immediate family, if the material financial effect is distinguishable from its effect on the public generally; or
  - b. any of the following economic interests:
    - 1) any business entity in which the Designated Staff or a member of the Designated staff's immediate family has invested \$2,000 or more; and
    - 2) any business entity for which the Designated Staff or a member of the Designated Staff's immediate family is a director, officer, partner, trustee, employee, or holds any position of management; and
    - 3) any real property which the Designated Staff or a member of the Designated Staff's immediate family has invested \$2,000 or more; and
    - 4) any person from whom a Designated Staff or a member of the Designated Staff's immediate family has received (or by whom you have been promised) \$500 or more in income within twelve months prior to the municipal decision; and
    - 5) any person from whom a Designated Staff or a member of the Designated Staff's immediate family has received gifts which total \$420 or more within twelve months prior to the municipal decision. This gift threshold is subject to adjustment as set forth in Title 2, section 18940.2, of the California Code of Regulations; and
    - 6) the personal expenses, income, assets, or liabilities of a Designated Staff or a member of the Designated Staff's immediate family.
2. For purposes of this section, "material financial effect" has the same meaning as that term is used in Title 2, sections 18705 through 18705.5 of the California Code of Regulations.



### **Prospective Employment of Designated Staff**

1. It is unlawful for any Designated Staff to make, participate in making, or use his or her official position with AGENCY to influence a AGENCY decision involving the interests of a person with whom he or she is seeking, negotiating, or securing an agreement concerning future employment.
2. It is unlawful for any person who has a matter pending before AGENCY to negotiate, directly or indirectly, knowingly or willfully, the possibility of future employment of a Designated Staff who is making, participating in making, or using his or her official position to influence, a AGENCY decision concerning that matter.

### **Restrictions Concerning Contracts and Procurements by Current and Former Employees**

1. Notwithstanding any other section of this Policy, AGENCY shall not contract with, and shall reject any bid or proposal submitted by, the persons or entities specified below, unless the Executive Director finds that special circumstances exist which justify the approval of such contract:
  - a. Persons employed by AGENCY;
  - b. Profit-making firms or businesses in which AGENCY employees serve as officers, principals, partners, or major shareholders;
  - c. Persons who, within the immediately preceding six (6) months, were employed by AGENCY and (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; and
  - d. Profit-making firms or businesses in which the former employees described in subsection (c) serve as officers, principals, partners, or major shareholders.

## **VI. Acceptance of Gifts, Benefits, or Gratuities**

In addition to requirements set forth in the Political Reform Act, as enforced by the Fair Political Practices Commission, staff should not accept gifts or benefits that are intended to, likely to, or be perceived to cause staff to act in a partial manner in the course of their duties. Staff will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value equal to or in excess of \$50 on an annual, aggregate basis from potential or current consultants or contractors, parties to sub-agreements, or other contracting parties. General guidance regarding these limitations may be found below. Gifts: Staff are prohibited from accepting gifts from vendors or from representatives of any non-governmental organization that provides, or is desirous of contracting with AGENCY if the aggregate annual value of the gift or gifts will equal or exceed \$50. This prohibition applies to any gift, gratuity, favor, entertainment, or loan,

and includes such items as liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.).

1. **Business Related Functions:** Acceptance of an invitation to join a vendor at a function being attended for official agency business may be permitted by the Executive Director. Included in this category are luncheon meetings, lunches incidental to a business meeting held before or after the lunch period, and business-related dinners.
2. **Industry Meetings:** At industry meetings, seminars, or other related functions where the employee's attendance is being funded by AGENCY, it is permissible to accept hospitality at activities that are provided for the benefit of all industry people and are commonly accepted as being a part of the group activities. The maximum annual aggregate amount of gifts an employee may accept from a particular vendor must be less than \$50.
3. **Entertainment:** AGENCY staff may not be guests of a vendor, purchaser, contractor, or representative of a service organization at a sports event, theater, etc. These activities are not connected with AGENCY business and could be criticized by the public or competitors of the host. The reason a company would act as such a host could be because the vendor, purchaser, contractor, etc. wants to solidify its position, influence the decision of the guest, or show its appreciation. When confronted with doubtful situations, AGENCY staff should refuse the offer. The possibility of placing oneself, or AGENCY, in a compromising position is thus avoided.

## **VII. Reporting Corrupt Conduct**

Staff is urged to report suspected corrupt conduct to the Executive Director.

# Contractor's Statement of Experience and Financial Condition

**CONFIDENTIAL**  
Contractor's Statement of Experience  
and  
Financial Condition  
(Updated \_\_\_\_ 2014)

To be submitted to AGENCY

Submitted by: \_\_\_\_\_  
Name of Firm

Address: \_\_\_\_\_  
Street or P.O. Box

\_\_\_\_\_

City	State	ZIP Code
------	-------	----------

Contractor Primary Point of Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_  
(Area Code) xxx-xxxx

Contract No.: \_\_\_\_\_

Contract Bid Amount: \_\_\_\_\_ Project CIP No.: \_\_\_\_\_

Bid Date: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

All pages of the questionnaires and financial statements should be marked "CONFIDENTIAL".

AGENCY  
Address

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    Age of Financial Information.....

    Data Required.....

    Affidavits.....

    Accountant’s Certificate.....

    Licensing.....

    Completeness.....

    Bidding Information.....

    Review Process.....

    AGENCY Qualification

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**TABLE OF EXHIBITS**

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2	AFFIDAVIT	
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## **INSTRUCTIONS FOR SUBMITTING**

### **Contractor's Statement of Experience and Financial Condition (CSOEFC)**

#### **FREQUENCY OF SUBMISSION**

A new CSOEFC will be required each time a bidder responds to an invitation for bid for a AGENCY project containing a requirement for submission of a CSOEFC. The CSOEFC will no longer be valid for one year. It shall be the contractor's responsibility to ensure that the CSOEFC will be applicable to the project for which the CSOEFC is being submitted and that all information in the CSOEFC is up to date and accurate.

#### **EVALUATION OF CSOEFC**

For Invitations for Bids (IFBs), SANDAG shall only evaluate the CSOEFC of the apparent lowest bidder. If the apparent low bidder does not meet the required qualifications, only then will AGENCY evaluate the next apparent lowest bidder.

#### **AGE OF FINANCIAL INFORMATION**

AGENCY reserves the right to reject statements in which the financial condition shown is twelve months or more prior to the date the CSOEFC was required to be submitted.

#### **DATA REQUIRED**

All applicable portions of the form should be filled out completely, with schedules being attached if the space provided is not sufficient.

It will be acceptable, in lieu of completing the specific schedules in the financial portion of the statement, for the contractor to submit the customary accountant's report and schedules, provided that they include all of the information specifically requested in the form.

It is essential that the questions regarding construction experience be completed as such experience is a major consideration in establishing qualifications.

#### **AFFIDAVITS**

The appropriate affidavit must be completely executed or the statement will be returned. Where a consolidated statement is submitted to obtain joint qualification of several organizations, an appropriate affidavit must be executed for each entity that is a part of the joint venture. If firms are bidding or responding as a joint venture and have no consolidated statement, each partner in the joint venture must submit their own CSOEFC.

#### **ACCOUNTANT'S CERTIFICATE**

**The certificate of a Certified Public Accountant or Public Accountant will be required in all cases.** A suggested form of unqualified certificate is included which may be used if appropriate. However, it will be acceptable for the accountant to submit a certificate in his own words, including such qualifications as may be necessary in view of the scope of this assignment; provided that such qualifications shall not be so extensive as to nullify the value of the statement or its usefulness to AGENCY.

Bearing in mind that working capital and the dollar value of previous construction projects worked on are important factors in determining the qualification of a contractor, the accountant will perform a valuation service for his or her client and at the same time assist AGENCY by furnishing supplementary schedules, or as a part of his or her certificate, any information not specifically called for by the statement which in the accountant's opinion may be properly taken into consideration.

In the event that the contractor's job income and expenditures are accounted on a completed-contract basis and the balance sheet includes an item reflecting the excess of costs-to-date over billings-to-date, or vice versa, the elements of "Accumulated Costs" and "Billings to Date" must be shown in support of the balance sheet item.

#### **LICENSING**

Contractor requirements shall be guided by Division 3 of the Business and Professional Code concerning the licensing of contractors.”

### **COMPLETENESS**

All forms must be completed, or the bidder must note where the required information is reflected in the attachments.

### **BIDDING INFORMATION**

1. Any contractor may download an Invitation for Bid (IFB) package free of charge from the AGENCY website.
2. Should contractors desire to bid or respond jointly, a joint-qualification statement containing information regarding each of the contractors must be submitted. Attention is called to the “Contractors’ License Law” with respect to the license requirements for joint bids or responses.

### **REVIEW PROCESS**

Qualification approvals are based on showing evidence of the availability of sufficient working capital, the dollar value of previous contracts worked on, and the successful completion of previous contracts exceeding five times the annual value of the AGENCY contract, subject to adjustment upon consideration of experience, equipment, and performance factors.

Working capital may be augmented by submission of Statement of Bank Credit (See Exhibit 6).

### **AGENCY QUALIFICATION REGULATIONS**

AGENCY requires a CSOEFEC for all contracts where the estimated cost exceeds \$500,000. AGENCY may require a CSOEFEC for projects where the estimated cost is under \$500,000. When completed, the CSOEFEC shall be verified under oath by the bidder in the manner in which pleadings in civil actions are verified.

AGENCY shall apply a uniform system of reviewing bidders on the basis of the CSOEFEC.

In no event shall any bidder be awarded a contract if such contract award would result in the bidder having under contract an amount of work in excess of that authorized by its qualification approval.  
The CSOEFECs will be treated as confidential records.

AGENCY shall furnish to each bidder a bid booklet, which shall be filled out, executed, and submitted as the bid (Section 1.4.1). Bid proposals shall be presented on the forms furnished. AGENCY shall review all bid proposals to determine which bidder is the lowest responsive and responsible bidder.

**Contractor's  
Statement of Experience  
and  
Financial Condition**



**EXHIBIT 1 – CONTRACTOR’S STATEMENT OF EXPERIENCE**

**A Corporation**

**A Copartnership**

**An Individual**

**Combination**

Name: \_\_\_\_\_  
 (Name Must Correspond with Contractor’s License in Every Detail)

Principal Office: \_\_\_\_\_  
 (Street or P.O. Box) (City) (State) (ZIP Code)

**The signatory of this questionnaire guarantees the truth and accuracy of all statements  
 and of all answers to Interrogatories hereinafter made.**

1. Are you licensed as a contractor to do business in California? \_\_\_\_\_ License No. \_\_\_\_\_ Type \_\_\_\_\_  
 Classification (Type) of Specialty Contractor: \_\_\_\_\_
2. How many years has your organization been in business as a contractor under your present business name: \_\_\_\_\_  
 \_\_\_\_\_
3. How many years’ experience in \_\_\_\_\_ construction work has your organization had?  
 (Type)  
 (a) As a general contractor? \_\_\_\_\_ (b) As a Subcontractor? \_\_\_\_\_
4. Show the projects your organization has completed or are under construction during the last five years in the following tabulation. (Attach additional sheets as needed).

**To assure maximum consideration for your qualification, be specific as to the nature of the work your firm actually performed.**

Year	Type of Work	Value of Work Performed	Location of Work	Project Duration (Months)	For Whom Performed and Phone Number to Contact for Verification

**A contractor that wishes to bid on projects handled by AGENCY shall be licensed in accordance with the laws and regulations of California. The licensing must correspond to the applicable types of work and organization. Corporations not incorporated in the State of California must take the necessary steps to register to conduct business in the state.**

For Questions 5-13, please also provide name of owner, title of project, contract amount, location of project, date of contract, and name of bonding company as applicable (attach additional pages if needed). All references to “bidder” should be treated as a reference to “proposer” and all references to a “bid” as a reference to a “proposal” where applicable.

5. List how many construction projects your organization will be working on in conjunction with the AGENCY project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Bidder or proposer must submit a summary of all claims made in the last five years arising out of previous contracts listed (including all claims by owner against bidder or proposer or bidder or proposer against owner, and the final status of each claim): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Have you or your organization, or any officer or partner thereof, failed to complete a contract? \_\_\_\_\_ if so, give details: \_\_\_\_\_  
\_\_\_\_\_
8. Have you, your organization, or any officer or partner thereof, defaulted on a construction project within the last two years? \_\_\_\_\_  
\_\_\_\_\_
9. Have you or your organization, or any officer or partner thereof, ever been terminated by an owner or client, or rejected from bidding or responding on a public works project in the last five years? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Has a surety ever completed any portion of work of your organization’s projects within the last five years: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. Have you or your organization, or any officer or partner thereof, been formally found to be a nonresponsive bidder by a public AGENCY within the last two years? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. List any violation of the Apprenticeship Requirements under a State Business and Professions Code or Labor Code found by an appropriate authority within the last two years? \_\_\_\_\_  
\_\_\_\_\_
13. Have you or your organization, or any officer to partner thereof, been found guilty of failure to pay required prevailing wages on a public contract within the last two years? \_\_\_\_\_  
\_\_\_\_\_
14. In what other liens of business are you financially interested? \_\_\_\_\_  
\_\_\_\_\_
15. Name the persons with whom you have been associated in business as partners or business associates in each of the

last five years? \_\_\_\_\_

16. What is the construction experience of the principal individuals of your present organization?

Individual's Name	Length of Employment	Present position or office in our organization	Has individual been involved in the same level of responsibility on successfully completed contracts during the previous five years that together exceeds the value of this AGENCY contract?	Years of Construction Experience	Magnitude and Type of Work	In What Capacity?

<p>If a Corporation, answer:</p> <p>Capital paid in cash, \$ _____</p> <p>When Incorporated?</p> <p>In What State? _____</p> <p>President's Name:</p> <p>Secretary's Name: _____</p> <p>Treasurer's Name: _____</p>	<p>If a co-partnership, answer:</p> <p>Date of organization: _____</p> <p>State whether partnership is general, limited, or association: _____ _____</p> <p>_____ Name and address of each partner: _____ _____ _____ _____ _____</p>
---	---

18. Attach a resume for the individuals listed above, including the name, title, address, and phone number of an individual or organization who could verify the individual's experience.

19. Have you or your organization, or any officer or partner thereof, or any employee of such organization who has a proprietary interest in such organization ever been disqualified, removed, or otherwise prevented from bidding or responding on or completing a federal, state, or local government project because of a violation of a law or safety regulation? If so, please explain the circumstances below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT 2 – AFFIDAVIT**

**WHERE PREQUALIFICATION IS BASED ON A COMBINATION OF ORGANIZATIONS, THE APPROPRIATE AFFIDAVITS BELOW MUST BE EXECUTED FOR EACH MEMBER OF SUCH COMINATION**

---

**AFFIDAVIT FOR INDIVIDUAL**

---

**(Name of Individual)**

**Doing business as:** \_\_\_\_\_

*certifies and says: That she/he is the person submitting the statement of experience and financial condition: that she/he has read the same, and that the same is true of his/her own knowledge; that the statement is for the purpose of inducing AGENCY to supply the submittor with plans and specifications, and that any depository, vendor, or other AGENCY therein named is hereby authorized to supply said AGENCY with any information necessary to verify the statement and that furthermore, should the foregoing statement at any time cease to properly and truly represent his financial condition in any substantial respect, she/he will refrain from further bidding on AGENCY work until she/he shall have submitted a revised and corrected statement.*

*I certify and declare under penalty of perjury that the foregoing is true and correct.*

**Subscribed at** \_\_\_\_\_, \_\_\_\_\_, **State of** \_\_\_\_\_  
(City) (County)

**Note: Statement will be returned unless affidavit on** \_\_\_\_\_, **20** \_\_\_\_\_

**Is complete including the date of signature**

\_\_\_\_\_  
*(Applicant must sign here)*

**AFFIDAVIT FOR CO-PARTNERSHIP**

\_\_\_\_\_, certifies and says: That she/he/it is a partner of

\_\_\_\_\_  
**(Name of firm)**

*that said partnership submitted the statement of experience and financial condition: that she/he has read the same and that the same is true of his/her own knowledge; that the statement is for the purpose of inducing AGENCY to supply the submittor with plans and specifications, and that any depository, vendor, or other AGENCY therein named is hereby authorized to supply AGENCY with any information necessary to verify the statement; and that furthermore, should the foregoing statement at any time cease to properly and truly represent the financial condition of said firm in any substantial respect, he/she/it will refrain from further bidding on AGENCY work until he/she/it has submitted a revised and corrected statement.*

*I certify and declare under penalty of perjury that the foregoing is true and correct.*

**Subscribed at** \_\_\_\_\_, \_\_\_\_\_, **State of** \_\_\_\_\_  
(City) (County)

**Note: Statement will be returned unless affidavit on** \_\_\_\_\_, **20** \_\_\_\_\_

**Is complete including the date of signature**

\_\_\_\_\_  
*(Member of firm must sign here)*

\_\_\_\_\_  
*(Remaining members of firm sign here)*

\_\_\_\_\_  
*(Name of firm)*

**AFFIDAVIT FOR CORPORATION**

\_\_\_\_\_, certifies and says: That she/he is \_\_\_\_\_  
(Name of Officer) (Official Capacity)

Of the \_\_\_\_\_  
(Name of Firm)

*the corporation submitting the statement of experience and financial condition; that she/he has read the same, and that the same is true of his/her own knowledge; that the statement is for the purpose of inducing AGENCY to supply the submittor with plans and specifications, and that any depository, vendor, or other AGENCY therein named is hereby authorized to supply said AGENCY with any information necessary to verify the statement; and that furthermore, should the foregoing statement at any time cease to properly and truly represent the financial condition of said corporation in any substantial respect, it will refrain from further bidding on AGENCY work until it shall have submitted a revised and corrected statement.*

*I certify and declare under penalty of perjury that the foregoing is true and correct.*

Subscribed at \_\_\_\_\_, \_\_\_\_\_, State of \_\_\_\_\_  
(City) (County)

Note: Statement will be returned unless affidavit on \_\_\_\_\_, 20\_\_\_\_\_  
Is complete, including the date of signature

\_\_\_\_\_  
(Officer must sign here)

*Note: use full corporate name and attach corporate seal*

**CONTRACTOR'S COMMENTS**

\_\_\_\_\_

**EXHIBIT 3 – INDEPENDENT AUDITOR’S REPORT**

We have audited the accompanying balance sheet of \_\_\_\_\_ as of \_\_\_\_\_, and the related statements of income and retained earnings and cash flows for the year then ended. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards required that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion. In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of \_\_\_\_\_ as of \_\_\_\_\_, and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Special Note to Accountant:**

The above Certificate of Accountant must not be made by any individual who is in the regular employ of the individual, co-partnership, or corporation submitting this statement, nor by any individual who is a member of the concern, unless she/he discloses his/her financial interest therein. A determination will be made by AGENCY if the financial interest is excessive.

**THE CERTIFICATE OF A LICENSED ACCOUNTANT WILL BE REQUIRED IN ALL CASES.**

**ACCOUNTANT’S COMMENTS**

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## EXHIBIT 4 – CONTRACTOR’S FINANCIAL STATEMENT

NAME: \_\_\_\_\_

Condition at close of business \_\_\_\_\_, 20\_\_\_\_\_

ASSETS		DETAIL				TOTAL	
<b>Current Assets</b>							
1.	Cash						
2.	Notes Receivable						
3.	Accounts receivable from completed contracts						
4.	Sums earned on incomplete contracts						
5.	Other accounts receivable						
6.	Advances to construction joint ventures						
7.	Materials in stock not included in Item 4						
8.	Negotiable securities						
9.	Other current assets						
	<b>TOTAL</b>						
<b>Fixed and Other Assets</b>							
10.	Real Estate						
11.	Construction plant and equipment						
12.	Furniture and fixtures						
13.	Investments of a non-current nature						
14.	Other non-current assets						
	<b>TOTAL</b>						
	<b>Total Assets</b>						
<b>LIABILITES AND CAPTIAL</b>							
<b>Current Liabilities</b>							
15.	Current portion of notes payable, exclusive of equipment obligations and real estate encumbrances						
16.	Accounts payable						
17.	Other current liabilities						
	<b>TOTAL</b>						
<b>Other Liabilities and Reserves</b>							
18.	Real estate encumbrances						
19.	Equipment obligations secured by equipment						
20.	Other non-current liabilities and non-current notes payable						
21.	Reserves						
	<b>TOTAL</b>						
<b>Capital and Surplus</b>							
22.	Capital Stock Paid Up						
23.	Surplus (or Net Worth)						
	<b>TOTAL</b>						
	<b>Total Liabilities and Capital</b>						
<b>CONTINGENT LIABILITIES</b>							
24.	Liability on notes receivable, discounted or sold						
25.	Liability on accounts receivable, pledged, assigned or sold						
26.	Liability as bondsman						
27.	Liability as guarantor on contracts or on accounts of others						
28.	Other contingent liabilities						

**Total Contingent Liabilities**

**Note: Show details under main headings in that column, extending totals of main headings to second column.**

**1**

(a) On hand \_\_\_\_\_ \$ \_\_\_\_\_  
 Cash: (b) Deposited in banks named below \_\_\_\_\_ \$ \_\_\_\_\_  
 (c) Elsewhere – (state where) \_\_\_\_\_ \$ \_\_\_\_\_

Name of Bank	Location	Deposit in Name of	Amount

**2\***

(a) Due within one year \_\_\_\_\_ \$ \_\_\_\_\_  
 Notes Receivable: (b) Due after one year \_\_\_\_\_ \$ \_\_\_\_\_  
 (c) Past Due \_\_\_\_\_ \$ \_\_\_\_\_

Receivable From	For What	Date of Maturity	How Secured	Amount

**3\***

Accounts receivable from completed contracts exclusive of claims not approved for payment \$ \_\_\_\_\_

Receivable From	Type of Work	Amount of Contract	Amount Receivable

Have any of the above been assigned, sold, or pledged? \_\_\_\_\_ If so, state amount, to whom, and reason \_\_\_\_\_

**EXHIBIT 4 (CONTINUED) – DETAILS RELATIVE TO ASSETS**

**4\***

Sums earned on incomplete contracts, as shown by engineers' or architects' estimates \$ \_\_\_\_\_

Receivable From	Type of Work	Amount of Contract	Amount Receivable

Have any of the above been assigned, sold, or pledged? \_\_\_ If so, state amount, to whom, and reason \_\_\_\_\_

\*List separately each item amounting to 10 percent or more of the total and combine the remainder.



**EXHIBIT 4 -DETAILS RELATIVE TO ASSETS (Continued)**

<b>5*</b>	Accounts receivable not from construction contracts _____ \$ _____		
	<b>Receivable From</b>	<b>For What</b>	<b>When Due</b>
			<b>Amount</b>
What amount, in any, is past due? _____			\$ _____
Assigned, sold, or pledged _____			\$ _____

<b>6</b>	Advances to construction joint ventures _____ \$ _____		
	<b>Name of Joint Venture</b>	<b>Type of Work</b>	<b>Amount</b>

What amount, in any, has been assigned, sold or pledged? \_\_\_\_\_ \$ \_\_\_\_\_

<b>7</b>	Materials in stock and not included in Item 4		
	(a) For use on incomplete contracts (inventory value) _____		\$ _____
	(b) For future operations (inventory value) _____		\$ _____
	(c) For sale (inventory value) _____		\$ _____

Description	Quantity	VALUE	
		For Incomplete Contracts	For Future Operations / For Sale

What amount, in any, has been assigned, sold, or pledged? \_\_\_\_\_ If so, state amount, to whom, and reason \_\_\_\_\_

<b>8&gt;</b>	Negotiable Securities (List non-negotiable items under Item 13)		
	(a) Listed – Present market value For use on incomplete contracts (inventory value) _____		\$ _____
	(b) Unlisted – Present value) _____		\$ _____

Issuing Company	Class	Quantity	Book Value		Present Value (Actual or Estimated)	
			Unit Price	Amount	Unit Price	Amount

Who \_\_\_\_\_ has \_\_\_\_\_ possession?  
 If any are pledged or in escrow, state form whom and reason \_\_\_\_\_  
 Amount pledged or in escrow \_\_\_\_\_  
 \$ \_\_\_\_\_

\*List separately each item amounting to 10 percent or more of the total and combine the remainder.

>Important: items listed under this heading will be given no consideration as working capital unless actual or estimated market value is furnished.

<b>9</b>	Other current assets Bid deposits, prepaid expenses, cash value of life insurance, accrued interest, etc. _____ \$ _____		
<b>Description</b>			<b>Amount</b>
<b>10*</b>	Real Estate Book Value	(a) Used for business purposes _____ \$ _____ (b) Not used for business purposes _____ \$ _____	
	<b>Location</b>	<b>Description</b>	<b>Held in Whose Name</b>
		<b>Value</b>	
<b>11</b>	Construction plant and equipment _____ \$ _____		
<b>11A</b>	What is your approximate annual income from rental of equipment owned by you, Exclusive of such income from associated concerns having same ownership \$ _____		
<b>12*</b>	Furniture and Fixtures _____ \$ _____		
<b>13</b>	Investments of non-current nature \$ _____		
<b>Description</b>			<b>Amount</b>
<b>14</b>	Other non-current assests \$ _____		
<b>Description</b>			<b>Amount</b>
			<b>Total Assets \$</b> _____

\*Show book value (Cost less Depreciation) unless an appraisal schedule prepared by an independent appraiser is attached; in which case, appraised value may be shown.

**EXHIBIT 4 – DETAILS RELATIVE TO ASSETS (Continued)**

<b>15</b>	Current portion of Notes Payable, exclusive of equipment obligations and real estate obligations \$ _____			
	To Whom Payable	What Security	When Due	Amount
<b>16</b>	Accounts Payable: (a) Not past due ..... \$ _____ (b) Past due..... \$ _____			
	To Whom Payable	What Security	When Due	Amount
<b>17</b>	Other current liabilities ..... \$ _____ Accrued interest, taxes, insurance, payrolls, etc.			
	Description			Amount
<b>18</b>	Real Estate encumbrances \$ _____			
<b>19</b>	Construction Equipment obligations (a) Total payments due within six months \$ _____ Secured by equipment: (b) Total payments due after six months \$ _____			
	To Whom Payable	How Payable**	Amount	
<b>20</b>	Other non-current liabilities and non-current notes payable \$ _____			
	Description	For What	When Due	Amount
<b>21</b>	Reserves \$ _____			
	Description			Amount
<b>22</b>	Capital stock paid up:	(a) Common.....\$ _____ (b) Preferred.....\$ _____		
<b>23</b>	Surplus (or Net Worth) \$ _____			

	Total Liabilities and Capital \$ _____
--	--

**EXHIBIT 5 – SUBORDINATION OF NOTES OR ACCOUNTS PAYABLE**

AGENCY  
Address

Amounts owing to officers or stockholders of a corporation may be considered as advances of capital, and may be added to net worth for approval purposes, in those cases where verified subordination agreements are executed stating:

The amount of \$ \_\_\_\_\_ due me from \_\_\_\_\_

\_\_\_\_\_  
(Name of Corporation)

Represents an advance of Working Capital and will not be withdrawn without prior notice to AGENCY nor during the life of any contract with said AGENCY on which the corporation may be the successful bidder or proposer.

\_\_\_\_\_  
(Signature of Creditor)

\_\_\_\_\_  
Date

**EXHIBIT 6 – GENERAL STATEMENT OF BANK CREDIT**

In connection with the prequalification of \_\_\_\_\_,  
(Name of Contractor)

a contractor seeking to be awarded a contract(s) with AGENCY, we hereby declare that said contractor has been extended a line of credit in a total amount exceeding \$ \_\_\_\_\_, and that such credit will not be withdrawn or reduced without notice to AGENCY.

This letter is signed with the understanding that it is a document to be used by AGENCY for the purpose of determining the financial resources of said contractor available for use in performing work under contracts which may be awarded to him by AGENCY during the term of his prequalification.

This General Statement of Bank Credit will EXPIRE with the Contractor’s Statement of Experience and Financial Condition for which the line of credit was issued.

\_\_\_\_\_  
(Name of Bank)

\_\_\_\_\_  
(Address)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

PLEASE NOTE: The above form may be used to augment you Working Capital and completed by your bank, or if they prefer, one with substantially the same provisions may be issued on their own letterhead, referencing the contract number.

(AGENCY USE ONLY)

CONTRACTOR'S STATEMENT OF EXPERIENCE AND FINANCIAL CONDITION (CSOEF)  
REVIEW SHEET

1. Contract: \_\_\_\_\_

2. Contract Bid Amount: \$ \_\_\_\_\_

Remarks  
\_\_\_\_\_

3. Total Working Capital \$ \_\_\_\_\_ [Current Assets – Current Liabilities]

4. Statement of Bank Credit \$ \_\_\_\_\_ See Exhibit 6

5. Subtotal \$ \_\_\_\_\_

6. Subtotal x 10 (Line 5 x 10) \$ \_\_\_\_\_

7. Is Line 6  $\geq$  Line 2? yes / no (Circle one)

8. Does the largest value of all work bidder or proposer has had under contract over a previous similar time frame as the subject contract meet or exceed the total amount bid? If so, please explain.

9. Does the dollar value of at least one of the previous individual contracts listed have at least 50 percent of the dollar value bid on the AGENCY contract? If so, please explain.

10. Has the bidder or proposer successfully completed contracts during the previous five years that together exceeds five times the annual value of the AGENCY contract? If so, please explain.

**AGENCY USE ONLY**

I have reviewed the contractor-furnished information contained in the CSOEF and have determined that the submittal is in compliance with AGENCY requirements. Therefore, this firm can be recommended for the award of this contract.

Initial Review Completed by \_\_\_\_\_, Firm Name: \_\_\_\_\_ Date: \_\_\_\_\_  
[Enter person name, role and Firm Name here if applicable]

Experience Reviewed and Checked for Completeness by \_\_\_\_\_ Date: \_\_\_\_\_  
Contracts Officer

Financials Approved by \_\_\_\_\_ Date: \_\_\_\_\_  
Administration and Finance

Experience Reviewed by \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix 5

# PROTEST PROCEDURES FOR PROCUREMENTS

## I. PROTESTS

The following procedures shall be used by AGENCY to fairly and promptly respond to any protests received regarding third-party contracts or the contracting process. AGENCY will consider all protests or objections regarding the contracting process or the award of an Agreement received by AGENCY by 4 p.m. on the deadlines discussed below. AGENCY will review only protests submitted by an actual or prospective Proposer. Protests by prospective subcontractors will be rejected. A protest by any adversely affected Proposer must be made in writing and must be mailed or hand delivered to AGENCY. A protest which does not strictly comply with the AGENCY protest procedures will be rejected.

### A. Protests Before Bid/Proposal Opening

Protests relating to the content of the solicitation (i.e., RFP, IFB, RFQ), including protests related to DBE/UDBE requirements, must be filed within five (5) business days after the date the solicitation or addendum with the revised content is released to the public by AGENCY. Failure to file a protest concerning the content of the solicitation or addendum prior to this deadline constitutes a waiver of any protest on these grounds.

### B. Protests Related to Determination of Responsiveness

In the event the RFP contains a DBE/UDBE goal and AGENCY makes a determination that Proposer has not met the goal or good faith effort requirements set forth in this RFP, AGENCY will send the Proposer a Notice of Non-Responsiveness. Protests relating to any Notice of Non-Responsiveness must be filed within five (5) business days after the date of such notice. Failure to file a protest concerning the non-responsiveness determination prior to this deadline constitutes a waiver of any protest on these grounds and AGENCY shall not be obligated to send Proposer any further notices.

### C. Protests After Bid/Proposal Due Date

After Proposers are shortlisted and/or selected for negotiations, notices will be sent to all relevant Proposers. Protests relating to failure to make the shortlist must be filed within five (5) business days following protester's receipt of a notice regarding the shortlisting. Protests relating to the intent to make an award must be filed within five (5) business days following protester's receipt of the notice regarding the intent to negotiate. The date of filing shall be the date AGENCY receives the protest. Untimely protests will be rejected. If deemed necessary, AGENCY shall notify all Proposers of record that a protest has been



filed and the award has been postponed until further notice. If necessary, Proposers will be asked to extend the time for acceptance of their proposal in order to avoid the need for readvertisement of the solicitation.

#### **D. Protest Contents**

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested. The protest also must state the law, rule, regulation, or policy upon which the protest is based. Protests concerning the relative weight of the evaluation criteria or the formula used in assigning points to make an award determination will be rejected. The protester must allege or establish a clear violation of a specific law, rule, regulation, or policy. If the protester considers that the protest contains proprietary material that should be withheld, a statement advising of this fact must be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears. Protests shall be mailed to:

The Protest Administrator

Reference: AGENCY Contract Solicitation No. [Solicitation#]

#### **E. Role Of The Protest Administrator**

If a protest raises solely a question of law, the Executive Director shall retain the services of AGENCY legal Counsel to serve as the Protest Committee. AGENCY Legal Counsel will prepare a recommendation regarding the protest, in writing, to the AGENCY Executive Director within ten (10) business days.

The Protest Administrator shall review each protest to determine if it is in compliance with the deadline, format, content, and notice requirements set forth in this Section. If a protest does not meet such requirements it may be rejected without further consideration. A written notice of such rejection shall be sent to the protester.

If the protest requires resolution of questions of fact, the Protest Administrator, his/her designee will appoint individuals to participate on a Protest Committee. The Protest Administrator will endeavor to appoint at least one of the Protest Committee members from an outside agency, and no one may sit on the Protest Committee that has a known and direct connection to the procurement that is the subject of the protest. The Protest Administrator also will appoint a chairperson for the Protest Committee. The Protest Administrator will gather the documents that the Protest Committee will need for its investigation and prepare a memo to the Protest Committee containing background

information regarding the protest. Any communication regarding the protest between the protester and AGENCY shall be through the Protest Administrator during the protest proceedings. Protesters may not contact anyone at AGENCY other than the Protest Administrator. Protest Committee

The Protest Committee shall ensure the protest was received within the timeline specified and review the protest to determine if it itemizes in appropriate detail each matter contested as well as any factual reason(s) for the requested protest. The Committee chairperson shall schedule the date of the Protest Committee meeting, contact the Committee panel members, and distribute all protest documentation.

**F. Reply To Protest**

The Protest Committee will review all qualifying protests in a timely manner and may hold an informal hearing if deemed necessary in order to complete its investigation. The Protest Committee will prepare a recommendation regarding the protest, in writing, to AGENCY's Executive Director within ten (10) business days of the date of receipt of the protest. All materials included with the original protest at time of submittal will be considered. Supplemental materials filed by a protester after the protest deadline will not be considered unless there are extenuating circumstances in the opinion of the Protest Committee. Protest documents will not be withheld from any interested party outside of AGENCY, with the exception that information will be withheld when required by law or regulation. The Executive Director or his/her designee will either sustain or reject the protest in writing based upon the recommendation of the Protest Committee and the best interests of AGENCY. This decision will be communicated in writing to the protestor and/or the party whose proposal is the subject of the protest and delivered by email or overnight delivery.

**G. Results Of The Protest**

If the protest relating to a contract award is sustained, the original Notice of Intent to Award may be withdrawn after the deadline for protest reconsideration has passed. AGENCY then may issue a new Notice of Intent to Award to a different bidder/Proposer and a new protest period will commence using the same timelines discussed above. If the protest is rejected, the original Notice of Intent to Award will stand and AGENCY will continue with contract negotiations with the awardee.

**H. Federal Transit Administration Requirements Not Applicable if no FTA Funding**

1. FTA Review of Protests

- a. In the case of contracts funded by the FTA, the FTA will review only protests regarding the alleged failure of AGENCY to have written protest procedures or alleged failure to follow such procedures.

- b. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. See Buy America Requirements, 49 C.F.R. 661.15; Participation by Minority Business Enterprise in DOT Programs, 49 C.F.R. 23.73.
    - c. The FTA will review only protests submitted by an interested party defined as an actual or prospective bidder or Proposer whose direct economic interest would be affected by the award of the contract or by failure to award the contract in accordance with FTA Circular 4220.1F. A subcontractor does not qualify as an “interested party.” (See FTA Circular 4220.1E, Chapter VII, Section I (1)(c)).”
2. Time for Filing
  - a. Protesters shall file a protest with the FTA not later than five (5) business days after a final decision is rendered under the AGENCY protest procedure. A copy of any protest documents filed with the FTA must be provided concurrently to AGENCY. In instances where the protester alleges that AGENCY failed to make a final determination on the protest, protesters shall file a protest with the FTA not later than five (5) business days after the protester knew or should have known of the failure of AGENCY to render a final determination on the protest.
  - b. AGENCY shall not award a contract for five (5) business days following its decision on a bid protest except in accordance with the provisions and limitations of subparagraph 6. After five (5) business days, AGENCY shall confirm with the FTA that the FTA has not received a protest on the contract in question.
3. Submission of Protest to the FTA
  - a. The protester must exhaust its administrative remedies by pursuing the recipient’s protest procedures to completion before appealing the recipient’s decision to the FTA. (FTA Circular 4220.1F, Page VII-3, November 1, 2008).
  - b. Protests should be filed with the FTA Region 9 office and a copy must be sent to AGENCY by the protester.
  - c. The protest filed with the FTA shall:
    - Include name and address of protester
    - Identify AGENCY as the grantee, the AGENCY Contract Administrator, and number of the contract solicitation

- Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible
- Include a copy of the local protest filed with AGENCY and a copy of the AGENCY decision, if any

4. AGENCY Response

- a. The FTA shall notify AGENCY in a timely manner of receipt of a protest.
- b. AGENCY shall submit the following information not later than ten (10) business days after receipt of notification by the FTA of the protest:
  - a copy of AGENCY's protest procedure
  - a description of the process followed concerning the protester's protest
  - any supporting documentation
- c. AGENCY shall provide protester with a copy of the above submission.

5. Protester Comments

The protester must submit any comments on the AGENCY submission not later than ten (10) business days after the protester's receipt of the AGENCY submission.

6. Withholding of Award

When a protest has been timely filed with AGENCY before award, AGENCY shall not make an award prior to five (5) business days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless AGENCY determines that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to AGENCY or the federal government.

The FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

7. FTA Action

Upon receipt of the submissions, the FTA will either request further information or a conference among the parties, or will render a decision on the protest.

## Appendix 6

# MEMO

[Date]

TO: Executive Director  
FROM: Project Manager  
SUBJECT: [Subject]

### 1. Introduction

This memorandum contains the [Insert Name of Project] Selection Committee's recommendation for the selection of a contractor for [Insert Description of Project]

Copies of the RFP, legal notices, the proposal from the recommended consultant, sample evaluation form, and scoring/ranking of contractors are attached for your review. The Selection Committee's recommendation is [state whether vote was unanimous or identity slip of approval] and is in full compliance with AGENCY's policies and procedures for the procurement of such services.

The Selection Committee seeks your approval of its recommendation and authorization for staff to proceed with notification of the selected contractor and [contract execution].

### 2. Background

[Include the dollar amount authorized for the project.]

### 3. Procurement and Selection Process

Include the following information:

- Date RFP was sent out

- methods of publication of RFP
- whether a pre-proposal meeting was held and if so, where and when was it held
- deadline for submitting proposals
- selection process used
- names and titles of individuals on selection committee
- number of proposals received and names of the contractors
- name of and names of contractors interviewed
- ranking of each proposal and dollar amount of bid in each proposal

#### **4. Statement of Necessity and Lease Versus Purchase Analysis**

The sender of this Recommendation Memo asserts that the amount of property or services being procured does not exceed AGENCY's current and reasonably expected needs. To the best of the sender's knowledge, this procurement does not include property or services that are duplicative or that are unlikely to be used. If this procurement concerns the procurement of equipment, supplies, or real property, the sender of this memo has analyzed the economic advantages and disadvantages of leasing versus purchasing and has concluded that [insert "leasing" or "purchasing"] is the best value for AGENCY.

#### **5. Responsibility Determination**

The sender of this Recommendation Memo, with the assistance of the Contracts Officer has concluded that the selected consultant/contractor is responsible based on the following findings regarding the consultant/contractor:

- Has a satisfactory record of integrity and business ethics;
- Has not been debarred or suspended from Federal programs and is not listed on the Excluded Parties List System at <http://www.sam.gov>;
- Is in compliance with Disadvantaged Business Enterprise requirements;
- Has the necessary organization, experience, accounting, operational controls, and technical skills, or the ability to obtain them;
- Is in compliance with applicable licensing and tax laws;
- Has or can obtain sufficient financial resources to perform the contract;
- Has or can obtain the necessary production, construction, and/or technical equipment and facilities to perform the contract;
- Is able to comply with the required delivery or performance schedule;
- Has a satisfactory current performance record;

- Has or can obtain key personnel with adequate experience and key subcontractors with adequate experience and past performance; and
- Has experience carrying out similar work.

**6. Contract Period Selection**

The duration of the contract period chosen for this procurement is [insert number] years with the possibility of [insert number] years of extensions. This contract period is reasonable for the following reasons [insert number].

**7. Recommendation**

[insert recommendation] [You must state the reasons the selected consultant/contractor was selected, including reasons why the consultant/contractor presents the best value to AGENCY taking experience, price, and other evaluation factors into account.]

**8. Approval**

I hereby approve the recommendation of the [insert title of project] Selection Committee and staff, and authorize and direct staff to begin and contract negotiations with the selected consultant/contractor named above.

Approved:

\_\_\_\_\_  
**Executive Director**

\_\_\_\_\_  
**Date**

Attachments: [list attachment]  
                  [list attachment]



## Appendix 7

### AGENCY EVALUATOR GUIDELINES

#### I. PURPOSE

AGENCY thanks you for your willingness to serve as one of its evaluators. Proposal and bid evaluators are tasked with assisting AGENCY in selecting a grantee, consultant, or contractor through a competitive process. Non-AGENCY members are invited to serve as evaluators when AGENCY believes they can provide valuable additional experience and input that will assist in the ranking or selection process. These guidelines are intended to provide you with information regarding your responsibilities as an evaluator for AGENCY.

#### II. ROLE AS AN EVALUATOR

You were most likely asked to assist AGENCY in evaluating proposals or bids due to your experience and/or position as an elected official or as a representative of a public agency, regional interest group, or community stakeholder. The interests of the public with regard to the AGENCY procurement or grant program may or may not coincide with the interests of the public or private organization you represent or with your personal interests. Since the funds used by AGENCY to pay its grantees, consultants, and contractors are public funds, however, you will be expected to evaluate proposals or bids using objective standards that will best serve the interests of the public and AGENCY.

You will be asked to review written proposals or bids from, and/or interview grantees, consultants, or contractors who would like to be awarded a grant or contract by AGENCY using evaluation criteria or specifications that vary depending upon the type of grant or contract to be awarded. All of AGENCY's solicitations contain a section that sets forth specifications and/or assigned weights for each of the evaluation criteria.

If you are asked to review proposals, you will be given a score sheet and asked to evaluate each proposal based on the criteria in the solicitation. You must use only the criteria discussed in the solicitation when scoring the proposals. Only persons who are members of the evaluation committee may fill out a score sheet and have their scores tabulated as part of the selection process. You may or may not see the costs or bid portion of proposals, depending on the evaluation criteria and selection method determined by AGENCY. You maybe asked to take part in interviewing proposers after the written proposals are reviewed and scored. The weight of the interview portion of the evaluation process will be indicated in AGENCY's solicitation and interviewers will use standardized questions to ensure proposers compete on equal ground.

If you are asked to review all or a portion of the bid documents, you will be limited to advising AGENCY of whether the bid is responsive to the specifications or contains errors. You must use only the criteria discussed in the solicitation.

AGENCY staff may carry out additional tasks as part of the evaluation process that you will not be involved in, such as checking proposers' references and holding additional meetings among AGENCY staff to further evaluate the proposals. After the evaluation process is complete, a recommendation memo will be prepared for AGENCY's executive director. Evaluation committee members do not have authority to approve entry into negotiations or a grant or contract award with a particular proposer or bidder.

From time to time a proposer or bidder who is not selected for contract award is disgruntled regarding the evaluation process and files a protest with AGENCY. AGENCY has protest procedures for dealing with this scenario. If a protest is filed, the objectivity of the evaluators and the integrity of the evaluation process may be closely scrutinized by persons outside of AGENCY. Additionally, all proposals, bids, and evaluation score sheets are potentially public records subject to disclosure to the public. Therefore, evaluators should exercise care so that their score sheets and other evaluation documents are legible and do not contain comments that could be perceived as ambiguous, discriminatory, or derogatory.

#### III. CONFLICTS OF INTEREST

Conflicts of interest may arise as a consequence of the many and varied roles you play in our community. One of the goals of these Guidelines is to manage real or perceived conflicts of interest. AGENCY has

determined that a system of self-disclosure is most effective since conflicts of interest must be dealt with on a case-by-case basis. Discussion and disclosure generally can resolve issues related to conflict of interest.

A conflict of interest occurs when there is or could be a divergence between an individual's professional, private, or personal relationships or interests and his/her obligations to AGENCY as an evaluator such that an independent observer might reasonably question whether the evaluator's actions or decisions are determined by considerations of private benefit, gain, or advantage. A conflict of interest or the appearance of it depends on the situation, and not necessarily on the character or actions of the individual. The appearance of a conflict of interest can be as damaging or detrimental as an actual conflict.

Potential conflicts of interest are not unusual and must be addressed. For example, sometimes people from the private sector are selected to serve as a member of one of AGENCY's evaluation committees because of their experience in a particular industry. Therefore, it is expected that situations may arise where a person that has served as an evaluation committee member may work for a private sector employer or client that will in the future want to submit a proposal or bid to AGENCY in response to a solicitation. In order to prevent an actual or perceived conflict of interest, a person serving as an evaluator must disqualify him or herself and the private organization he/she is employed by from submitting a proposal/bid to AGENCY or receiving compensation from AGENCY for a prospective period of one year for work related to the project for which AGENCY is conducting its competitive solicitation. The foregoing sentence will not apply, however, if your organization is under contract with AGENCY to perform proposal/bid evaluation work as part of its scope of work following a conflict evaluation related to your contract. This one-year bar also applies to persons who were employed in the public sector when serving as an evaluator, but who eventually take a position as a consultant for, employee of, or owner of a private sector firm. California law states that certain financial interests are automatically a conflict of interest. AGENCY has listed these prohibited interests as well as others that it chooses to avoid in the attached Declaration Concerning Conflicts.

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It is wrong for an individual's actions or decisions made in the course of his or her AGENCY activities to be determined by considerations of personal financial gain or illegal bias. Such behavior calls into question the professional objectivity and ethics of the individual and it also reflects negatively on AGENCY. As a AGENCY evaluation committee member you must respect AGENCY's status as a recipient of public funds and conduct your affairs in ways that will not compromise AGENCY's integrity.

For all of the above reasons, evaluators must fill out the attached "Declaration Concerning Conflicts" and return it to AGENCY before they begin evaluating any proposals or bids, and must report potential conflicts that may arise during the evaluation process. Potential conflicts must be reported up until the time a contract or grant is actually awarded or until an evaluator's role in the evaluation process is complete, whichever occurs first, so that appearances can be separated from reality. If an evaluator believes she/he may have a potential conflict and it arises subsequent to submitting the Declaration Concerning Conflicts, the evaluator has an affirmative duty to immediately disclose any potential conflict of interest to the AGENCY project manager or contract analyst. Notification of the actual or potential conflict should be given to the project manager or contract analyst. Evaluators with an actual or potential conflict of interest will be excused from assisting in the evaluator process.

#### IV. CONFIDENTIAL INFORMATION

Proprietary or other confidential information that a AGENCY evaluator may be exposed to at AGENCY may never be used in external activities or disclosed to others unless written approval is given in advance by AGENCY's Executive Director or designee.

#### V. PROHIBITION AGAINST DISCRIMINATION AND HARASSMENT

AGENCY has a policy of nondiscrimination as required by federal and state law due to AGENCY's use of federal and state money to fund contracts. This policy applies to the selection of consultants and contractors. AGENCY's policy prohibits discrimination on the basis of sex, age (over 40), religion, creed, race, nationality, color, disability, sexual orientation, or marital status. All evaluators are expected to abide by this policy when evaluating consultants. AGENCY's policies prohibiting harassment, discrimination, or violence when dealing with AGENCY's employees or using AGENCY's facilities or property also apply. Evaluators suspected of

actual or potential discrimination in violation of AGENCY policy will be excused from assisting in the evaluation process.

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Appendix 8

# DECLARATION CONCERNING CONFLICTS FOR EVALUATORS

## INSTRUCTIONS

Please review the language in this declaration carefully prior to signing below. Once you have signed the declaration, please enclose it in an envelope marked “confidential” and submit it to the AGENCY project manager or to the contracts officer who requested that you serve on AGENCY’s evaluation committee.

For purposes of this declaration “interest in a firm” means having a financial interest (either personal or organizational) including, but not limited to, owning stock or having an investment or profit-sharing interest in, receiving commissions or fees from, owning property with, or having a management or policy making position with a firm.

For purposes of this declaration “relationship with a firm” means employee, consultant, officer, attorney, agent, broker, supplier of services or goods, landlord or tenant, or officer or employee of a firm.

For purposes of this declaration “firm” means a person, corporation, or unincorporated association.

## DECLARATION

I, \_\_\_\_\_, have been asked to serve as a member of AGENCY’s evaluation committee for proposals or to help evaluate bids submitted for:

\_\_\_\_\_ (“the Project”).

I have reviewed the AGENCY EVALUATOR GUIDELINES. I understand that I cannot serve as an evaluation committee member or as a bid evaluator if I have an actual or potential conflict of interest or am unwilling or unable to serve without discriminating against proposers/bidders on the basis of sex, age (over 40), religion, creed, race, nationality, color, disability, sexual orientation, or marital status. I understand that I will be expected to abide by AGENCY policy prohibiting discrimination when serving as an evaluator. I also understand that AGENCY’s policies prohibiting harassment, discrimination, or violence when dealing with AGENCY’s employees or using AGENCY’s facilities or property will also apply to me.

AGENCY has provided me with a list of the firms who have submitted proposals or bids for the Project and any firms that may have assisted AGENCY with the preparation of any development criteria, specifications, scope of work, grant solicitation, request for proposals or request for qualifications, or bid documents related to the Project.

The name of my employer is: \_\_\_\_\_.

My employer is:

- a public agency
- a non-profit corporation
- a corporation
- a sole proprietorship
- an unincorporated association (partnership, joint venture, LLC, LLP, etc.).

Mark the box below that applies:

- I do not have an interest in, or relationship with, any firm awarded a contract by AGENCY in the last calendar year; or
- I do have an interest in, or relationship with, a firm awarded a contract by AGENCY in the last calendar year and the names of those firms and the scope of work performed by each are:

\_\_\_\_\_  
\_\_\_\_\_

or;

- I do not know if I have an interest in, or relationship with, a firm awarded a contract by AGENCY in the last calendar year.

I understand that I must immediately report any potential conflicts of interest that I become aware of after signing this declaration to AGENCY's project manager or contract analyst.

In order to affirmatively establish that I do not have an actual or potential conflict interest, I make the following statements of fact:

1. I do not have an interest in, or relationship with, a firm that has submitted a proposal or bid to AGENCY for the Project.
2. I have not received a gift with a value in excess of \$50 during the last calendar year from a firm that has submitted a proposal or bid for the Project.
3. Neither my spouse nor children (if applicable) have an interest in, or relationship with, a firm that has submitted a proposal or bid to AGENCY for the Project.
4. I do not have, and do not plan to have, a direct or indirect interest in a business, transaction, or professional activity that is in substantial conflict with the proper discharge

of my duties as an evaluator that would interfere with my ability to serve AGENCY's best interests in objectively selecting a consultant/contractor/grantee for the Project.

5. I have not, and do not plan to incur, an obligation of any nature in a business or transaction or professional activity that is in substantial conflict with the proper discharge of my duties as an evaluation committee member or bid evaluator to serve AGENCY's best interests in objectively selecting a consultant/contractor/grantee for the Project.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

**Signature of Declarant**

**Printed Name of Declarant**

---

**DO NOT WRITE BELOW THIS LINE – FOR AGENCY’S USE ONLY**

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- No conflict of interest issues; or
- Potential conflict of interest issue – referred to Deputy General Counsel for review

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**Signature of Contract Officer**

**Date**

- Conflict of interest confirmed
- Potential conflict of interest issue reviewed and no conflict of interest was found.

Notes:

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**Signature of Executive Director**

**Date**

Attachment XX - Cost Proposal

Project: \_\_\_\_\_  
 Consultant: \_\_\_\_\_

Combined Overhead (%) =  Fee (%) =

		Actual Hours	Actual Rate/Hr	Loaded Rate*/Hr	Labor Amount	Total	Date Due
<b>Task 1. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 2. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 3. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 4. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 5. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 6. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 7. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Other Direct Cost</b>							
Item 1					\$0.00		
Item 2					\$0.00		
						<u>\$0.00</u>	

<b>Prime Consultant Total Hours</b>	0	<b>Prime Consultant Total Cost</b>	\$0.00
		<b>Prime Consultant Other Direct Cost</b>	\$0.00
		<b>PRIME CONSULTANT TOTAL COST</b>	\$0.00
<b>Subconsultant Total Hours</b>	0	<b>Subconsultant Total Cost</b>	\$0.00
		<b>Subconsultant Other Direct Cost</b>	\$0.00
		<b>SUBCONSULTANT TOTAL COST</b>	\$0.00
<b>TOTAL PROJECT COST:</b>			<b>\$0.00</b>

\* Includes Labor Overhead, Fringe Benefit and General Administrative Expenses (% of Total Direct Labor Cost)  
 Loaded Hourly Rate Calculation: \$ Actual Hourly Rate X (1+Combined of Overhead&Fringe%) X (1+Fee%)

\_\_\_\_\_  
 Name/Title of Authorized Representative      Signature      Date



Attachment XX - Cost Proposal

Project: \_\_\_\_\_

Subconsultant: \_\_\_\_\_

		Combined Overhead (%) =			0.00%	Fee (%) =	
		Actual	Actual	Loaded	Labor		Date
		Hours	Rate/Hr	Rate/Hr*	Amount	Total	Due
<b>Task 1. type task description</b>							tbd
Name	Classification	0	\$25.00	\$25.00	\$0.00		
Name	Classification	0	\$100.00	\$100.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 2. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$15.00	\$15.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 3. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 4. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 5. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 6. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Task 7. type task description</b>							tbd
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
Name	Classification	0	\$0.00	\$0.00	\$0.00		
		<u>0</u>				<u>\$0.00</u>	
<b>Other Direct Cost</b>							
Item 1					\$0.00		
Item 2					\$0.00		
						<u>\$0.00</u>	
<b>Subconsultant Total Hours</b>		0					
						\$0.00	
						\$0.00	
						<b>\$0.00</b>	

\* Loaded Hourly Rate: Includes Labor Overhead, Fringe Benefit and General Administrative Expenses (% of Total Direct Labor Cost)  
 Loaded Hourly Rate Calculation: \$ Actual Hourly Rate X (1+Combined of Overhead&Fringe%) X (1+Fee%)

# Appendix 10

## METHOD OF PROCUREMENT SELECTION (MOPS)

This form shall be used to document how the method of procurement was selected. To best determine which method of procurement is suitable, classify the situation by checking off the appropriate boxes below. All elements must apply to use selected method.<sup>1</sup>

COMPETITIVE SOLICITATIONS					
SMALL PURCHASE (INFORMAL IFB OR RFP)		SEALED BID (FORMAL IFB)	REQUEST FOR PROPOSALS (FORMAL RFP)	TWO STEP PROCUREMENT (QUALITATIVE BASED RFQ FOLLOWED BY RFP)	
<input type="checkbox"/> Price or rate quotes can be obtained from an adequate number of qualified sources <input type="checkbox"/> Procurement has not been divided or reduced to keep within small purchase category <input type="checkbox"/> Conforms to informal IFB <u>or</u> informal RFP elements listed below		<input type="checkbox"/> Supplies, construction, or property more than \$25,000 <input type="checkbox"/> Bids can be publicly solicited and advertised <input type="checkbox"/> Award can be made to the lowest responsive and responsible bidder who conforms to all material terms and conditions of solicitation	<input type="checkbox"/> Professional services more than \$5,000 <input type="checkbox"/> Nature of procurement does not lend itself to sealed bidding <input type="checkbox"/> More than one source will be willing to submit a proposal <input type="checkbox"/> Performance or functional specification <input type="checkbox"/> Need for discussion following receipt of proposals <input type="checkbox"/> Evaluation factors and relative importance can be specified in solicitation <input type="checkbox"/> Award can be made to the responsible offeror whose proposal is most advantageous to AGENCY with price and other factors considered	<input type="checkbox"/> Ability to evaluate technical qualifications of proposers to make prequalified selection (Step 1) <input type="checkbox"/> Ability to solicit and review bids or proposals submitted by prequalified firms (Step 2) <input type="checkbox"/> Proposals can be solicited from at least three qualified firms	
INFORMAL IFB	INFORMAL RFP			A&E, PROGRAM MANAGEMENT, CONSTRUCTION MANAGEMENT, AND OTHER RELATED SERVICES?	NON-A&E SERVICES
<input type="checkbox"/> Supplies or property less than \$25,000 <input type="checkbox"/> Bids can be publicly solicited and advertised <input type="checkbox"/> Award can be made to the lowest responsive and responsible bidder who conforms to all material terms and conditions of solicitation <input type="checkbox"/> Complete, adequate, precise, and realistic specification or purchase description is available <input type="checkbox"/> Two or more responsible bidders are willing to compete <input type="checkbox"/> Successful bidder can be selected on basis of price alone <input type="checkbox"/> Discussions with one or more bidders after bids have been submitted are unnecessary	<input type="checkbox"/> Professional services less than \$5,000 <input type="checkbox"/> Nature of procurement does not lend itself to sealed bidding <input type="checkbox"/> More than one source will be willing to submit a proposal <input type="checkbox"/> Performance or functional specification <input type="checkbox"/> Need for discussion following receipt of proposals <input type="checkbox"/> Evaluation factors and relative importance can be specified in solicitation <input type="checkbox"/> Award can be made to the responsible offeror whose proposal is most advantageous to SANDAG with price and other factors considered	<input type="checkbox"/> Complete, adequate, precise, and realistic specification or purchase description available <input type="checkbox"/> Two or more responsible bidders are willing to compete <input type="checkbox"/> Successful bidder can be selected on basis of price alone <input type="checkbox"/> Discussions with one or more bidders after bids have been submitted are unnecessary		<input type="checkbox"/> Services are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property <input type="checkbox"/> Price is excluded as an evaluation factor <input type="checkbox"/> Qualifications are evaluated to determine contract award	<input type="checkbox"/> Services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property <input type="checkbox"/> Price is included as an evaluation factor and award is based upon technical qualifications as well as cost

<sup>1</sup> FTA Circular 4220.1F, Chapter V and Chapter VI, Section 29





# BID SUMMARY

PROJECT NAME

CONTRACT NUMBER

Bids Due to AGENCY: \_\_\_\_\_, 20\_\_ at 0:00 AM/PM

Lowest Bidder Name*	Schedule A	\$X,XXX,XXX
Lowest Bidder Street Address	Schedule B	<u>\$X,XXX,XXX</u>
Lowest Bidder City, State, Zip	Total	\$X,XXX,XXX
Second Bidder Name	Schedule A	\$X,XXX,XXX
Second Bidder Street Address	Schedule B	<u>\$X,XXX,XXX</u>
Second Bidder City, State, Zip	Total	\$X,XXX,XXX
Third Bidder Name	Schedule A	\$X,XXX,XXX
Third Bidder Street Address	Schedule B	<u>\$X,XXX,XXX</u>
Third Bidder City, State, Zip	Total	\$X,XXX,XXX

Etc.

\*Apparent low bid

---

AGENCY Estimate: \$ \_\_\_\_\_

\_\_\_\_\_  
Name of Project Manager

\_\_\_\_\_  
Name of Contracts Officer

SEE PAGE 2 FOR LIST OF SUBCONTRACTORS FOR EACH BIDDER.

**PROJECT NAME**

**CONTRACT NUMBER**

Bid Opening date:

LISTED SUBCONTRACTORS

Lowest Bidder Name*	Total	\$X,XXX,XXX
---------------------	-------	-------------

Subcontractor 1, City, State (Type of Work)	\$XX,XXX
Subcontractor 2, City, State (Type of Work)	\$XX,XXX
Subcontractor 3, City, State (Type of Work)	\$XX,XXX
Subcontractor 4, City, State (Type of Work)	\$XX,XXX

---

Second Lowest Bidder Name	Total	\$X,XXX,XXX
---------------------------	-------	-------------

Subcontractor 1, City, State (Type of Work)	\$XX,XXX
Subcontractor 2, City, State (Type of Work)	\$XX,XXX
Subcontractor 3, City, State (Type of Work)	\$XX,XXX
Subcontractor 4, City, State (Type of Work)	\$XX,XXX

---

Third Lowest Bidder Name	Total	\$X,XXX,XXX
--------------------------	-------	-------------

Subcontractor 1, City, State (Type of Work)	\$XX,XXX
Subcontractor 2, City, State (Type of Work)	\$XX,XXX
Subcontractor 3, City, State (Type of Work)	\$XX,XXX
Subcontractor 4, City, State (Type of Work)	\$XX,XXX

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Etc.

\*Apparent low bid

# SUBCONSULTANT LIST

The proposal shall include a complete list of all proposed subconsultants. All subconsultants listed must be provided a meaningful element of work within the defined scope of work. Changes to this Subconsultant List will not be allowed without prior written approval from AGENCY.

## PROPOSED SUBCONSULTANTS

<b>Subconsultant Firm Name and Address</b>	<b>Scope of Work</b>	<b>Dollar Amount of Work</b>
Name Address		\$0.00
Name Address		\$0.00
Name Address		\$0.00
Name Address		\$0.00
Name Address		\$0.00
Name Address		\$0.00

---

Name of Firm

---

Printed Name and Title of Signatory

---

Signature

---

Date

# Appendix 14A BIDDERS LIST

Proposer:

RFP/TO No.

The U.S. Department of Transportation (DOT) requires AGENCY to create and maintain a Bidders List containing information about all firms (Disadvantaged Business Enterprise (DBEs) and non-DBEs) that bid, propose, or quote on the AGENCY DOT-assisted contracts in accordance with 49 C.F.R. 26.11. The Proposer is to complete all requested information for every firm that submitted a bid, proposal, or quote, including the Proposer itself and any proposed subconsultants. The Bidders List form shall be submitted with the proposal. AGENCY will utilize this information to assist in the Overall Annual DBE Goal Setting process. ***The Bidders List content will not be considered in evaluating the proposal or determining award of any contract.***

**[NOTE: Delete the text box above and use the following one instead if this document does not need to be provided until the Agreement or Task Order execution stage because the DBE commitment will be decided at a later date.]**

The DOT requires AGENCY to create and maintain a Bidders List containing information about all firms (DBEs and non-DBEs) that bid, propose, or quote on the AGENCY DOT-assisted contracts in accordance with 49 C.F.R. 26.11. Prior to the time a Task Order is executed, Consultant will be required to complete all requested information for every firm that submitted a bid, proposal, or quote, including the Consultant itself, and any proposed subconsultants. AGENCY will utilize this information to assist in the Overall Annual DBE Goal Setting process.

Proposer's Information				
Name of Prime's Firm:		Phone: (     )     -		
Firm Address:		Fax: (     )     -		
		Type of work/services/materials provided:		
City	ST			ZIP
Number of years in business:				
Contact Person:		Title:		
Is the firm currently certified as a DBE under 49 C.F.R. 26? <input type="checkbox"/> Yes <input type="checkbox"/> No		Check the box below for your firm's annual gross receipts last year:  <input type="checkbox"/> Less than \$1 million <input type="checkbox"/> Less than \$5 million <input type="checkbox"/> Less than \$10 million <input type="checkbox"/> Less than \$15 million <input type="checkbox"/> More than \$15 million		
Proposer has DBE Certification in the following categories (place an "X"): <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other				



Appendix 14A  
**BIDDERS LIST**



## INSTRUCTIONS - CONSULTANT PROPOSAL DBE COMMITMENT

### Consultant Section

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

### Local Agency (AGENCY) Section

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

**EXHIBIT K - CONSULTANT CONTRACT U/DBE COMMITMENT INFORMATION  
(AKA CALTRANS LAPM EXHIBIT 10-O2 - CONSULTANT CONTRACT DBE INFORMATION)**

(Inclusive of all U/DBEs listed at Agreement/Task Order award. Refer to instructions on the next page.)

<b>Selected Consultant to Complete this Section</b>			
<b>1.</b> Local Agency Name: _____ AGENCY _____ <b>2.</b> Project Location: _____ <b>3.</b> Project Description: _____ <b>4.</b> Total Contract Award Amount: \$ _____ <b>5.</b> Consultant Name: _____ <b>6.</b> Contract DBE Goal %: _____ <b>7.</b> Total Dollar Amount for <u>all</u> Subconsultants: \$ _____ <b>8.</b> Total Number of <u>all</u> Subconsultants: _____			
<b>Award DBE/DBE Information</b>			
<b>9.</b> Description of Services to be Provided	<b>10.</b> DBE/DBE Firm Contact Information	<b>11.</b> DBE Cert. Number	<b>12.</b> DBE Dollar Amount
<b>Local Agency to Complete this Section</b>		<b>13.</b> Total Dollars Claimed	\$ _____
<b>20.</b> AGENCY Contract Number: _____		<b>14.</b> Total % Claimed	_____ %
<b>21.</b> Federal-aid Project Number: _____			
<b>22.</b> Contract Execution Date: _____		AGENCY certifies that all DBE certifications are valid and the information on this form is complete and accurate:	
<b>23.</b> AGENCY Representative Name (Print)		_____	
<b>24.</b> AGENCY Representative Signature <b>25.</b> Date		<b>15.</b> Preparer's Signature	
<b>26.</b> AGENCY Representative Title <b>27.</b> (Area Code) Tel. No.		<b>16.</b> Preparer's Name (Print)	
		_____	
<b>Caltrans to Complete this Section</b>		<b>17.</b> Preparer's Title	
Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness:		<b>18.</b> Date <b>19.</b> (Area Code) Tel. No.	
<b>28.</b> DLAE Name (Print) <b>29.</b> DLAE Signature <b>30.</b> Date		_____	

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

## INSTRUCTIONS - CONSULTANT U/DBE COMMITMENT INFORMATION

### Consultant Section

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

### Local Agency (AGENCY) Section

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

### Caltrans Section:

*Caltrans District Local Assistance Engineer (DLAE) shall:*

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

**Appendix 14C**

# **U/DBE Information-Good Faith Efforts**

**(TO BE SUBMITTED BY PROPOSER/BIDDER [WITH PROPOSAL/BID [OR] AT TIME OF TASK/JOB ORDER PROPOSAL])**

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**ALL PROPOSERS/BIDDERS**

Proposers/Bidders who do not intend to meet the U/DBE goal must complete and submit this form in order to be deemed responsive. All references to “proposer/bidder” in this form will also be treated as a reference to Consultant/Contractor if applicable.

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<i>Contract Number</i>	<i>Task/Job Order Number (if applicable)</i>	<i>Proposal Submittal Date</i>
------------------------	--	--------------------------------

AGENCY has established a Disadvantaged Business Enterprise (DBE) or an Underutilized Disadvantaged Business Enterprise (UDBE) goal of [ insert percentage] % for this RFP/IFB [or Task/Job Order]. The information provided herein shows that a good faith effort was made by proposer/bidder to meet this goal.

Proposers/bidders should complete this U/DBE Information-Good Faith Efforts, even if the Local Agency U/DBE Commitment form indicates that the proposer/bidder has met the U/DBE goal. This will protect the proposer/bidder’s eligibility for award of the Agreement [or Task/Job Order] if AGENCY determines that the proposer/bidder failed to meet the goal for various reasons, e.g., a U/DBE firm was not certified at proposal/bid due date, or the proposer/bidder made a mathematical error. Submittal of only the Local Agency U/DBE Commitment form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

**ALL PROPOSERS/BIDDERS**

Proposers/bidders that have not committed to meet the U/DBE goal utilizing the Local Agency U/DBE Commitment form must complete and submit this form and demonstrate adequate Good Faith Efforts to meet the U/DBE goal in order to maintain their eligibility for award.



- D. The names, addresses, and phone numbers of rejected U/DBE firms, the reasons for the proposer/bidder's rejection of the U/DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each U/DBE if the selected firm is not a U/DBE:

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- E. Efforts made to assist interested U/DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to U/DBEs:

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- F. Efforts made to assist interested U/DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the U/DBE subconsultant/subcontractor purchases or leases from the proposer/bidder or any affiliate:

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- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting, and using U/DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, web page download, etc.):

Name or Agency/Organization	Method/Date of Contact	Results

- H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

## APPENDIX 15

Date

TO: Interested Firms

FROM: AGENCY

SUBJECT: Notification of insert type of Procurement for [Project Name,] Agreement Number [Agreement #####]

The AGENCY is soliciting [Procurement Type] from qualified firms for [Program Name,] Agreement Number [Agreement #####.] [Procurement Type] are due by [Closing Date].

[Insert paragraph providing project background and additional project description]

A copy of the [Procurement Type] has been posted on AGENCY's website [website.]

[If a Pre-Procurement Type meeting will be held include the following paragraph.]

A Pre-Procurement meeting will be held on[Date, Time and Location]. Attendance at the pre-proposal meeting is mandatory. [Delete this last sentence if the pre-proposal meeting will not be mandatory.]

A summary of the questions and answers from this meeting will be posted on the website noted above by[Posting Date].

If your firm is interested, please print the [Procurement Type] for more information and detail. If you do not have access to the website, a copy of the [Procurement Type] can be mailed to you. A summary of the [Pre-Procurement Type] meeting questions and answers can also be mailed to you. [Delete this last sentence if there will not be a pre-proposal meeting.]

Please contact [Name of Project Manager], Project Manager, at [AGENCY, ADDRESS, PHONE or EMAIL ADDRESS] if you have any questions or would like this information mailed to you.

Thank you for your interest in providing services to AGENCY.

[AUTHOR'S INITIALS]/

## Appendix 16A

DATE

Contract No. xxxx

Mr./Mrs. Contractor Full Name Here

Contractor Title

Company Name

Address 1

Address 2

Dear Mr. XXX:

Subject: NOTICE OF INTENT TO AWARD – [ENTER PROJECT NAME HERE,  
CONTRACT #]

On [Enter BIDS DUE DATE], the AGENCY received [Enter total # of Bids received] for the above-referenced project. AGENCY staff has determined that [Enter Lowest Responsible & Responsive Bidder Name Here] submitted the lowest responsive, responsible bid. Therefore, pursuant to AGENCY policy, staff intends to recommend award of the contract to [Enter Lowest Responsible & Responsive Bidder Name Here].

This Notice of Intent to Award is not binding on AGENCY; it is merely notice that [Enter Lowest Responsible & Responsive Bidder Name Here] has been identified as the lowest responsive, responsible bidder. No formal determination of the other bidders has been made at this time.

If you have any questions regarding the award of this contract, please call the Contracts Officer, CA Name, at (XXX) XXX-XXXX.

Sincerely,

Xxxxx

Cc: [Enter PM Name here]

## APPENDIX 16B

[Date]

[Name]

[Title]

[Firm]

[Address]

[City, State, Zip Code]

Dear [Mr./Ms./Mrs.] [Addressee Last Name]:

SUBJECT: Notice of Intent to Award  
[Name of Project/Study]

We have reviewed your proposal and have selected [Name of Selected Proposer] for contract negotiations. This Notice of Intent to Award is not binding on [AGENCY]; it is merely notice that your company was selected for negotiations. If a contract with mutually-acceptable terms cannot be negotiated between [Name of Selected Proposer] and [AGENCY] within a reasonable period of time, [AGENCY's] Executive Director may choose to cease negotiations with your company and pursue negotiations with the next highest-ranked proposer.

[Project Manager] of this office has been assigned the management responsibility for this project. All questions and administrative matters should be directed to [Mr./Ms./Mrs. PM's Last Name] at the above address or at [Phone Number] In the coming weeks [Mr./Ms./Mrs. PM's Last Name] will be working with you to negotiate the terms of the proposed contract. [Name of Selected Proposer] must forward all required insurance certificates and endorsements to [Mr./Ms./Mrs. PM's Last Name] within 15 days.

[Add the following paragraph if applicable]

The [Name of Project/Study] will be funded in whole or in part with Federal funds. Therefore, a pre-award audit by [AGENCY] will be necessary. During the pre-award audit [AGENCY] will examine your accounting, administrative and estimating systems; proposed costs; quantities; and financial condition. The audit will be broad in scope and should take approximately 30 days if there are no complications. Detailed cost negotiations between [AGENCY] and your company cannot commence until after [AGENCY] has completed its audit and issued an Authorization to Proceed. [AGENCY] expects [Name of Selected Proposer] to cooperate fully in order to expedite satisfactory completion of the audit.

We look forward to working with you to negotiate a contract that benefits both [AGENCY] and [Name of Selected Proposer].

Sincerely,

[AUTHOR NAME]

[Author Title]

[AUTHOR UPPERCASE INITIALS]/

Attachment/Enclosure

## APPENDIX 17

[Date]

[Name]

[Title]

[Firm]

[Address]

[City, State, Zip Code]

Dear [Name]:

SUBJECT: Notice of Intent to Enter Negotiations with Another Consultant for: Contract Number(s): Contract ###(s)  
[Contract/Project Name of Description]

Thank you for your response to the AGENCY Request for [Procurement Type] for the above-referenced contract(s). [AGENCY] received a number of high-quality proposals and recognizes the hard work that went into preparing them.

Based on the written qualifications and interviews, your firm was not selected for contract negotiations. A final decision to award is not completed, but [AGENCY] has issued a Notice of Intent to Award to the consultant(s) as follows:

(If there is more than one contract awarded list Consultants in alphabetical order.)

[Name of Selected Firm(s)]

Protests regarding the prospective award to the selected Consultant(s) must be received by [AGENCY] within five business days after the date of this notice. If you have any questions, please contact me at the number listed below. [AGENCY] appreciates the interest shown by your firm.

Sincerely,

[AUTHOR NAME]

[Author Title]

[Phone Number]

[AUTHOR INITIALS] /

## APPENDIX 18

[Date]

[Name]

[Title]

[Firm]

[Address]

[City, State, Zip Code]

Dear [Mr./Ms./Mrs.] [Addressee Last Name]:

SUBJECT: Notice to Short-Listed Proposers, [Name of Project/Study], Agreement  
Number [Insert Number]

Congratulations! This letter serves as your notice that you have been placed on [AGENCY's] short-list of qualified proposers for the [Name of Project/Study], Agreement Number [Insert Number]. Thank you for responding to [AGENCY's] Request for [Proposals (RFP) or Qualifications (RFQ)]. We realize that a considerable amount of time must be spent to prepare a [Proposal or Statement of Qualifications (SOQs)] in response to an [RFP or RFQ]. AGENCY's consultant evaluation committee has reviewed and evaluated all of the [RFPs or RFQs]. The top-ranked proposers submitting a [Proposal or SOQ] have been placed on a short-list. (For SOQs- Only the proposers on the short-list will be asked to submit a technical proposal and cost estimate. Enclosed with this letter is a request for Cost Proposal. Cost Proposals are due on [Insert Date].)

[Project Manager] of this office has been assigned the management responsibility for this project. All questions and administrative matters should be directed to [Mr./Ms./Mrs.] [PM Last Name] at the above address or at [Insert Phone Number].

Sincerely,

[AUTHOR NAME]

[Author Title]

[Author Initials] /

## APPENDIX 19

Date  
Mr./Mrs. Contractor Full Name Here  
Contractor Title  
Company Name  
Address 1  
Address 2

Dear Mr./Ms./Mrs./ Addressee Last Name:

SUBJECT: Notice to Proposers Not Making Short-List  
Name of Project/Study, Agreement Number [Insert Number]

Thank you for responding to AGENCY's Request for Proposals (RFP) or Qualifications (RFQ). We realize that a considerable amount of time must be spent to prepare a Proposal or Statement of Qualifications (SOQs) in response to an RFP or RFQ. AGENCY's consultant evaluation committee has reviewed and evaluated all of the Proposals or SOQs. The top-ranked companies submitting a Proposal or SOQ have been placed on a short-list. This letter will serve as your notice that you have not been placed on AGENCY's short-list of qualified proposers for the Name of Project/Study.

You will not receive any further notices from AGENCY regarding the Name of Project/Study. Protests regarding lack of inclusion of your company on the short-list must be received by AGENCY within five business days after the date of this Notice.

Project Manager of this office has been assigned the management responsibility for this project. All questions and administrative matters should be directed to Mr./Ms./Mrs. PM Last Name at the above address or at (XXX) XXX-XXXX.

Again, thank you for your interest in working with AGENCY.

Sincerely,

AUTHOR NAME  
Author Title

Author Initials/



## APPENDIX 20

[Date]

Mr./Mrs. Contractor Full Name Here  
Contractor Title  
Company Name  
Address 1  
Address 2

Dear [Mr./Ms./Mrs. Addressee Last Name]:

SUBJECT: Request for Cost Proposal for [Name of Project/Study], Agreement Number  
[Insert number]

Congratulations! This letter serves as your notice that you have been preliminarily selected as the top-ranked proposer for the [name of Project/Study], Agreement Number [insert number]. Thank you for responding to AGENCY's Request for Qualifications (RFQ). We realize that a considerable amount of time must be spent to prepare a Statement of Qualifications (SOQs) in response to an RFQ. AGENCY's consultant evaluation committee has reviewed and evaluated all of the SOQs. At this time, AGENCY requests that you submit a cost proposal for the project. Please provide a cost proposal for the project by [date]. Failure to provide a complete and detailed cost proposal by the deadline may disqualify your firm from consideration.

[Project Manager] of this office has been assigned the management responsibility for this project. All questions and administrative matters should be directed to [Mr./Ms./Mrs.] [PM Last Name] at the above address or at (XXX) XXX-XXXX.

Sincerely,

AUTHOR NAME  
Author Title

Author Initials/

## APPENDIX 21

[Date]

Mr./Mrs. Contractor Full Name Here  
Contractor Title  
Company Name  
Address 1  
Address 2

Dear [Mr./Ms./Mrs. Addressee Last Name]:

SUBJECT: Post-Award Notice  
[Name of Project/Study]

Thank you for your response to the [AGENCY] Request for Proposal (RFP) for [Name or Description of RFP]. [AGENCY] received a number of high quality proposals and recognizes the hard work that went into preparing them.

On or about [Date], [AGENCY] sent you a Notice of Intent to Enter Negotiations with another Proposer. At that time we informed you that [AGENCY] had commenced negotiations with [Name of Selected Firm]. Since that time, [AGENCY] has finalized its contract negotiations with [name of Selected Firm].

Although your firm was not selected for this contract work, we hope you will respond again should similar opportunities become available at AGENCY.

Please feel free to contact me at [Phone Number] if you have any questions. Again, thank you for your interest in contracting opportunities with [AGENCY].

Sincerely,

[AUTHOR NAME]  
[Author Title]

[Author Initials] /

## APPENDIX 22

[Date]

Mr./Mrs. Contractor Full Name Here  
Contractor Title  
Company Name  
Address 1  
Address 2

Dear [Mr./Ms./Mrs. Addressee Last Name]:

SUBJECT: Notice to Proceed  
[Name of Project/Study]

This letter will serve as your Notice to Proceed, effective [Date].

[Project Manager] of this office has been assigned the management responsibility for this project. All questions and administrative matters should be directed to [Mr./Ms./Mrs. PM Last Name]: at the above address or at (XXX) XXX-XXXX.

We look forward to working with you in the development of a valuable and meaningful [Outcome of Project/Study].

Sincerely,

AUTHOR NAME  
Author Title

Author Initials/

## Appendix 23

### **INDEPENDENT COST ESTIMATE (ICE) JUSTIFICATION FOR SMALL PROCUREMENTS (Equipment, Supplies, & Construction-\$3,001 to \$50,000; Services other than A&E- \$3,001 to \$100,000)**

Date \_\_\_\_\_ ICE For Project: \_\_\_\_\_

Project \_\_\_\_\_

Project Manager \_\_\_\_\_

In accordance with the Federal Transit Administration Circular 4220.1F, Third Party Contracting Guidance, an ICE is required for all purchases over \$3,000. The Small Procurement ICE may be used for simple procurements under the formal procurement thresholds as follows: for professional services other than A&E under \$100,000 and for Supplies, Equipment and Construction under \$50,000.

The ICE must be completed prior to requesting quotes from prospective vendors, contractors, and consultants.

**Please indicate which of the statements apply with a check mark.**

<input type="checkbox"/>	I performed market research for the pricing of the products and/or services being procured through one or more of the following sources: <input type="checkbox"/> Internet <input type="checkbox"/> Trade Show <input type="checkbox"/> Catalog <input type="checkbox"/> Other Contracts
<input type="checkbox"/>	I contacted other agencies that may have procurement knowledge/experience for the product or service being procured to determine the prices they paid.
<input type="checkbox"/>	I reviewed/compared AGENCY historical or established labor rates or product pricing in order to determine my estimate for this procurement.
<input type="checkbox"/>	The service and cost already has been negotiated and approved in a AGENCY contract.
<input type="checkbox"/>	The service is being procured based on rates regulated by the government (i.e., utilities).
<input type="checkbox"/>	Other (explain):

NOTE: A more detailed ICE may be required for more complex procurements.

Provide a brief explanation of your analysis that is the basis of your estimate.

Example: I found the price of a computer printer on the internet at \$50 each from Dell on 1/18/09. The total for 100 printers is \$5,000 and was the basis of my estimate. The copy of the Internet ad enclosed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

# AGENCY - Independent Cost Estimate / Engineer's Estimate

Procurements for services over \$50,000.00 or as required by Contract

Contract No.: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Date: \_\_\_\_\_

Task Order No.: \_\_\_\_\_

Project No.: \_\_\_\_\_

Total Project Cost: \_\_\_\_\_

Project: \_\_\_\_\_

Average Cost Per Hour: #DIV/0!

Task	WBS Codes	Description	Schedule		Hours					Total Hours
					Principal	PM	Sr Analyst	Analyst	Support	
			Begin Date	End Date						
1										-
2										-
3										-
4										-
5										-
6										-
7										-
8										-
Totals =										-

Task	WBS Codes	Description	Schedule		Cost					Total Cost
					Principal	PM	Sr Analyst	Analyst	Support	
			Begin Date	End Date						
1					\$ -	\$ -	\$ -	\$ -	\$ -	
2					\$ -	\$ -	\$ -	\$ -	\$ -	
3					\$ -	\$ -	\$ -	\$ -	\$ -	
4					\$ -	\$ -	\$ -	\$ -	\$ -	
5					\$ -	\$ -	\$ -	\$ -	\$ -	
6					\$ -	\$ -	\$ -	\$ -	\$ -	
7					\$ -	\$ -	\$ -	\$ -	\$ -	
8					\$ -	\$ -	\$ -	\$ -	\$ -	
Totals =					\$ -	\$ -	\$ -	\$ -	\$ -	

Task	WBS Codes	Description	Other Direct Cost	Total Cost
9				
Totals =				

TOTAL ESTIMATED PROJECT COST =

Staffing Plan

	A	B	C	D	E	F	G	H	I	J	K
1	Contract No.:			Task Order No.:			Project Center:				
2	Project:			Project No.:							
3											
4	Task / SubTask	Description	Schedule		Fiscal Years (Hours)					Totals	
5					Principal	PM	Sr Analyst	Analyst	Support		
6			Begin Date	End Date							
7											
8	1.0				Hrs	Hrs	Hrs	Hrs	Hrs		
9	1.1										
10	1.2										
11	1.3										
12	1.4										
13	1.5										
14	1.6										
15	1.7										
16	1.8										
17	1.9										
18	1.10										
19					Totals =						
20											
21	2.0				Hrs	Hrs	Hrs	Hrs	Hrs		
22	2.1										
23	2.2										
24	2.3										
25	2.4										
26	2.5										
27	2.6										
28	2.7										
29	2.8										
30	2.9										
31	2.10										
32					Totals =						
33											
34	3.0				Hrs	Hrs	Hrs	Hrs	Hrs		
35	3.1										
36	3.2										
37	3.3										
38	3.4										
39	3.5										
40	3.6										
41	3.7										
42	3.8										
43	3.9										
44	3.10										
45					Totals =						
46											
47	4.0				Hrs	Hrs	Hrs	Hrs	Hrs		
48	4.1										
49	4.2										
50	4.3										
51	4.4										
52	4.5										
53	4.6										
54	4.7										
55	4.8										
56	4.9										
57	4.10										
58					Totals =						
59											
60	5.0				Hrs	Hrs	Hrs	Hrs	Hrs		
61	5.1										
62	5.2										
63	5.3										
64	5.4										
65	5.5										
66	5.6										
67	5.7										
68	5.8										
69	5.9										
70	5.10										
71					Totals =						
72											
73	6.0				Hrs	Hrs	Hrs	Hrs	Hrs		
74	6.1										
75	6.2										

# Independent Cost Estimate Template

## Staffing Plan

	A	B	C	D	E	F	G	H	I	J	K
1	Contract No.: _____			Task Order No.: _____			Project Center: _____				
2	Project: _____			Project No.: _____							
3											
4	Task / SubTask	Description	Schedule		Fiscal Years (Hours)					Totals	
5					Principal	PM	Sr Analyst	Analyst	Support		
6			Begin Date	End Date							
76	6.3										
77	6.4										
78	6.5										
79	6.6										
80	6.7										
81	6.8										
82	6.8										
83	6.10										
84					Totals =						
85											
86	7.0					Hrs	Hrs	Hrs	Hrs	Hrs	
87	7.1										
88	7.2										
89	7.3										
90	7.4										
91	7.5										
92	7.6										
93	7.7										
94	7.8										
95	7.9										
96	7.10										
97					Totals =						
98											
99	8.0					Hrs	Hrs	Hrs	Hrs	Hrs	
100	8.1										
101	8.2										
102	8.3										
103	8.4										
104	8.5										
105	8.6										
106	8.7										
107	8.8										
108	8.9										
109	8.10										
110					Totals =						
111											
112	9.0		Other Costs		Cost						
113	9.1										
114	9.2										
115	9.3										
116					Totals =						
117											

# Appendix 25

---

## LIMITED COMPETITION APPROVAL

Project Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor/Consultant/Vendor: \_\_\_\_\_

Project Number: \_\_\_\_\_ Contract Amount: \$ \_\_\_\_\_

Project Description:

**Notice: Contracting without providing for full and open competition is a violation of statute unless justified on one or more of the bases below.**

THE FOLLOWING MUST BE ANSWERED AFFIRMATIVELY
--

BY MARKING THE BOXES BELOW YOU ARE AFFIRMING THAT THE FOLLOWING STATEMENTS ARE TRUE.

- The need for a limited scope procurement is not due to a failure to plan or a lack of advanced planning.
- The need for a limited scope procurement is not due to concerns about the amount a federal assistance available to support the procurement (for example, expiration of federal assistance available for award).

JUSTIFICATION FOR LIMITED COMPETITION PROCUREMENT
---

- Documentation is attached establishing that full and open competition in connection with a particular acquisition is not in the public interest.
- Documentation is attached establishing that an unusual and urgent need for the services exists, and AGENCY would be seriously injured unless it is permitted to limit the competition.
- Documentation is attached establishing that public exigency or emergency will not permit a delay resulting from a full formal competitive procurement for the supplies or services.
- Acquisition of an expert or neutral person's services are needed for a current or potential protest, dispute, claim, or litigation.

**EXPLANATION:**

**DESCRIPTION OF PROPOSED LIMITED COMPETITION PROCESS:**

---



## Appendix 26A

### **Contracts, Task Orders, and Job Orders – Close-Out Instructions**

#### **PM Responsibilities:**

**Keep Track of Contracts & Task Orders - Keep track of the amount of contract capacity and contract expiration date to be sure work can still be done by the Consultant.**

Use an Excel or other file noting the original contract amount. Add any amended amounts. Subtract any authorized payments. Know how much is left.

Speak to the PM in charge of the contract (“Contract Manager”) before using their contract capacity.

Keep calendar reminders at least a few months before the actual date your contract / task order expires so that you have time to work with Contracts to extend the time before it has expired.

Remember you are not authorized to promise to pay or let the Consultant work before a Notice to Proceed.

#### **Close Out Steps for Contracts, Task Orders and Job Orders**

##### **1. AGENCY Consultant Performance Evaluation Tool**

Prepare an Evaluation of the Consultant/Contractor/Vendor and discuss with Consultant or email Consultant a copy.

##### **2. Contract Close-Out Letter**

Prepare the Contract Closeout Letter and request that any final invoices be marked FINAL INVOICE from the Prime Consultant and all Subconsultants.

##### **3. Final Report – U/DBE and SB, First-Tier Subconsultants**

For agreements with a DBE goal, final payment and release of retained funds cannot occur until the Consultant completes the Final Disadvantaged Business Enterprise Utilization Report and the PM submits it to the Contracts Inbox.

##### **4. Finance Encumbrance Liquidation**

When the final invoice is approved, work with Administration and Finance to liquidate the encumbrance.

## AGENCY CONSULTANT PERFORMANCE EVALUATION TOOL

\* Please fill in all green-shaded fields. Comments are optional.

Consultant Name: <input style="width: 90%;" type="text"/>	Contract Phase: <input style="width: 10%;" type="text"/> Initial <input style="width: 10%;" type="text"/> Mid <input style="width: 10%;" type="text"/> Close
Contract #: <input style="width: 90%;" type="text"/>	Project Name: <input style="width: 90%;" type="text"/>
Date of Evaluation: <input style="width: 90%;" type="text"/>	Type of Work Performed: <input style="width: 90%;" type="text"/>
Evaluation Prepared By: <input style="width: 90%;" type="text"/>	Small or DBE (Yes or No) <input style="width: 90%;" type="text"/>

**Please add any other specific factors you evaluated below.**

SCORE IN SHADED CELLS: 1 = UNSATISFIED 2 = SATISFIED 3 = VERY SATISFIED	ENTER COMMENTS IN BOXES PROVIDED BELOW:
--	---

<b>1) Quality / Technical Performance</b>  Met work product standards. Performed & documented according to approved plan. Met DBE/UDBE Goal/Commitment (if applicable). Managed subconsultants/DBEs effectively.	<input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/>	<input style="width: 95%; height: 100%;" type="text"/>
---	--	--

<b>2) Cost Performance</b>  Finished within Contract budget. Invoices were accurate & timely, according to contract.	<input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/>	<input style="width: 95%; height: 100%;" type="text"/>
---	--	--

<b>3) Schedule Performance</b>  Submitted accurate and timely deliverables. Met milestone or completion due date(s).	<input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/>	<input style="width: 95%; height: 100%;" type="text"/>
---	--	--

<b>4) Business Relations/Negotiations Performance</b>  Responded to customer needs. Conducted business in a professional manner. Provided effective verbal and written communication.	<input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/> <input style="width: 100%; height: 100%; background-color: #e0e0e0;" type="text"/>	<input style="width: 95%; height: 100%;" type="text"/>
---	--	--

Grand Total Points:	0
<i>Calculated Evaluation Score:</i>	<i>0%</i>

AGENCY Project Manager: <input style="width: 95%;" type="text"/>	Printed Name: <input style="width: 95%;" type="text"/>	Date: <input style="width: 95%;" type="text"/>
--	--	--

Signature of PM confirms that the evaluation has been provided to Consultant. If applicable, Consultant comments may be attached to the final assessment.

**Email completed evaluation to Consultant & submit copy to Director of Finance & Administration to Close Out Contract.**

# Record of Negotiation

Contract Number \_\_\_\_\_

Task Order Number \_\_\_\_\_

Consultant \_\_\_\_\_

\_\_\_\_\_  
Functional/Project Manager (Print Name)

\_\_\_\_\_  
Task Order Manager (Print Name)

Task Order Description \_\_\_\_\_

DATE	DESCRIPTION OF ACTION	OUTCOME – CHANGES MADE
	Ex. I prepared the original draft Scope of Work.	
	Ex. I (or who) prepared the ICE or EE and amount.	

I have explained any variance of 10% or more from the original ICE and in my opinion the price negotiated remains fair and reasonable as described above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
(AGENCY or other Agency) Name

Note: It is the intent that the record of negotiation covers the period from the development of the first draft of the task order through the submittal of the final draft of the task order.

APPENDIX 28

ON-CALL TASK ORDER FIRM SELECTION FORM  
(DO NOT USE FOR A&E FIRMS)

Project Manager: \_\_\_\_\_ Date: \_\_\_\_\_  
Task Order No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_  
Task Order Amount: \_\_\_\_\_  
Project Description/Title: \_\_\_\_\_

**You must compare all eligible on-call firms to each other.** You may not select one firm and then simply state why it is qualified because, in almost all cases, more than one on-call firm is eligible and qualified for the work. Therefore, a comparison of the firms is required. You must document a comparison of the eligible firms and explain why the firm selected is the best choice among the eligible firms based on the selection factors discussed in the procurement document.

**SECTION I**

Are you using this document to establish use of a particular on-call firm for work that will go on beyond this Task Order on a Project-wide basis and will be of the best value to AGENCY?  Yes  No

If you have marked the "No" box above, skip to Section II of this form. If you have marked the "Yes" box above, briefly describe the range of work that will be expected for the entire Project, beyond what is being awarded in the current Task Order:

(Explanation)

The on-call firm identified below for award of this Task Order has already performed services on a Project that is in progress. The selected firm was evaluated as the best value to AGENCY for the Project overall when price, qualifications, and other factors were considered previously in the Task Order Selection Form dated \_\_\_\_\_. If this box is marked, skip to Section III of this form.

**SECTION II**

**By marking the box below, you are affirming that the following statements are true.**

Selection of firm for this Task Order is based upon qualification(s) and cost (best value).

**Describe any additional specialty qualifications and experience needed for Task Order or Project:)**

(Provide Brief Description of Qualifications and Experience)

**If one or more eligible on-call firms were not considered for the work in this Task Order/Project, identify the firm(s) and provide an explanation for why the firms were not considered based on factors such as experience, rates, or past performance:**

(Explanation)

**Draft Scope of Work was discussed with or compared with the SOQs or proposal(s) of the on-call firms shown below:**

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) |
| <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) |
| <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) | <input type="checkbox"/> (Name of Firm) |

**SECTION III**

**Check all that apply for your comparison analysis. The selected firm:**

- Offers the most relevant experience based on the complexity level of this Task Order/Project compared to the other firms evaluated.
- Can meet the schedule needed for completion of the scope of work for this Task Order/Project.
- Has availability to take on additional work without jeopardizing existing project deliverables and performance.
- Provides the most appropriately experienced and skilled key personnel for this Task Order/Project when compared to the other firms evaluated.
- Has prior work experience with this Project that will prevent work from being redone and; therefore, will provide a better value to AGENCY compared to the other firms.
- Demonstrated best understanding of the Project and approach during interviews/discussions as compared to the other firms.
- Offered the best overall proposal for this Task Order/Project taking level of effort and rates into account.
- Was selected in previous documentation for the overall Project and has performed to AGENCY's satisfaction on prior work for the Project.
- Performance ratings of firm on previous work establish it has performed satisfactorily for AGENCY.
- Other (see explanation below)

**Document discussions with on-call firms confirming information marked in boxes above and/or identifying information in proposals or other documents establishing that the qualifications and cost of selected firm for this Task Order/Project are the best value for AGENCY's needs. Make sure to discuss rates/costs of selected firm compared to other eligible firms.**

<u>(Explanation)</u>   
----------------------------------

I am not aware of any conflicts of interest or organization conflicts that would arise as a result of choosing (name of firm) and believe it is best qualified for this Task Order/Project.

\_\_\_\_\_  
Project (or Task Order) Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Accepted by Contracts Officer

\_\_\_\_\_  
Date



## Appendix 29

answered affirmatively by the Contracts Analyst and supporting documentation for each statement must be provided.

BY MARKING THE BOXES BELOW, YOU ARE AFFIRMING THAT THE FOLLOWING STATEMENTS ARE TRUE.	
<input type="checkbox"/>	<p><b>I have obtained quotations from each of the vendors who were awarded a contract and selected the vendor with the lowest price for the item(s) I am purchasing.</b></p> <p>Required documentation:</p> <ul style="list-style-type: none"> <li>• Quotations from all awarded vendors</li> </ul>
<input type="checkbox"/>	<p><b>I have obtained a copy of the contract and the solicitation document, including the specifications.</b></p> <p>Required documentation:</p> <ul style="list-style-type: none"> <li>• Solicitation (RFP, IFB, etc.) including the specifications</li> <li>• Addenda issued (if applicable)</li> <li>• Legal notices/advertisements</li> <li>• Successful bid/proposal</li> <li>• Scoring summary (if RFP process was used)</li> <li>• Notices of Award</li> <li>• Summary of procurement (number of respondents, how award determination was made, if any proposals/bids were deemed non-responsive, if there were any protests and what the outcome was, and any other information summarizing the procurement process and award to the selected consultant/contractor/vendor.)</li> <li>• Original Contract</li> <li>• Contract Amendments (if applicable)</li> </ul>
<input type="checkbox"/>	<p><b>The contract price remains fair and reasonable.</b></p> <p>Required documentation:</p> <ul style="list-style-type: none"> <li>• Market analysis demonstrating price is fair and reasonable.</li> </ul>
<input type="checkbox"/>	<p><b>The contract term complies with the five-year term limit established by the FTA.</b></p> <p>Required documentation:</p> <ul style="list-style-type: none"> <li>• Contract start and end dates, including all option periods in effect.</li> </ul>



# Appendix 30

## DOCUMENTATION OF CONTRACT PAYMENT TYPE SELECTION

This form shall be used to document how the contracting type was selected. To best determine which contract type is suitable, classify the situation by checking off the appropriate boxes below. All elements must apply to use selected type.<sup>1</sup> All references to "contractor" shall be treated the same as "consultant".

CONTRACT TYPE	Requirements to utilize contract type	SUBCONTRACT TYPE	Requirements to utilize subcontract type
<input type="checkbox"/> <b>FIXED PRICE</b>	<input type="checkbox"/> Commercial items, supplies, or low-risk service contracts with performance/functional/design specs <input type="checkbox"/> Product/service must be delivered as specified and no payment can occur until the product/service that meets the contract specification is delivered <input type="checkbox"/> Price that remains fixed irrespective of the contractor's cost experience in performing	<input type="checkbox"/> <b>FIRM FIXED PRICE (LUMP SUM OR UNIT PRICE)</b>	<input type="checkbox"/> Contractor has complete responsibility for costs of performance and resulting profit/loss
		<input type="checkbox"/> <b>FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT</b>	<input type="checkbox"/> Contingencies in contracting period will occur or contract is high risk <input type="checkbox"/> Doubt of stability of costs/prices over extended period of time <input type="checkbox"/> Price adjustment is based upon: <ul style="list-style-type: none"> <li><input type="checkbox"/> Published indices</li> <li><input type="checkbox"/> Actual contractor costs</li> <li><input type="checkbox"/> Increase/decrease of published prices</li> </ul> <input type="checkbox"/> Contract defines circumstances under which economic price adjustment will be made and means by which it will be calculated
<input type="checkbox"/> <b>COST REIMBURSEMENT</b>	<input type="checkbox"/> Payment of allowable incurred costs to the extent prescribed in the contract <input type="checkbox"/> Estimate of total cost that contractor cannot exceed without a written amendment <input type="checkbox"/> Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to establish fixed prices	<input type="checkbox"/> <b>COMPLETION FORM</b>	<input type="checkbox"/> Describes the scope of work by specifying an end product or definite goal <input type="checkbox"/> Contractor must complete work and deliver end item as condition for payment of entire fee
		<input type="checkbox"/> <b>TERM FORM</b>	<input type="checkbox"/> Describes work in general terms and obligates contractor to devote specified level of effort for a stated time period <input type="checkbox"/> Fixed fee is payable at expiration of stated period if contractor has furnished specified level of effort
<input type="checkbox"/> <b>TIME AND MATERIALS</b>	<input type="checkbox"/> Determination is made that no other type of contact is suitable <input type="checkbox"/> Services or supplies <input type="checkbox"/> Payment of labor costs is on basis of fixed hourly billing rates specified in contract (including wages, indirect costs, general & administrative expenses, and profit) <input type="checkbox"/> Labor hours are flexible <input type="checkbox"/> Materials are billed at cost <input type="checkbox"/> Maximum obligation (ceiling price) is included in contract that cannot be exceeded without an amendment	<input type="checkbox"/> <b>LABOR HOUR</b>	<input type="checkbox"/> Materials are not supplied by contractor

Contract Officer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1</sup> FTA Best Practices Procurement Manual, Section 2.4.3

## AGENCY Micropurchase Justification Form

Cost of Procurement:	\$
Description of Services, Equipment or Supplies being procured	
Sophisticated or unique terms and conditions (Y/N):	
Explain determination of fair and reasonable price:	
If unable to determine fair and reasonable price, document at least three bids and how they were obtained (written or oral):	
Bid 1	
Bid 2	
Bid 3	
Successful firm	

I certify that this procurement has not been split to avoid a competitive procurement.

\_\_\_\_\_  
Signature  
(AGENCY Staff)

# Appendix 32

## PURCHASE ORDER CHECKLIST

This form shall be completed by the Contract Officer prior to routing a request for approval.

Contract Officer: \_\_\_\_\_  
 Project Manager: \_\_\_\_\_  
 Date submitted to Contract Officer: \_\_\_\_\_

### Purchase Order Details

Vendor Name: \_\_\_\_\_  
 Brief description of goods/services: \_\_\_\_\_  
 OWP Number(s): \_\_\_\_\_  
 Requested Amount: \$ \_\_\_\_\_

For Purchase Order Amendments, complete the following and attach original PO and amendments.

PO Number: \_\_\_\_\_  
 Original PO Issuance Amount: \$ \_\_\_\_\_  
 Current PO Amount (original and all amendments): \$ \_\_\_\_\_  
 New PO Total (after approval of this amendment request) \$ \_\_\_\_\_

### Procurement Method

Attach completed Method of Procurement Selection (MOPS) form and required supporting documentation.

Procurement Method	Required Supporting Documentation
<input type="checkbox"/> Competitive Solicitation	
<input type="checkbox"/> Invitation for Bid (IFB)	Solicitation email including specifications <sup>1</sup> , and at least 3 quotes
<input type="checkbox"/> Request for Proposal (RFP)	Solicitation email including specifications <sup>1</sup> , best value criteria, and at least 3 quotes
<input type="checkbox"/> Another Agency Procurement	
<input type="checkbox"/> Joint Procurement	Copy of solicitation and contract
<input type="checkbox"/> Purchasing Schedule	Completed Purchasing Schedule Worksheet with related documentation
<input type="checkbox"/> Assignment/Piggyback	Completed Piggyback Worksheet with related documentation
<input type="checkbox"/> Noncompetitive Solicitation	
<input type="checkbox"/> Intergovernmental	Copy of underlying MOU or Agreement
<input type="checkbox"/> Sole Source	Completed Sole Source Justification

### Basis of Award:

- Award has been made to the lowest responsive and responsible bidder who conformed to all material terms and conditions of the solicitation. This is the required method for all IFBs.
- Award has been made to the responsible offeror whose proposal is most advantageous to AGENCY with price and other factors considered. The evaluation criteria used to score the proposals must be included in the solicitation. This is the required method for all RFPs.

<sup>1</sup> When it was impractical or uneconomical to make a clear and accurate description of the technical requirements, a 'brand name or equal' description must have been used as a means to define the performance or other salient characteristics of the procurement. The specific features of the named brand which must be met by offerors must have been clearly stated in the IFB/RFP. – FTA BPPM

## Appendix 32

### DOCUMENTATION TO REVIEW FOR PURCHASE ORDER REQUEST

#### Requisition

- The correct procurement requisition form is utilized (Red Flag vs Director Delegated). Use Director Delegated unless any of the following statements are true, which will require the use of a Red Flag requisition:
  - The procurement value exceeds \$50,000 AND any of the OWP/CIPs listed on the requisition are designated with an "X" by GGA or KKA on the Red Flag/Director Delegated List.
  - The procurement is a Sole Source of any amount (except Blanket Sole Source which is Director Delegated).
  - Any of the OWP/CIPs listed on the requisition are not listed on the Red Flag/Director Delegated List (i.e. a new budget was set up during the fiscal year).
- If the Purchase Order is related to an existing contract or formal procurement, the contract or solicitation number is listed and the document is attached. Also verify the items/services being purchased are within the scope of the underlying contract/solicitation.
- If the purchase order needs to be retroactively dated, a signed Director's Memo is included.
- An 8 digit cost code has been provided for the CIP if the procurement is funded by a *TransNet* project beginning with a 12xxxxx or 13xxxxx.
- The procurement justification clearly explains the purpose and benefit of the procurement.
- An Independent Cost Estimate (ICE) amount is listed and attached.
  - The PM made and documented an independent cost estimate containing a line item breakdown of each type of cost within the overall price before receipt of quotes.
- The quantity, unit of measure, description, unit cost, and extended cost fields are filled in accurately and correctly. Be sure the numbers are calculated correctly.
- If the procurement will be split among more than one OWP/CIP, a breakdown of costs per budget shall be listed.
- If this is a multi-year purchase against an OWP, the amount to be encumbered per fiscal year shall be listed.
- The attachments are checked and accurate.
  - A Record of Negotiation (RON) is included in the attachments, where applicable.
- Funding source(s) are checked and accurate.
  - A printout of the current budget book is attached as verification of funding sources in the fiscal year(s).
  - A current IFAS report (less than 2 weeks old) is attached.
  - Funds are available for the cost code indicated.
- If FTA or FHWA funds, the vendor has completed and submitted the required Federal forms.
- The vendor information is filled in and a copy of SB/DBE certification is attached if applicable.
  - The vendor is not debarred. Attach a printout from the Federal System for Award Management (SAM) website (<http://www.sam.gov>) as well as the State of California DLSE website (<http://www.dir.ca.gov/dlse/debar.html>)
- The correct signature block is used (for Red Flag procurements, the Chief Deputy and Executive Director should have signature lines).
- The item(s) or service(s) being procured will not present a high risk to ANGEKY if the item(s) fail to perform as expected or the service(s) are not performed in compliance with industry standards.

## Appendix 33

# DBE Complaint Procedures and DBE Complaint Process Description for Staff

- A. Within 10 business days of being informed by AGENCY that it is not responsive because it has not provided sufficient U/DBE documentation, a bidder/offeror may request administrative reconsideration. For DBE-related complaints arising during the administration of a contract or outside of the procurement process, the complaint must be filed within 30 days of the date of the alleged AGENCY discretionary action forming the basis of the complaint. Complainants should make this request in writing to the following reconsideration official or his/her designee using the attached complaint form:

AGENCY DEPARTMENT  
TITLE  
ADDRESS  
ADDRESS

- B. The reconsideration official will not have played any role in the alleged discretionary action that is the basis for the complaint. The reconsideration official will review the administrative record concerning the reconsideration request (AR) and determine if it requires resolution by a committee or may be resolved by an appointed reconsideration person as the committee.
- C. As part of this reconsideration, the complainant will have the opportunity to provide written documentation or argument concerning the issues. The complainant may also have the opportunity to meet in person with the reconsideration committee or official to discuss the issues.
- D. The reconsideration committee and/or official will review the reconsideration request in a timely manner and may hold an informal hearing if deemed necessary in order to complete its investigation. The reconsideration committee or official will prepare a recommendation regarding the complainant's reconsideration request, in writing, to AGENCY's Executive Director within 30 (thirty) calendar days of the date of receipt of the request. All materials included with the AR at time of submittal will be considered. The Executive Director will either sustain or reject the reconsideration document in writing based upon the recommendation of the administrative committee or official and the best interests of AGENCY. This decision will be communicated in writing to the complainant.

- E. The result of the AGENCY reconsideration process is not administratively appealable to the Department of Transportation, however, the complainant may contact one or more of the following agencies that oversee various aspects of AGENCY DBE Programs to file a complaint directly with those agencies:

Director, Office of Civil Rights  
Federal Transit Administration  
1200 New Jersey Ave, SE  
Washington, DC 20590

Caltrans District [ District number] Local Assistance

[Office Engineer Name; E-mail address; Phone Number]

[Small Business Liaison Name; E-mail address; Phone Number]

[Small Business Liaison Name; E-mail address; Phone Number]

# DBE Complaint Process Description for Staff

## 1. INTRODUCTION

These processes are intended to assist AGENCY staff in managing DBE-related complaints arising out of or related to a contract between a consultant/contractor, AGENCY and/or any DBE prime consultants/contractors/subcontractors/subconsultant. It is important to note that DBE dispute/complaint references provided herein are examples and are not intended to be inclusive of all issues that can arise from DBE requirements. These processes are intended to serve as the framework for receiving, tracking, and resolving complaints, thereby creating an efficient method for handling these issues.

These procedures are meant to provide details for staff that supplement the DBE Complaint Procedures found on the AGENCY DICSO/DBE Web page. The types of DBE complaints intended to be covered by these procedures, include, but are not limited to:

- Disputes related to whether a proposer/bidder has provided sufficient DBE documentation
- Disputes related to project participation by DBEs
- Termination of DBE contractor/subcontractor
- Nonpayment of a DBE firm
- Failure to provide a DBE the work to which the prime committed

The complaint resolution process will focus on gathering pertinent information, determining the responsibilities of the affected parties and achieving a thorough understanding of the issue(s) in dispute. AGENCY staff should be committed to providing a timely response and resolution and evaluating complaints in accordance with the terms of the contract documents and applicable laws.

### A. Governing Regulations and Statutes

All complaint resolution actions will be governed by any or all of the following non-exhaustive list of applicable laws, regulations, and documents:

- 49 CFR Part 26
- State of California Department of Industrial Relations Prevailing Wage Determinations
- California Labor Code
- AGENCY solicitation documents
- AGENCY contract documents

## **2. RECEIVING A COMPLAINT**

Complaints addressed in these processes will typically originate from a compliance related issue/discrepancy discovered by AGENCY or its authorized representative, as part of the standard DBE compliance monitoring review.

### **A. Evaluating a Complaint**

Any contractor/consultant/subcontractor/subconsultant that believes that it has been subjected to a violation under DBE-related laws, regulations or contractual requirements as a result of a AGENCY discretionary action, may file a complaint with AGENCY. A complaint is a written or electronic statement concerning an allegation of noncompliance that contains a request for AGENCY to take some type of remedial action. Complaints must be in writing and may be filed by mail or fax, in person, or online. Immediately upon receipt, the AGENCY **DBE Reconsideration Official** should determine whether the correspondence constitutes a DBE-related complaint.

The following are examples of items that should not be considered a complaint:

- (a) Anonymous correspondence;
- (b) Inquiries seeking advice or information;
- (c) Courtesy copies of correspondence or complaints filed with other agencies; and
- (d) Oral allegations (exceptions should be made for people with disabilities or who require translation assistance on request).

Correspondence that is not a complaint but nevertheless potentially involves a DBE-related compliance deficiency should be recorded by AGENCY staff as an inquiry if staff believes an issue might eventually evolve into a complaint.

### **B. Record and Track Complaint**

A complaint (or potential complaint) should be date stamped by the receiving office immediately upon receipt. This step is important because the date that AGENCY receives the complaint may affect a complainant's ability to seek redress. Once correspondence has been deemed a complaint, AGENCY staff should document the appropriate information and assign a case or tracking number, and create an investigative case file to hold all documents and information pertaining to the complaint.

When recording a complaint, the following guidelines should be applied:



- (a) Each complaint should be assigned a separate number;
- (b) Complaints filed by more than one person that raise substantially identical allegations against the same recipient may be treated as one complaint and assigned one case number;
- (c) Complaints filed by more than one person against the same entity should be assigned separate case numbers if they contain different allegations;
- (d) New allegations filed by the same complainant against the same entity after the investigative process has begun should be reviewed on a case-by-case basis to determine whether the allegations should be added to the existing complaint or treated as a new complaint; and
- (e) Complaints filed by entities, such as advocacy groups, where there are multiple complainants, but one entity handling all complaints should receive one case number.

### C. Initial Considerations After Receipt of Complaint

Once AGENCY concludes that correspondence is a complaint staff should determine whether the complaint is “complete” in order to proceed with complaint processing and resolution. For a complaint to be complete it should include the following information if applicable:

- (a) A written explanation of the violation(s) of DBE-related laws, regulations or contractual requirements complainant believes has occurred and that involve AGENCY
- (b) Information necessary to contact the complainant (if the complaint is filed by e-mail, AGENCY should request the sender’s actual name and address, if not provided)
- (c) Identification of the person(s) or group(s) injured by the alleged violation
- (d) Identification of the person(s) or organization(s) alleged to have committed the violation
- (e) Sufficient information to understand the facts that led the complainant to a violation of DBE-related laws, regulations or contractual requirements occurred and when the violation took place

AGENCY may contact the complainant by telephone or e-mail to obtain missing information. In instances in which further information is needed in writing, especially when the complainant cannot be reached by telephone, staff may wish to send the individual a complaint form. However, staff should always advise the complainant that he or she is not required to use the

complaint form to submit the complaint or additional information, but rather may choose to provide the information it asks for in some other format.

Regardless of the method of contact or at what stage in the investigation information is requested, the complainant should be informed that AGENCY will close the case if the information is not provided within 30 days. AGENCY may extend the deadline depending on the extent of the information request or other special circumstances. The complainant should be notified in writing of closure of the investigation.

If the complaint contains sufficient information for at least one allegation, but lacks sufficient information for other allegations, staff should attempt to obtain the missing information, as described above. Complainant should be notified in writing that allegations lacking sufficient information that is not supplied within the 30-day timeframe will be closed;

Staff should work with each complainant to ensure receipt of sufficient information to evaluate the complaint. People with disabilities and limited English proficiency, in particular, may need assistance preparing complaint materials.

If the complaint is submitted on behalf of a complainant by an attorney, AGENCY staff should call the attorney for additional information or to request permission to contact the complainant directly. In addition, if it appears the complainant may be represented by an attorney (especially if the complaint states that the matter raised has been or will be filed in court), staff should ask the complainant whether he or she is represented by an attorney concerning the complaint. If so, staff should contact the attorney for permission before further contacting the complainant directly.

#### D. Determining Whether the Complaint is Timely

AGENCY DBE Complaint Procedures state that complaints that arise due to a proposer/bidder being found non-responsive due to failure to provide sufficient U/DBE documentation must be filed within 10 business days, and other types of DBE-related complaints must be filed within 30 days of the last date of the alleged discrimination. The filing date of the complaint is the earlier of: (1) the postmark of the complaint or (2) the date the complaint is received by AGENCY's main office.

If a complaint is not filed within these timeframes, AGENCY staff the AGENCY Executive Director may grant an extension under any of the following circumstances:

- (a) The complainant could not reasonably be expected to know the act was a violation within the 30-day period, and the complaint was filed within 30 days after the complainant became aware of the alleged violation;

- (b) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 30-day period, and the complaint was filed within 30 days after the period of incapacitation ended;
- (c) The complainant filed a complaint alleging the same discriminatory conduct within the 30-day period with another Federal, state, or local civil rights enforcement agency, and filed a complaint with AGENCY within 30 days after the other agency had completed its investigation or notified the complainant that it would take no further action;
- (e) The violation is of a continuing nature.

#### E. Closing an Investigation

The AGENCY reconsideration official/committee may decide to send a letter to the complainant informing him/her/it that AGENCY will not proceed further with investigation or reconsideration, if one or more of the following conditions exist:

- (a) The complaint is untimely filed;
- (b) The complaint is so weak, insubstantial, or lacking in detail that it is without merit, or so replete with incoherent or unreadable statements that it, as a whole, cannot be considered to be grounded in fact;
- (c) The complainant fails to respond to repeated requests for additional information needed to process the complaint;
- (d) The complainant cannot be located after reasonable attempts;
- (e) There is no statutory or alleged basis for the complaint, or the complainant does not allege any harm with regard to current programs or statutes;
- (f) The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same recipient or other recipients that have been found factually or legally insubstantial;
- (k) The same allegations and issues of the complaint have been addressed in a recently resolved complaint or compliance review;
- (l) The complainant decides to withdraw his or her complaint. If the complaint included class allegations, the office may close out the entire complaint, pursue resolution of the class allegations, or use the information to target future compliance review activity;

- (m) Litigation has been filed raising the same allegations with the same basis(es) and issue(s) involved in the complaint;
- (n) The death of the complainant or injured party makes it impossible to investigate the allegations fully, or when the death of the complainant or injured party forecloses the possibility of relief because the complaint involved potential relief solely for the complainant or injured party;

### **3. INVESTIGATION OF COMPLAINT**

Upon receiving the complaint statement, and after acknowledging receipt of complaint statement, AGENCY staff should review the complaint statement and all supporting documentation provided.

The investigation should be confined to the issues and facts relevant to the allegations in the complaint, unless evidence shows the need to extend the issues

The investigation will take the following steps (at a minimum) to arrive at a prompt resolution. The specific steps include:

- Identify the appropriate contacts and names of all persons affected by the dispute.
- Identify and review all relevant documents, practices and procedures to determine appropriate resolution, including but not limited to relevant DBE regulations, DBE program documents, solicitation, contract, etc.
- If the complaint involves a discrepancy in payment, look for supporting documentation provided by the Contractor/Subcontractor, such as invoices that conflict with AGENCY records.

After deciding to proceed with investigation of the complaint, staff should notify the complainant and other parties alleged to have violated a DBE requirement that the complaint has been accepted for investigation. The notification letter to should contain the following:

- (a) AGENCY understanding of the basis for the complaint;
- (b) Brief statement of the allegations;
- (c) Indication of when the parties will be contacted by AGENCY;
- (e) Cautionary statement that recipients or other persons shall not intimidate, threaten, coerce, or discriminate against the complainant because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation proceeding or hearing under Title VI or any other laws or regulations related to nondiscrimination;
- (f) AGENCY contact information.

If during the course of the investigation/analysis, the complainant or another involved party wishes to submit additional information concerning the dispute, AGENCY staff should accept such information, so long as it is pertinent to resolving the pending issue

#### **4. DOCUMENTATION GUIDELINES**

The following guidelines should be followed for keeping records and providing information when responding to Contractor/Subcontractor disputes, questions, and all other potential claims:

- Make sure that reports and documents (such as those submitted to AGENCY counsel and the USDOT) are factual and accurate.
- The communication between AGENCY and Contractor/Subcontractor concerning issue in dispute should be in writing.
- Record the full name and contact information of all Contractor/Subcontractor personnel (who work for the company raising the challenge).

#### **5. RESPONSE**

After the reconsideration official/committee comes to a decision, the recommendation(s) should be put in writing and provided to the Executive Director. The Executive Director should document whether she/he sustains or rejects the recommendation(s). The AGENCY response to the complainant should include the following information:

- Information considered during the AGENCY investigation
- Other parties with whom AGENCY consulted
- Supporting documentation (USDOT or Caltrans decisions, regulations, laws, etc.)
- Final decision and recommendations for subsequent action by involved parties

## Appendix 34

### RTPA Cost Analysis Form

<b>Cost Analysis Summary</b> (For New Contracts Including Letter Contracts) (See Instructions Below)						
Solicitation #			Supplies And/Or Services to be Furnished			
Preparer's Name, Department, Title Phone						
Division(s) and Location Where Work Is to Be Performed			Approval Signature			
<b>Detail Description Of Cost Elements</b>						
<b>1. Direct Material</b>		<b>Vendor A Proposal</b>	<b>Vendor B Proposal</b>	<b>Independent Estimate</b>	<b>Analysis</b>	
A. Purchased Parts						
B. Subcontracted Items						
C. Other 1. Raw Material						
2. Standard Commercial Items						
<i>Total Direct Material</i>						
<b>2. Material Overhead (RATE % x \$ Base*)</b>						
<b>3. Direct Labor</b>	<b>Estimated Hours</b>	<b>Rate/Hour</b>	<b>Vendor A (\$)</b>	<b>Vendor B (\$)</b>	<b>Independent Estimate</b>	<b>Variance</b>
<i>Total Direct Labor</i>						
<b>4. Labor Overhead</b>	<b>Vendor A (\$)</b>	<b>Vendor B (\$)</b>	<b>Independent Estimate</b>	<b>Variance</b>		

OH Rate				
x Base (labor total above)				
<i>Total Labor Overhead</i>				
<b>5. Other Direct Costs</b>	<b>Vendor A (\$)</b>	<b>Vendor B (\$)</b>	<b>Independent Estimate</b>	<b>Variance</b>
A. Special Tooling/Equipment				
<i>Total Special Tooling/Equipment</i>				
B. Travel				
1) Transportation				
2) Per Diem or Subsistence				
<i>Total Travel</i>				
<b>Detail Description of Cost Elements (continued)</b>	<b>Vendor A (\$)</b>	<b>Vendor B (\$)</b>	<b>Independent Estimate</b>	<b>Variance</b>
C. Individual Consultant Services				
<i>Total Individual Consultant Services</i>				
D. Other				
<i>Total Other</i>				
<i>E. Subtotal Direct Cost and Overhead</i>				
6. General and Administrative (G&A) Rate %				
X \$ Base (Use 5. E above)				
7. Royalties (if any)				
<i>8. Subtotal Estimated Cost</i>				
9. Contract Facilities Capital and Cost of Money				
<i>10. Subtotal Estimated Cost</i>				
11. Fee or Profit				
<b>12. Total Estimated Cost and Fee or Profit</b>				
13. Discounts				
14. Option Costs (specify)				
15. Adjusted Cost				

**ANALYSIS GUIDELINES A. DIRECT MATERIAL**

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities Included In the various tasks, orders, or contract line Items being proposed and the basis for pricing (vendor quotes, Invoice prices).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors. C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed Items that the offeror will provide, in whole or In part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

## **B. MATERIAL OVERHEAD**

Verify that this cost is not computed as part of labor overhead (Item 4) or General and Administrative (G&A) (Item 6).

## **C. DIRECT LABOR**

Analyze the hourly rate and the total hours for each individual (If known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

## **D. LABOR OVERHEAD**

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine If Government Audited rates are available.

## **E. OTHER DIRECT COSTS**

A. Special Tooling/Equipment: Analyze price and necessity of specific equipment and unit prices.

B. Travel: Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.

C. Individual Consultant Services: Analyze the proposed contemplated consulting. Compare to Independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.



D. Other Costs: Review all other direct charge costs not otherwise included in the categories described above. (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing.) Scan for duplication or omissions.

#### **F. GENERAL AND ADMINISTRATIVE EXPENSE**

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

#### **G. ROYALTIES**

If more than \$250, analyze the following Information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (Including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties.

#### **H. SUBTOTAL ESTIMATED COST**

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

#### **I. CONTRACT FACILITIES CAPITAL AND COST OF MONEY**

Analyze the offerors' supporting calculations and compare to known standards.

#### **J. SUBTOTAL ESTIMATED COST**

This is the total of all proposed costs excluding Fee or Profit.

#### **K. FEE OR PROFIT**

Review the total of all proposed Fees or Profit.

#### **L. TOTAL ESTIMATED COST AND FEE OR PROFIT**

Analyze the range of total estimated costs Including Fee or Profit, and explain variance to Independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

#### **M. DISCOUNTS**

Review basis for Discounts and range between offers.

Appendix 35

**PRICE ANALYSIS**

PO/Contract: \_\_\_\_\_

The evidence compiled by a cost/price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst’s conclusions are valid.

DATE: \_\_\_\_\_ PREPARED BY: \_\_\_\_\_

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- Comparison with competing suppliers’ prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)
- Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)
- Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price index or Inflation Rate over the corresponding time period. (Attach data and historical price record.)
- Analysis of price components against current published standards, such as labor rates, dollars per pound, etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

**SUMMARY MATRIX**

ITEM	Proposed or Pre-Negotiated Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

Attachments:

Analysis/Conclusions:



## Appendix 38

**Procurement Steps**  
**Competitive Proposal for Services other than A & E (RFP)**  
**One-Envelope – Best Value**  
**Procurement Policies and Procedures Manual**  
**Section 23E**

**Project:**  
**Project Manager:**  
**Procurement No:**

Procurement Step	PM Initial/Date	Reviewer Initial/Date
1. Identify the need to contract out for services.		
2. Staff is required to follow the SRTA Standard of Conduct policy (Appendix 3) when carrying out procurement or contracting functions. Review the policy prior to commencing with procurement activities.		
3. Staff should perform a cost or price analysis for every procurement action, including contract modifications and amendments. The starting point for cost/price analysis is the Independent Cost Estimate. The degree of analysis and detail depends on the size and complexity of the procurement. Complete the Independent Cost Estimate Scope of Work, Summary and Staffing Plan (Appendix 24).		
4. Complete the Procurement Requisition Form (Appendix 2) to initiate the procurement process.		

<b>Procurement Step</b>	<b>PM Initial/Date</b>	<b>Reviewer Initial/Date</b>
5. Determine the method of procurement by completing the Method of Procurement Selection Form (Appendix 10).		
6. Determine the method of payment for the procurement by completing the Contract Payment Type Selection Form (Appendix 30).		
7. Develop the solicitation (RFP). The RFP should contain sufficient information to enable prospective offerors to prepare responsive proposals. The solicitation should be as complete as possible with respect to the items identified in Section 023E, 3.d. The RFP must also include evaluation factors and their relative importance (cost must be a factor), the method for conducting technical evaluations of the proposals received and for selecting awardees, as well as protest procedures. (Section 023E, 2). Include a copy of the draft contract.		
8. Publicize the RFP per instructions in Section 023E 12. a&b		
9. Hold a pre-proposal meeting, if necessary, to brief prospective offerors as early as possible after the RFP has been issued and before proposal are due. Yes/No		
10. Establish the Evaluation Committee(s) of technically qualified personnel, including at least one non-SRTA staff member in procurements exceeding \$50,000. All members must read Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7) and complete the Declaration Concerning Conflicts for Evaluators (Appendix 8).		

<b>Procurement Step</b>	<b>PM Initial/Date</b>	<b>Reviewer Initial/Date</b>
11. Document receipt of all proposals – time and date stamp.		
12. Ensure that responses to the RFP include a list of all proposed subconsultants/contractors, their area of work and certified U/DBEs, as well as a cost proposal which will be used as an evaluation factor. (Subconsultant List, Appendix 13)		
13. Upon receipt of three or more responsive proposals, move to step 14. In the absence of three responsive proposals, readvertise.		
14. Short list firms that are deemed responsible and responsive (Responsive Bidder/Proposer Checklist for RFP Appendix 11) and receive the highest scores according to criteria included in the RFP. DOCUMENT the scoring process!		
15. Send Notice to Short-Listed Proposers (Appendix 18, page 91) to successful proposers and Notice to Proposers Not Making Short-List (Appendix 19, page 93) These notices trigger the protest period.		
16. Interview top ranked firms, if necessary. Ensure that the criteria established in the RFP is used to score the interview.		
17. Summarize findings of the evaluation committee in a recommendation memo to the Executive Director.		
18. Upon the Executive Director’s approval, enter into negotiations with the recommended firm after sending the Notice of Intent to Award (Appendix 16b, page 87). Send the Notice of Intent to Enter into Negotiations with Another Proposer (Appendix 17, page 89) to proposers who are not selected for negotiations.		



<b>Procurement Step</b>	<b>PM Initial/Date</b>	<b>Reviewer Initial/Date</b>
19. Use cost proposals of the recommended firm as the basis for negotiations and document the process in the Record of Negotiation (Appendix 27, page 123).		
20. Perform a price analysis to determine the reasonableness of the proposed contract price. (Price Analysis Form, Appendix 33).		
21. Once negotiations are complete, prepare a contract incorporating the negotiated terms and conditions for the Executive Directors signature and the Recommendation for the Selection of a Contractor Memo Template (Appendix 6).		
22. Send Post-Award Notice to Unsuccessful Proposers (Appendix 21).		
23. After protest period has ended, issue Notice to Proceed (Appendix 29).		
24. Place all documentation into Procurement File.		

## Appendix 39

**Procurement Steps**  
**Competitive Proposal for Services other than A & E (RFP)**  
**Two-Envelope – Lowest Price**  
**Procurement Policies and Procedures Manual**  
**Section**  
**23E**

**Project:**  
**Project Manager:**  
**Procurement No:**

Procurement Step	PM Initial/Date	Reviewer Initial/Date
1. Identify the need to contract out for services.		
2. Staff is required to follow the SRTA Standard of Conduct policy (Appendix 3) when carrying out procurement or contracting functions. Review the policy prior to commencing with procurement activities.		
3. Staff should perform a cost or price analysis for every procurement action, including contract modifications and amendments. The starting point for cost/price analysis is the Independent Cost Estimate. The degree of analysis and detail depends on the size and complexity of the procurement. Complete the Independent Cost Estimate Scope of Work, Summary and Staffing Plan (Appendix 24).		
4. Complete the Procurement Requisition Form (Appendix 2) to initiate the procurement process.		

Procurement Step	PM Initial/Date	Reviewer Initial Date
5. Determine the method of procurement by completing the Method of Procurement Selection Form (Appendix 10).		
6. Determine the method of payment for the procurement by completing the Contract Payment Type Selection Form (Appendix 30).		
7. Develop the solicitation (RFP). The RFP should contain sufficient information to enable prospective offerors to prepare responsive proposals. The solicitation should be as complete as possible with respect to the items identified in Section 023E, 3.d. The RFP must also include evaluation factors and their relative importance (cost must be a factor), the method for conducting technical evaluations of the proposals received and for selecting awardees, as well as protest procedures. (Section 023E, 2). The RFP should include the requirement that separately sealed costs be submitted. Also include a copy of the draft contract.		
8. Publicize the RFP per instructions in Section 023E 12. a&b		
9. Hold a pre-proposal meeting, if necessary, to brief prospective offerors as early as possible after the RFP has been issued and before proposal are due. Yes/No		
10. Establish the Evaluation Committee(s) of technically qualified personnel, including at least one non-SRTA staff member in procurements exceeding \$50,000. All members must read Evaluator (Consultant/Contractor Evaluation Committee) Guidelines (Appendix 7) and complete the Declaration Concerning Conflicts for Evaluators (Appendix 8).		

<b>Procurement Step</b>	<b>PM Initial/Date</b>	<b>Reviewer Initial/Date</b>
11. Document receipt of all proposals – time and date stamp.		
12. Upon receipt of three or more responsive proposals, move to step 14. In the absence of three responsive proposals, readvertise.		
13. The Evaluation Committee will determine which offerors meet the pass/fail criteria. The cost proposals of those offerors will then be opened and the offeror with the lowest price is selected for recommendation to the Executive Director.		
14. Ensure that responses to the RFP include a list of all proposed subconsultants/contractors, their area of work and certified U/DBEs, as well as a cost proposal which will be used as an evaluation factor. (Subconsultant List, Appendix 13)		
15. Summarize the findings of the Evaluation Committee in a recommendation memo to the Executive Director.		
16. Upon the Executive Director’s approval, enter into negotiations with only the offeror with the lowest price after sending the Notice of Intent to Award (Appendix 16b). Send the Notice of Intent to Enter into Negotiations with Another Proposer (Appendix 17) to offerors not selected for negotiations. These notices trigger the protest period.		

<p>17. Failing agreement with the lowest price offeror, negotiations with the next lowest price offeror should be conducted until a contract award can be made to the lowest priced qualified offeror. Document the process in the Record of Negotiation (Appendix 27).</p>		
<p><b>Procurement Step</b></p>	<p><b>PM Initial/Date</b></p>	<p><b>Reviewer Initial/Date</b></p>
<p>18. Perform a price analysis to determine the reasonableness of the proposed contract price. (Price Analysis Form, Appendix 33).</p>		
<p>19. Once negotiations are complete, prepare a contract incorporating the negotiated terms and conditions for the Executive Directors signature and the Recommendation for the Selection of a Contractor Memo Template (Appendix 6).</p>		
<p>20. Send Post-Award Notice to Unsuccessful Proposers (Appendix 21).</p>		
<p>21. After protest period has ended, issue Notice to Proceed (Appendix 29).</p>		
<p>22. Place all documentation into Procurement File.</p>		