

Contracts Manager Reference Guide

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1.1: Purpose of the Contract Manager Reference Guide

The purpose of the Contract Manager Reference Guide is to provide local public agency (LPA) Contract Managers (CMs) the best practices for managing contracts. The CM is appointed as soon as the need for Consultant and/or construction services is identified. The CM must be qualified to ensure the work delivered is complete and accurate, and consistent with the terms, conditions, and specifications of the contract. The CM represents the contracting agency in all dealings with the Consultant and has the responsibilities defined by the contracting agency, including monitoring work performance, expenditures, and authorizing payments.

The Caltrans Division of Local Assistance (DLA) provides guidance to local agencies on Consultant selection and the procurement process related to State and federal-aid highway projects. Further guidance and resources can be found within the [Consultant webpage](#) and [Chapter 10 of the Local Assistance Procedures Manual](#) (LAPM).

1.2: Ensure Funds for Contract are Programmed and Authorized

The CM must also abide by the laws, regulations, and policies required as part of accepting State and federal funding for their project. Non-compliance with the laws, regulations, and policies may result in the loss of project funding. Prior to advertising a contract that seeks reimbursement from Caltrans (with the exception of on-call contracts), three criteria must be met:

1. Prior to federal authorization, all federal-funded transportation projects must be included in the current approved Federal Transportation Improvement Program/Federal Statewide Transportation Improvement Program (FTIP/FSTIP). The FTIP/FSTIP must identify:
 - a. The types and amounts of federal funds
 - b. Programmed Federal Fiscal Year (FFY)
 - c. Federal-funded phases of work
 - d. Project location
 - e. Project sponsor
 - f. Scope of work
2. Project funding must be allocated by the California Transportation Commission (CTC) prior to beginning work that will be reimbursed by Caltrans. The project must be authorized by Caltrans, and a Program Supplement Agreement (PSA) or other agreement must be fully executed prior to receiving reimbursement. The project sponsor identified in the FTIP/FSTIP to receive the federal funds is responsible for requesting the Federal Authorization to Proceed. The project sponsor must prepare and submit a [Request for Authorization to Proceed package](#) to the appropriate Caltrans District Local

Assistance Office. Emergency Relief (ER) projects that involve substantial functional, locational, or capacity changes also must be included in the FTIP/FSTIP.

- 3. Funds may not be used to reimburse the LPA for any work or costs incurred before an Authorization to Proceed is issued, or for Consultant costs incurred prior to the execution of the Consultant contract unless it meets the exceptions listed below.** All executed on-call contracts must have a begin and end date. All executed project specific or multiphase contracts must have a begin date and should have an end date prior to the Project End Date to ensure consultants are accountable to execute deliverables within a set timeframe. LPA Consultant selection and contract execution costs may be reimbursable if they are incurred after the PSA or other agreement is executed.

Only work performed after the date of federal authorization is eligible for federal reimbursement. However, there are two exceptions:

1. The preliminary studies portion of preliminary engineering (PE) may be authorized prior to an optional or mandatory field review per [Chapter 7 of the Local Assistance Procedures Manual \(LAPM\)](#). This allows for the reimbursement of selecting Consultants and other specialists who may be needed for field review.
2. [Federal Highway Administration \(FHWA\) Special Funding](#) authorizes the FHWA to reimburse recipients and subrecipients for PE costs incurred prior to project authorization, assuming the costs are for otherwise eligible activities on eligible projects, and the project and phase are included in a federally-approved FSTIP document or amendment. If eligible, and once federal authorization is received, incurred costs can be reimbursed back to the effective date of the FAST Act, October 1, 2015 or the federal approval date of the FSTIP, whichever occurs later.

1.3: Need for Contract

If the LPA does not have sufficient staff expertise they may partner with another agency to collaborate and/or bundle projects, or use a qualified private Consultant to perform the required work. The LPA may engage Consultants to perform architectural, engineering, and related services to develop a State-funded or federal-aid project.

[Part 172 in Title 23 of the Code of Federal Regulations \(23 CFR 172\)](#) and [Section 4525 of the California Government Code](#) further define Architectural and Engineering (A&E) services and includes those private consulting firms providing architectural, landscape architectural,

engineering, environmental, land surveying, construction engineering, or program management termed as A&E Consultants.

If the LPA determines that there is a need to solicit assistance from a Consultant, the District Local Assistance Engineer (DLAE) should be notified if State funds or federal-aid are to be requested for the project segment to be contracted out. The CM must consider:

- Types of services needed
- Degree of necessity
- Evaluate the type of work to be performed and when the work is needed
- If one-time or on-going services
- Routine or extraordinary/unique services
- Existing or new service
- Internal procedures of requesting services
- Possible and probable sources for services
- Justifications
- Whose and what approvals are needed before executing a contract
- Items of work to be provided (materials, equipment, supplies, or services)
- Availability of subcontractors in the area where the work will be performed as needed

1.4: Types of Architectural and Engineering (A&E) Contracts

1. On-call services are provided for several potential projects or a defined area/region through issuance of task orders that are issued on an as-needed basis.
2. Project-specific services are provided for a defined scope of work (SOW) related to a specific project or projects.
3. Multiphase project-specific contracts are where the solicited services are divided into phases whereby the specific SOW and associated costs may be negotiated and authorized by phase as the project progresses.

For further information on the specific types of Consultant selection methods, please refer to [Section 10.1.4: Consultant Selection Methods in the LAPM.](#)

1.5: Applicable Requirements

State and federal requirements listed below, and specific contract requirements serve as the standards for audits and reviews performed. LPAs, Consultants, and Subconsultants are responsible for complying with State, federal, and specific contract requirements. LPAs are responsible for determining the eligibility of costs to be reimbursed to Consultants.

Applicable standards include, but are not limited to:

- [The LAPM](#)
- State and federal agreements between LPAs and Caltrans, (e.g. Master Agreements)
- PSAs
- [23 United States Code \(U.S.C.\), Section 112 – Letting of Contracts](#)
- [40 U.S.C., Chapter 11: The Brooks Act](#)
- [23 CFR 172 - Procurement, Management, and Administration of Engineering and Design Related Services](#)
- [23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation](#)
- [48 CFR 31, Federal Acquisition Regulation \(FAR\)- Contract Cost Principles and Procedures](#)
- [48 CFR 99 – Cost Accounting Standards \(CAS\), Subpart 9900](#)
- [2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)
- [United States Government Accountability Office, Government Auditing Standards - Generally Accepted Government Auditing Standards \(GAGAS\)](#)
- [California Government Code sections 4525-4529](#); and
- Proposed contract terms and conditions.

Employee in Responsible Charge

Federal statutes require the LPA to provide a full-time agency employee who is accountable for any federal-funded project they administer. This individual is the person in responsible charge of the project [23 CFR 172.9\(d\)\(1\)](#). The person designated in responsible charge must be a public agency employee but does not need to be an engineer. Federal statutes allow for at least one employee to be in responsible charge over multiple projects at the same time. This requirement applies even in the following cases:

1. A Consultant is performing the construction engineering services
2. A Consultant has been hired as the Consultant in a Management Support Role (e.g. City Engineer or Public Works Director)

The employee in responsible charge performs the following duties:

- Administers inherently governmental project activities including those dealing with cost, time, adherence to contract requirements, evaluation of performance, construction quality, and scope
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant
Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel
- Scheduling and attending progress and project review meetings,

commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones

- Ensuring consultant costs billed are allowable in accordance with the federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work
- Evaluating and participating in decisions for contract modifications
- Documenting contract monitoring activities and maintaining supporting contract records
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements
- Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse
- Directs project staff, local agencies, or Consultants to carry out project administration and contract oversight, including proper documentation
- Maintains awareness of the qualification assignments and on-the-job performance of local agencies and Consultant staff at all stages of the project

Project Documentation Record Retention/Contract Project Files

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

These records must be **maintained for a minimum of three (3) years** following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters ([2 CFR Part 200.334](#)). Upon request, LPAs need to make all project documentation and backup records available for inspection by Caltrans and FHWA reviewing personnel. Use of a uniform project record-keeping system, together with diligent maintenance of the system, greatly facilitates a process review and positive findings. Retain records of all project related activities, transactions, and emails that clearly demonstrate project supervision and control were maintained on the project.

As stated in the Master Agreement, project records are to be retained by LPAs for a period of three years from State payment of the final voucher, or a four-year period from the date of the final payment under the contract, whichever is longer.

Among the records to be retained are as follows (not an all-inclusive list):

- Copies of Requests for Qualifications (RFQs) and Requests for Proposals (RFPs), changes, addendums, etc. and bidder's list
- Documentation of DBE participation for federal-aid funded projects (including [Exhibit 10-O1: Consultant Proposal DBE Commitment](#), [Exhibit 10-O2: Consultant Contract DBE Commitment](#), [Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet](#), [Exhibit 17-F: Final Report – Utilization of DBE and First-Tier Subcontractors](#), [Exhibit 17-F1: Final Report – Utilization of DBE for On-call Contracts](#), and [Exhibit 17-O: DBE Certification Status Change](#))
- All emails that serve to clarify costs and services such as key personnel being removed and added to the contract or project.
- Solicitation and advertisement records
- Identification of selection committee members
- Record of receiving proposals, statement of qualifications
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#))
- The Independent Cost Estimate (ICE) is the LPA's required tool for comparison of the consultant's proposed cost estimate that includes hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee.
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines)
- Financial Review Letter and Cognizant Agency Letter, when applicable
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#))
- A&E Consultant Audit Request Letter and Checklist ([Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) for contracts equal to or greater than \$150,000 and all supporting documentation
- Executed Consultant contracts, cost proposals, and amendments (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#) and [Exhibit 10-H: Sample Cost Proposal](#))
- Documents related to contract progress and completion
- Progress and final payments, and supporting documentation
- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#))
- Consultant contract checklists (see [Exhibit 10-C: A&E Consultant Contract Database](#))
- Accounting records documenting compliance with State and

- federal administrative requirements
- Certifications and Conflict of Interest forms:
 - [Exhibit 10-Q: Disclosure of Lobbying Activities](#) must be completed if the Consultant needs to disclose any lobbying activities
 - [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#) all personnel involved in the procurement of the agreement should complete this exhibit
 - [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#)

1.6: General Guidelines for Writing the Scope of Work (SOW)

The SOW is a detailed description of the products or services the Consultant is to provide pursuant to [23 CFR 172.7\(a\)\(1\)](#). The SOW must be clear, concise, complete, and describe the deliverables, standards for design; and include quality control measures, acceptance criteria, and deadlines. Before writing the SOW with detailed tasks and deliverables, complete an analysis of the project to determine what specific services are required and what outcomes are needed to define the SOW. When writing the SOW, it is important to write for the potential audience of your document. Focus your writing on what is needed. Determine what your requirements are from the start; do not leave them undefined or say, “at the direction of the LPA.” Every word has meaning; no word should be included if it does not serve a purpose.

Consider the following questions when compiling information for the initial draft of the SOW:

- Project Overview and Objectives: Include a problem statement, define issues that you are facing and what will be achieved. Tie the SOW to a final objective with expected outcome(s) to achieve and by when. Remember, Consultants cannot perform any work that is not specified in a contract.
- Schedule/Milestones: Identify clear starting and final (ending) due dates as Consultants cannot perform work outside of the contract performance period.
- Type of Solicitation Used: Determine the type of solicitation document that will be used. Select from a RFQ for an on-call or list of Consultants, or a RFP for an open and competitive contract, or a task order (contract). Please refer to [Section 10.1.4: Consultant Selection Methods in the LAPM](#) for additional information.
- Individual Tasks Lists: State work/services that specifically need to be completed.
- Stakeholders: Identify all stakeholders including permitting agencies, utility agencies, funding agencies, review and approval entities.

- Deliverables: Narrowly define deliverables to include all the needed work/services.
- Payment Information: Specify how to identify/claim eligible project costs for reimbursement; and how payments will be made.

1.7: Advertising the RFQ or RFP

Developing the Evaluation for the Most Highly Qualified Consultant

When developing the evaluation for the most highly qualified Consultant(s) (MHQC), the LPA should use qualification criteria to determine if the Consultant is:

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

Advertisement and Solicitation

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

Advertisement of the RFQ and/or RFP in a major newspaper, technical publications of widespread circulation, professional associations and societies, recognized Disadvantaged Business Enterprise (DBE) organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the LPA's or other widely used websites are all acceptable methods of solicitation. To document website postings, the LPA should retain copies of screen shots displaying the posted begin/end dates; and prepare to respond to RFP/RFQ questions and conduct proposer conferences if applicable.

1.8: Disadvantaged Business Enterprise Goal

A DBE goal is only required on contracts that will or potentially receive any federal funding. The DBE goal is calculated based upon the relative availability of DBE firms as compared to all firms in the relevant geographic market area.

[Section 9.6 et. seq. in the LAPM](#) defines the LPA Responsibilities under the Caltrans DBE Program Plan, including how to set a goal for any contract that may be assisted with federal funding. The DBE goal must be submitted to DLAE prior to contract advertisement. In addition, [Exhibit 10-G Individual A&E Task Order DBE Tracking Sheet](#) is a good tool used for DBE task order tracking, and [Exhibit 17-O: Disadvantaged Business Enterprises \(DBE\) Certification Status Change](#) is required and must be completed, signed, and submitted as specified in the provisions for Consultant contracts. Please refer to these sections when developing the DBE contract goal and for compliance with the federal DBE program prior to posting the contract for advertisement.

1.9: Ethics and Conduct

A contracting agency shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. This policy must govern the conduct and roles of Consultants in the performance of services under such contracts to prevent, identify, and mitigate conflicts of interest in accordance with [2 CFR 200.112](#), [23 CFR 1.33](#) and [23 CFR 172.7\(b\)\(4\)](#).

Before retaining a Consultant in a Management Support Role (CMSR), LPAs shall submit [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) along with the SOW to the DLA A&E email account: aeoversight@dot.ca.gov prior to contract advertisement.

An LPA is prohibited from entering into a contract where an officer or employee will engage in any employment or activity funded through a contract, unless the employment or activity is required as a condition of the officer's or employee's regular employment. In addition, no agency may contract with an officer or employee to provide consulting or other services as an independent contractor.

CMs shall not accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person (including individuals, firms, corporations, partnerships, associations, other governmental bodies, or agents and representatives for such person) who is performing or seeking

to conduct business of any kind with a CM's appointing authority. It could be inferred the gift was intended to influence a CM in his/her official duties or was intended as a reward for any official action performed by the CM. **All favors should be refused courteously.**

CMs who have been given authority to make outside purchases of materials or services shall not make such purchases from any business entity where they have financial interests. In addition, employees are prohibited from using their positions to bestow any preferential treatment or benefit to anyone having any family, business, or social relationship with them.

1.10: Proposal Review and Verification

The CM shall verify suspension and debarment actions and eligibility status of Consultants and Subconsultants prior to entering into an agreement or contract in accordance with [2 CFR part 1200](#) and [2 CFR part 180](#). In addition, per [23 CFR 172.7\(b\)\(3\)](#) a debarment order may be taken against a contractor or any subcontractor. The intent of the law is to debar and prevent contractors who have committed any violation with the intent to defraud or have committed more than one willful violation within a 3-year period from bidding on public works projects.

For the federal-aid highway program, the FHWA requires verifications of the current eligibility of their principals through certifications of prime and subcontractors by checking www.sam.gov.

The CM should incorporate boilerplate language from [Exhibit 10-R A&E Sample Contract Language, Article XVII Debarment and Suspension Certification](#) as applicable:

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

“A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA."

All lower tier participants (e.g. local agencies, subcontractors, material suppliers, vendors, etc.) are also required to certify the current eligibility of the entity and its principals in accordance with [2 CFR 180.335](#).

For State-funded projects only, the CM must review the list of suspended and debarred contractors through the California Department of Industrial Relations (DIR) and the California Department of Consumer Affairs websites listed below to determine the Consultant is not suspended or disbarred.

The California sites are:

- California Department of Industrial Relations:
<https://www.dir.ca.gov/dlse/debar.html>
- California Department of Consumer Affairs:
<https://search.dca.ca.gov/?BD=31>

The CM must print the screenshot and a hardcopy of the website search should be placed into the contract file regardless if the project is State or federal funded.

1.11: Evaluating and Selecting the Most Highly Qualified Consultant

Refer to [Sections 10.1.5 and 10.1.6 in the LAPM](#) when receiving and evaluating technical proposals, developing the final rankings, and notifying Consultants of the results. Please note, each cost proposal should not be opened or reviewed until the MHQC is selected.

The CM must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and/or submittals with inadequate copies are considered nonresponsive and must

be rejected. With the exception of a DBE good faith effort ([refer to Section 9.8 of the LAPM](#)), submittal of additional information after the due date must not be allowed. Documentation of when each proposal was received must be retained in the project files. Copies of date-stamped envelope covers or box tops are recommended.

The CM's evaluation of proposals and selection of the MHQC should include, but not be limited to the following:

- Distribute proposals or Statements of Qualifications (SOQs) to Selection Committee members
- Ensure Committee members receive the appropriate score sheet to use (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#))
- Convene Selection Committee and evaluate submittals; perform reference checks
- Develop final ranking or short list
- Notify proposers of ranking/short list
- Retain all original score sheets and summaries
- Send out RFPs to short list (two-step process)
- Conduct interview of short list (if required or needed)
- Develop final ranking of Consultants and notify all interviewees
- Retain all original score sheets and summaries
- Provide a copy of standard contract language to the MHQC and invite for negotiations (see [Exhibit 10-R: A&E Sample Contract Language](#) for standard contract language and provisions)
- Open and analyze cost proposal from the highest ranked firm

Contracts shall be awarded to responsive, responsible proposers who meet one of the following criteria:

1. Are the MHQC that received the highest score in the RFP award method.
2. Are the MHQC in a RFQ contract.

LPAs should maintain a list of at least the three most qualified Consultants and notify the proposers if they are not selected. For specific information on the evaluation and selection of the MHQC refer to [Figure 10.1: Evaluation and Selection of Consultant in the LAPM](#).

1.12: Independent Cost Estimate (ICE)

LPAs are required to perform a cost analysis (estimated costs of Consultant work) to ensure all costs are allowable and in compliance with State and federal requirements and retain documentation of negotiation activities and resources with the MHQC such as emails and spreadsheets.

Items necessary for the ICE include hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit or fee. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be fair and reasonable for the work performed and actual, allowable, and allocable in accordance with the federal cost principles.

Costs must be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the State and federal regulations, procedures, and contract provisions.

Agencies must retain documentation of how the cost estimate was developed. It may be revised for use in negotiations with the next most qualified Consultant. A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process in the LAPM](#)).

Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

Examples of Cost Analysis Worksheets are provided at Exhibit 10-H1 through 10-H3:

- [Exhibit 10-H1 Cost Proposal Cost-Plus-Fixed Fee, Lump Sum, or Firm Fixed Price Contracts \(Design, Engineering and Environmental Studies\)](#)
- [Exhibit 10-H2 Cost Proposal Specific Rate of Compensation \(Use for on-Call or as Needed Contracts\) \(Construction Engineering and Inspection Contracts\)](#)
- [Exhibit 10-H3 Cost Proposal Cost Per Unit of Work Contracts \(Geotechnical and Material Testing\)](#)

1.13: Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both prime and all Subconsultants), and contract audit and review documents such as the [Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System of Costs and Financial Management System](#) must be submitted in a separate sealed envelope (see [Section 10.1.3: A&E Consultant Audit and Review Process in the LAPM](#)).

Typically, the cost proposals are submitted by the short-listed Consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all Consultants with their technical proposal.

The cost proposal for the MHQC will be opened and used to begin

negotiations. Typically, the LPA will come to an agreement with the first MHQC unless the costs are unreasonable. If agreement cannot be reached, then negotiations proceed to the next MHQC. Each Consultant's cost proposal must remain sealed until negotiations commence with that particular Consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the LPA. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to Consultants.

Cost proposals in electronic form must be submitted separately from the RFP and contained securely (such as in a database) that is inaccessible to the members involved in the A&E Consultant contract procurement process. Only the cost proposal of the MHQC will be requested to be sent to the members. Cost proposals of unsuccessful Consultants are confidential and must not be opened by the LPA or any private entity that the LPA uses to store the cost proposals. Any concealed cost proposals of the unsuccessful Consultants must be returned unopened or properly disposed of in accordance with the LPA's written policies and procedures.

The ICE, developed by the LPA in advance of requesting a cost proposal from the top-ranked Consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified Consultant.

The CM will request a revised cost proposal from the Consultant after:

- Negotiations have been completed
- The LPA and Consultant have agreed to a fair and reasonable price, and
- A letter, if applicable, is released by Caltrans Independent Office of Audits and Investigations (IOAI) that accepts, denies, or makes an adjustment to the proposed ICE. The CM should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to, and made a part of the contract.

The CM has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided.

The CM ensures that all required documentation is provided to Caltrans IOAI within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a

Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans IOAI Financial Review Letter if applicable. An audit may be performed within the record retention period of the contract.

Items typically negotiated include:

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

LPAs are required to apply Caltrans accepted Consultant or Subconsultant's indirect cost rates (ICRs) to contracts. An ICR is valid for the one-year applicable accounting period accepted or audited by Caltrans IOAI. For contracts spanning more than one year, LPAs are responsible for ensuring [Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System](#) and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. The Consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA.

The LPA and the Consultant will agree on the final cost proposal, incorporate the final cost proposal into the final contract, and retain all documentation related to negotiations.

Irreconcilable Differences

When an LPA cannot come to agreement with the MHQC, they must formerly terminate all negotiations with the first MHQC and then may negotiate with the second MHQC, and then the third MHQC. The LPA may have a termination clause in the contract but must follow the advertisement guidelines detailed in that clause. If negotiations cannot be achieved with any MHQC or if a termination clause is invoked, the LPA will need to readvertise the contract.

For specific information on contract negotiations refer to [Figure 10-1: Contract Negotiations in the LAPM.](#)

1.14: Contract Template Requirements

Required contract language and format have been included in the LAPM as [Exhibit 10-R: A&E Boilerplate Agreement Language](#). As applicable, this language or equivalent must be incorporated as part of the LPA's A&E Consultant contract.

1.15: Review and Approval of Final Contracts

Reimbursement is contingent upon meeting the federal or State requirements and may be withdrawn if these procedures are not followed and documented. Refer to the following LAPM exhibits:

[Exhibit 10-C: A&E Consultant Contract Database](#) is to be completed prior to award, or after contract award but no later than the first invoice. A copy of Exhibit 10-C must be retained in the LPA project files.

Proposed contracts for Consultant services (including subcontracted work) must be reviewed by the LPA to verify that the following are included or addressed:

- DBE goal [Exhibit 10-O2: Consultant Contract DBE Commitment](#) is included for all contracts regardless of goal
- [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for prime and subs)
- [Exhibit 10-A: A&E Consultant Financial Document Review Request](#) and Checklist and all supporting documents, if applicable (contracts equal or greater than \$150,000), have been submitted to Caltrans IOAI
- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal
- [Exhibit 10-C: A&E Consultant Contract Database](#) must be used to ensure that required documentation has been provided
- A cost proposal (see [Exhibit 10-H: Sample Cost Proposal](#)), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations
- Consultant/Subconsultant is not disbarred or suspended from State or federally funded contracts in accordance with [2 CFR part 1200](#), [2 CFR part 180](#) and [23 CFR 172.7\(b\)\(3\)](#)

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

The contract must require the Consultant and Subconsultants to maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and LPA authorized representatives.

1.16: Execution of Contracts/Notice to Proceed to Consultant

The CM shall not authorize the Consultant to start work until the contract has been fully executed (signed) by both parties. Copies of the contract are sent to the Consultant for signature first.

The CM sends the Consultant a fully executed copy of the contract with an original signature and issues a written notice to proceed. **Work may not commence until proper authorization is obtained; and Caltrans will not make reimbursements unless funding is authorized.**

For on-call contracts, a fully executed copy of the contract with original signatures will be sent to the Consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed once it is negotiated and approved. Task order expiration dates may not exceed the Master On-call agreement end date. The CM should send a letter to the Consultant to announce contract execution, and a copy should be retained in the contract file and/or project file(s).

1.17: Contract Kick-off Meeting

A contract kick-off meeting ensures open communication and awareness of contract and project requirements by all parties. Invite or bring all pertinent staff responsible for the project, including the firm's accounting staff, and everyone to the meeting who will be involved, including sub-Consultants who will utilize the contract.

The kick-off meeting should last as long as needed to cover the contract terms in enough detail to reach shared understandings of the contract requirements, expectations, receive clarification of any discrepancies; and answer any questions identified concerning the project. The meeting may range from one to four hours depending on the complexity of the contract.

1.18: Administer the Contract

The primary responsibility of CMs is to monitor the progress of work to ensure contracted services are performed according to the quality, quantity, and manner specified in the agreement. CMs must ensure that work proceeds on schedule and is completed and accepted by their agency before contracts expire and services are paid. Creating calendars or timelines for

each contract for performance objectives, license and insurance expirations, appropriate time to request renewals, etc., is a useful tool to help monitor various contract aspects. If the work cannot be done according to the specifications, the CM needs to know why.

Project work begins as specified in the contract after the notice to proceed is issued to the Consultant. Contract administration activities ensure that contractual obligations are completed satisfactorily. CMs must perform the following for each contract:

1. Review the grant agreement or grant guidelines to ensure contract deliverables such as reports, updates, and requirements are scheduled, and deadlines are met
2. Ensure that all federal or special regulations are adhered to
3. Review progress reports and interim products for compliance with contract objectives and timeframes
4. Review and approve invoices to substantiate expenditures for work performed
5. Monitor the DBE, or preference program participation per approved goal attainment and forward required participation reports to DLA by the deadline
6. Maintain documentation of all activity
7. Maintain running totals of charges and costs
8. Notify appropriate personnel, if applicable, of any equipment purchases and ensure that property is tagged and inventoried prior to approving reimbursement of purchase costs
9. Determine the need for contract amendment or renewal and request any amendment or renewal with sufficient time to process and execute an amendment or renewal before the original contract expires. As a best practice, LPAs may need to provide up to three-to-six months in advance to execute an amendment
10. Request an "assignment of contract" (transfer of contractual rights from one Consultant to another) whenever the contracted firm is bought out, merged, or sold to another company
11. Verify the Consultant has fulfilled all requirements of the contract
12. Verify any Subconsultant who is being substituted or added to a contract is registered with the DIR if the contract has a public works element and update the existing contract in the Public Works Project Registration (PWC-100) on the [DIR website](#).

Substitution of Consultant Personnel and Subconsultants

After contract execution the Consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or Subconsultants without prior written approval from the LPA. Without proper approval, costs may be ineligible for State or federal reimbursement. The

Consultant must request and justify the need for the substitution and obtain approval from the LPA prior to use of a different Subconsultant on the contract. The proposed substitution must be as qualified as the original, and at the same or lower cost. LPA must submit [Exhibit 10-A: A&E Consultant Financial Document Review Request](#) to IOAI for substituted subconsultant requesting a participating ICR on contracts equal to or greater than \$150,000. For engineering types of Consultant contracts, the Consultant's project manager must be a registered engineer in the State of California.

Completion of Work

The CM-Consultant relationship is built on trust, but that does not negate the LPA's obligation to inspect and approve the Consultant's final deliverables. Difficulties in this area arise when both parties have not agreed on the exact definition of what constitutes completion.

Make your definition of "complete" as clear as possible by documenting detailed specifications for all contract products. Include this verbiage as part of the original contract and all task orders. Monitor Consultant progress and communicate continuously during the contract and task order periods of performance to ensure compliance with the services/deliverables detailed in contract and task order language.

1.19: Contract Invoices and Progress Payments

No additional work is to be authorized after the contract expires. Caltrans will not make reimbursements for work performed outside of the contract performance period including after the contract expires. Although, five (5) years is the maximum contract term for all "on-call" contracts, typically "on-call" contracts have about 3-year terms and may have extensions that will reach the 5-year maximum. Refer to [Section 10.1.8: Execute Contract and Issue notice to Proceed to Consultant in the LAPM](#) for more information.

CMs should track dollars available versus dollars spent, as well as the type of contract and the method of payment. Issues to consider include, but are not limited to:

- Methods of payment (hourly, monthly, per item, per milestone, by task order, and/or lump sum)
- Track estimated and actual hours worked and any applicable direct costs
- Confirm prior approval is obtained on all key staff and/or subconsultants who are substituted or added to a contract before they commence work on the contract to avoid disallowed costs
- Prepare spreadsheets to maintain this "tally" when contracts are awarded

Payments to Consultants must be consistent with the bid rates, provisions and services provided. **Caltrans will not pay for services not yet received.** Payments to the Consultant are to be in arrears. In other words, the Consultant must have actually incurred and paid the costs before invoicing the LPA. Request Consultants to submit invoices in a timely fashion and as provided in the contract. **Promptly timestamp, and review and pay accepted invoices within 30 days of receipt.**

Copies of all invoices (annotated, as needed) and all back-up documentation must be retained in CMs' contract files. If an electronic file is being used, an electronic image (e.g., PDF) should be made of the invoice information. At a minimum, enter invoice information in an electronic document. CMs should reconcile, at least quarterly, a contract balance with their accounting office.

Timely Invoice Processing and Invoice Disputes

Pursuant to [Section 3320 of the California Civil Code](#), the LPA must pay the prime design professional any progress payment within 30 days of receipt of the invoice, and the final retention payment within 45 days of receipt of a written demand (or invoice) for payment in accordance with the contract. If a CM disputes any portion of the invoice and decides to withhold payment on that part of the invoice (for example, the work performed was not satisfactory (product or performance issues) or not performed at all), the CM must notify the Consultant in writing about the item(s) in dispute, the monetary amount of the dispute, and what actions, if any, are required to resolve the dispute. Payment to Consultants should not be authorized if work has not been completed to a CM's satisfaction. The CM cannot withhold the entire invoice amount, but only the amount for items being disputed.

If an inspection or invoice review reveals unacceptable products or performance, the Consultant may not charge a second time for correcting unacceptable work or replacing poor quality material.

An invoice dispute effectively interrupts the required payment date for prompt payment. Consultants must be notified of an invoice dispute within 15 working days of invoice receipt or delivery of the goods or services, whichever is later. If the Consultant corrects or completes the disputed work (and sends notice that the fix is complete), that work must be accepted or rejected within 10 days. Refer to the [California Prompt Payment Act, California Government Code \(GC\) 927](#) for more specifics.

Submitting Reimbursement Requests to Caltrans

For reimbursement of Consultant costs on a project, the LPA must submit an invoice to Caltrans at least once every six months, or as required in the agreement between Caltrans and the LPA. The LPA must send the following to the DLAE for each Consultant or consulting firm used on the project (failure to do so will result in the Consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract
- Copy of issued on-call task order
- [Exhibit 10-O1: Consultant Proposal DBE Commitment Page 44 of 68 January 2021 Local Assistance Procedures Manual Chapter 10 Consultant Selection](#)
- [Exhibit 10-O2: Consultant Contract DBE Information](#). DLAE must confirm that the LPA has submitted copies of [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System \(for Prime and Subconsultants\)](#) to Caltrans IOAI for contracts equal to or greater than \$150,000 and agency has submitted [Exhibit 10-C: Consultant Contract Database to Caltrans](#)

The LPA is to follow the procedures provided in [LAPM Chapter 5: Invoicing](#), to obtain reimbursement of State or federal funds.

1.20: Contract Concerns

Contract Termination

First try to solve any contract-related problems that arise with other parties and internally with the agency itself. Problems that arise during the term of a contract must be fully documented in formal, written communications with Consultants. Letters to Consultants should outline problems related to non-performance and cite, verbatim the contract specifications so there are no doubts about the services required under a specific contract. All non-performance letters should be sent "certified" with copies going to all concerned parties.

Copies of letters also should be kept in the files created for each contract and sent to the LPA's accounting office to eliminate possibility of invoices being paid in error. For record retention purposes, the documents specified above are considered original records.

Termination is an extreme remedy for resolving Consultant performance problems or changes in governmental circumstances. It is imperative a CM performs oversight and communicates in writing to the Consultant when identified problems are not corrected and if performance is not satisfactorily improved.

Depending on the contract terms [\(Exhibit 10-R: A&E Boilerplate Agreement](#)

[Language, Article VI Termination](#)) the CM may terminate the contract immediately, and then have the work finished by another Consultant. [Refer to Section 10.1.10: Program Management](#) to determine the extent to which the Consultant may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract.

Termination may occur based on one of three situations:

- Default—A CM may exercise its right to terminate contracts because of a Consultant's actual or anticipated failure to perform its contractual obligations. For example, the Consultant breaches any material term or condition of the contract, fails to perform or fulfill any material obligation. A court proceeding may overturn a termination by default or vice versa with the Consultant ending up with full recovery of contract amount.
- For Convenience (commonly referred to as "Without Cause")—A CM may terminate a contract in the event of an unforeseen public emergency, lack of funding, or a change of circumstances.
- By Mutual Agreement—When both parties agree to terminate the contract due to insolvency of or disputes between the Consultant and the LPA. The LPA will prepare a mutual release agreement freeing both parties from any further obligations of performance.

Contract Amendments

Timely extension or amendments according to what's best for the affected parties may be necessary. Neither time extensions nor amendments occur automatically.

Amendments are formal modifications to contracts. Contracts may be modified or amended only if the contract allows it. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. "Time-only" amendments are only possible in order to complete a project that has been delayed and is not permissible for recurring, on-call, and/or as-needed services.

The following guidelines apply to any amendment:

- Changes must be in writing
- Amendments must be executed prior to the contract's expiration date
- Submit "*written*" requests for changes and approvals PRIOR to work being done as a result of the change
- Task Orders do **NOT** amend the contract
- Change in team members must be requested and approved; a letter is sufficient for approval

Note: Subconsultants may be added to the contract if the team can no

longer meet contractual requirements. However, it may not be necessary to go through the amendment process. The LPA must submit an [Exhibit 10-A: A&E Consultant Financial Document Review Request](#) to IOAI for the new Subconsultant requesting a participating ICR on contracts greater than or equal to \$150,000. Check the contract boilerplate language [Exhibit 10-R: A&E Boilerplate Agreement Language](#) for additional information on amendments and contact the appropriate CM-personnel to negotiate and approve the cost proposal for the new firm.

Noncompetitive Negotiated Contracts (Sole-Source)

Noncompetitive negotiated contracts or procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals [\(23 CFR 172.7\(a\)\(3\)\)](#) and [Section 10.1.9: Miscellaneous Considerations](#).

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

Conditions under which noncompetitive negotiated contracts may be acceptable include:

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

The LPA must:

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

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

1.21: Program Management

According to [23 CFR 172.5](#), LPAs are required to adopt written policies and procedures prescribed by Caltrans. The LPA must adopt Caltrans [LAPM Chapter 10: Consultant Selection](#). LPAs are responsible for providing all resources necessary for the procurement, management, and administration of A&E Consultant contracts including subcontracts. Ensuring Consultant costs billed are allowable in accordance with the federal cost principles and consistent with the contract terms as well as the acceptability and progress of the Consultant's work.

1.22: Contract Completion and File Closeout

A contract is ready for closeout when all the work it covers has been completed according to the contract terms. Once the CM inputs final documentation information into an electronic file, it also becomes an inactive file. For conventional files, CMs should make notations that all documents are complete, all invoices have been paid, and any active funds have been disencumbered and/or deobligated.

1.23: Authorizing Final Payment

Prior to authorizing final payment of invoices, the CM must ensure all of the following:

1. Review the contract task order log or contract spreadsheet/database to make sure all task orders have been closed out. Remind the Consultant of contract expiration date, and that work performed after the expiration date will not be reimbursed.
2. Review final deliverables to see that they are complete and delivered as expected.
3. Resolve administrative issues. Make sure to consider whether the Consultant is due any bonus payment or, conversely, if any penalties should be assessed, as specified in the contract. If there are any disputed items, when notifying the Consultant refer to the [California Prompt Payment Act, GC 927](#). Review and approve final invoices to authorize final payment. The CMs shall sign, date, and write "Final Payment - Approved" on each copy of the final invoice.
4. Provide the Consultant with formal written notice that the contract has been completed.
5. Disencumber any unused contract funds.
6. Complete Consultant Performance Evaluation [Exhibit 10-S: Consultant Performance Evaluation](#) as required per [23 CFR 172.9\(d\)\(2\)](#) and [Section 10.1.8: Completing the Project](#) in the LAPM, where applicable.
7. Complete [Exhibit 17-F: Final Report – Utilization of DBE and First-Tier Subcontractors](#) and [Exhibit 17-F1: Final Report – Utilization of DBE for On-call Contracts](#) as applicable.
8. Complete all Documentation Requirements.

1.24: Critical Items

Below are critical items as summarized within this chapter to ensure successful administration of the A&E procurement contract:

- The LPA must specify the contract type and method(s) of payment anticipated to contract for the solicited services.
- The LPA shall promptly disclose, in writing, any potential conflict of interest to their DLAE.
- The LPA shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract.
- The LPA must incorporate [Exhibit 10-R: A&E Boilerplate Agreement Language](#) within all of their federal A&E consultant contracts.
- As a best practice, the LPA consultant agreement for preliminary engineering should provide for ongoing consultant involvement during the construction phase of the project.
- The LPA shall not award contract before satisfactory completion of the pre-award audit.
- The LPA shall not allow a substitution of key staff unless the proposed substituted person is as qualified as the original.