



## **CITY COUNCIL REGULAR MEETING AGENDA APRIL 16, 2019**

**CLOSED SESSION: 6:00P.M. – 7:00 P.M.**  
**OPEN SESSION: 7:00 P.M.**

Notice is hereby given that the City Council will hold a Regular Meeting on April 02, 2019, at the City Council Chambers, 1416 C Street, Livingston, California. Persons with disabilities who may need assistance should contact the Deputy City Clerk at least 24 hours prior to this meeting at (209) 394-8041, Ext. 121. Any writings or documents pertaining to an Open Session item provided to a majority of the members of the legislative body less than 72 hours prior to the meeting shall be made available for public inspection at Livingston City Hall, 1416 C Street. The Open Session will begin at 7:00 p.m. the Closed Session will be held in accordance with the state law prior to the Open Session beginning at 6:30 p.m. The Closed Session will be held at the City Council Chambers Located at 1416 C Street. The agenda shall be as follows:

### **CLOSED SESSION**

1. Call to Order
2. Roll Call

### **CLOSED SESSION**

*A "Closed" or "Executive" Session of the City Council may be held in accordance with state law which may include, but is not limited to, the following types of items: personnel matters, labor negotiations, security matters, providing instructions to real property negotiators, conference with legal counsel regarding pending litigation. The Closed Session will be held in the City Council Chambers located at 1416 C Street, Livingston, California. Any public comment on Closed Session items will be taken before the Closed Session. Any required announcements or discussion of Closed Session items or actions following the Closed Session will be made in the City Council Chambers, 1416 C Street, Livingston, California.*

3. Conference With Real Property Negotiator  
(Government Code Section 54956.8)  
Real Property:  
APN: 024-154-005-000  
APN: 024-153-003-000  
APN: 024-153-011-000  
APN: 024-147-006-000  
Negotiating Parties for City: Jose Antonio Ramirez, City Manager  
Under Negotiation: Potential Property Sale
  
4. Conference with Labor Negotiator  
(Government Code Section 54957.6)  
Labor Negotiator: Jose Antonio Ramirez, City Manager  
Employee Organizations: OE3 - Police Supervisory Employees Association.  
OE3 - Management/Confidential Bargaining Unit  
OE3 - Livingston Police Officer Association  
AFSCME – Public Works and Parks Unit  
All Represented and Unrepresented City Employees
  
5. Conference with Legal Counsel – Potential Litigation  
(Government Code Section 54956.9(d)(2))  
Number of Cases: 2

## **REGULAR MEETING**

### **CALL TO ORDER**

**Next Resolution No.: 2019-22**  
**Next Ordinance No.: 638**

Pledge of Allegiance.

Roll Call.

Closed Session Announcements.

Changes to the Agenda.

### **ANNOUNCEMENTS AND REPORTS**

Supervisor Rodrigo Espinoza Announcements and Reports.

City Staff Announcements and Reports.

City Manager Announcements and Reports.

City Council Members' Announcements and Reports.

Mayor's Announcements and Reports.

## **PUBLIC HEARING**

1. (Continued) Resolution Approving Economic Development Incentive Agreement between City of Livingston and Foster Poultry Farms.
2. Changes to the Special Tax Rates for Community Facilities District No. 2017-1 (Public Service).

## **CITIZEN COMMENTS**

*This section of the agenda allows members of the public to address the City Council on any item NOT otherwise on the agenda. Members of the public, when recognized by the Mayor, should come forward to the lectern, and identify themselves. Comments are normally limited to three (3) minutes. In accordance with State Open Meeting Laws, no action will be taken by the City Council this evening. For items which are on the agenda this evening members of the public will be provided an opportunity to address the City Council as each item is brought up for discussion.*

## **CONSENT AGENDA**

*Items on the Consent Calendar are considered routine or non-controversial and will be enacted by one vote, unless separate action is requested by the City Manager or City Council Member. There will be no separate discussion of these items unless members of the City Council or City Manager request that specific items be removed.*

3. Approval of Warrant Register Dated April 10, 2019.

## **DISCUSSION AND POTENTIAL ACTION ITEMS**

4. Resolution Adopting Policies for the Administration and Procurement of Architectural and Engineering (A&E) Services for State and Federal Funded Transportation Projects.
5. Adopt a Resolution approving the City of Livingston FY 19/20 List of Eligible Projects for Funding from the Road Maintenance and Rehabilitation Account (RMRA) created by Senate Bill (SB) 1 Road Repair and Accountability Act of 2017, and Authorizing the City Manager to file with the California Transportation Commission the Project List and Annual Expenditure Report for FY 19/20 RMRA Funding.
6. City Council to Provide Staff Direction for Appointment of the Second Alternate to the Planning Commission.

## **ADJOURNMENT**

## STAFF REPORT

**AGENDA ITEM:** (Continued) RESOLUTION APPROVING ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN CITY OF LIVINGSTON AND FOSTER POULTRY FARMS.

**MEETING DATE:** April 16, 2019

**PREPARED BY:** Jose Antonio Ramirez, City Manager

**REVIEWED BY:** Jose Antonio Ramirez, City Manager

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### **RECOMMENDATION:**

City Council adopt a resolution approving an Economic Development Incentive Agreement between the City and Foster Poultry Farms (Foster Farms) whereby the City will pay specified development fees in an amount not to exceed \$553,773.67, in return for Foster Farms remaining, and expanding its facilities, in the City

### **BACKGROUND:**

Successful economic development calls for creating an environment that supports and strengthens existing businesses (Retain & Expand), attracts new businesses (Recruit), and creates employment opportunities in the community while also enhancing city revenues. Actions by the City of Livingston aimed at enhancing the business climate and establishing Livingston as a great place to do business, should include:

- Ensure an effective and consistent development permitting process that also integrates innovation and technology to improve efficiency.
- Encourage activities that attract both residents and visitors from surrounding communities to live, work, shop and visit Livingston.
- Create commercial districts within the community that provide quality shopping, dining, and entertainment possibilities.
- Support community investment (Retain) that create employment opportunities and enhances city revenues.
- Strengthen (Retain) and diversify (Expand) the city's sales tax base while preserving Livingston's unique culture and superior quality of life.

The City has taken a very proactive approach as it relates to economic development and it involves a multi-prong approach. It is one of the reasons why the city developed a special fund called the economic opportunity fund. The City needs to be positioned in such a way as to be able to respond to specific actions and needs that surface in the economic development realm.

The City has a draft Economic Development Action Plan (EDAP) which embodies the collective efforts and insight of the City Council, stakeholders and staff to create opportunities to grow the City's tax base by retaining and creating job opportunities in the City through strategic planning and partnerships.

The City recognizes that a strong economy, powered by an engaged civic-minded public & private sector, will generate the resources and participative climate necessary to stimulate our community.

## PROJECT OVERVIEW

Livingston's future and identity is intertwined with that of Foster Farms and our unique relationship makes for a strong bond around community/family values and economic vitality.

Foster Farms is located in the City and employs approximately 2,000 people. Foster Farms recently decided to expand its operations and has considered relocating outside the City and State. The loss of Foster Farms as a local employer and business would have a significant negative impact on the City and its residents, while the expansion of Foster Farms within the City would increase employment opportunities and provide a valuable contribution to the economic prosperity of the City.

The proposed Economic Development Incentive Agreement will provide for the expansion of Foster Farms at its location in the City of Livingston and, therefore, retain and expand local employment opportunities. Pursuant to the proposed Agreement, Foster Farms would construct an expansion and remodel at its facilities located at 843, Davis Street, Livingston, CA, which, after the expansion will total 298,024 square feet of building occupancies (the Project). The City will provide Foster Farms with an incentive in the form of the payment by the City of certain fees which are required to be paid as a condition of the Project. Those fees consist of"

4 <sup>th</sup> Plan Check	\$250
Building	\$96,958.75
Mechanical	\$7,264.89
Plumbing	\$8,072.100
Electrical	\$8,072.10
CBSC	\$1,200.00
S.M.I.	\$8,400.00
Municipal Facilities	\$60,540.75
Fire Mitigation	\$16,144.20
Police Mitigation	\$22,601.88
General Plan Update	\$150,000.00
Site Plan Review	\$75.00
Winton Parkway Road Expansion	\$21,118.00
Winton Parkway/99 Improvements	\$123,970.00
Main Street Roundabout	<u>\$29,106.00</u>
	\$553,773.67

If Foster Farms were to cease substantially all of its operations in the City within three years of the date a certificate of occupancy was first issued for the Project, Foster Farms would be required to repay the fees to the City, less the amount of \$184,591.20 for each full year that it continued operations after that date.

It is anticipated that the Project will result in the retention of 2,039 jobs and the creation of 7 net new jobs. The incentive package includes the participation of the following:

- The Governor's Office of Business and Economic Development
- Office of Assemblyman Adam Gray
- The Merced County Board of Supervisors
- The Merced County Department of Community and Economic Development
- Worknet Merced County
- Merced Irrigation District

The Project is also expected to result in an estimated/projected tax revenue (increased property taxes) as follows: \$55,860.00

**FISCAL IMPACT:**

The current available balance in the Economic Opportunity Fund is approximately \$294,000.00. This balance plus future inflows into the Fund will be used to cover fees contained in the agreement.

**ATTACHMENTS:**

1. Resolution Approving Economic Development Incentive Agreement with Foster Farms
2. Economic Incentive Agreement Between City of Livingston and Foster Poultry Farms
3. California Competes Tax Credit Allocation Agreement.
4. Merced County February 7, 2019 Press Release: Foster Farms Announces Multi-Million Dollar Expansion of Livingston Plant.

3203304.1

**RESOLUTION NO. 2019-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LIVINGSTON APPROVING ECONOMIC INCENTIVE AGREEMENT BETWEEN  
CITY OF LIVINGSTON AND FOSTER POULTRY FARMS**

**WHEREAS**, the City Council has established an Economic Opportunity Fund for the purpose of improving the economic well-being and quality of life for the community by creating and/or retaining jobs and supporting or growing incomes and the tax base; and

**WHEREAS**, Foster Poultry Farms (Foster Farms) is currently located within the City and employs approximately 2,000 people; and

**WHEREAS**, Foster Farms is preparing to expand its operations and has considered relocation outside the City and the State of California; and

**WHEREAS**, the loss of Foster Farms as a local employer would have a significant, negative economic impact on the City and its residents and the retention and expansion of Foster Farms within the City will increase local employment opportunities and contribute significantly to the economic prosperity of the City; and

**WHEREAS**, the City Council has determined that the use of Economic Opportunity Fund to provide an incentive to Foster Farms to remain and expand its operation in the City will further the purposes of that Fund through the retention and creation of jobs in the community.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Livingston as follows:

1. The City Council hereby approves the granting of an economic incentive to Foster Farms in an amount not to exceed \$553,773.67, to be used to pay certain fees required as a condition of the expansion and remodel of the Foster Farms facility currently located in the City, and which requires Foster Farms to repay the incentive if it ceases operations in the City within three years of a certificate of occupancy being issued for that expansion and remodel, less one third of the total incentive amount for each full year in which operations did continue during that three year period.
2. The City Council authorizes the City Manager to execute an Economic Incentive Agreement with Foster Farms to provide the above incentive in a form approved by the City Attorney.

Passed and adopted this 16<sup>nd</sup> day of April, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Gurpal Samra, Mayor  
of the City of Livingston

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a regular meeting of the City Council of the City of Livingston this 16<sup>nd</sup> day of April, 2019.

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Monica Cisneros, Deputy City Clerk  
of the City of Livingston

3203389.1



**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
BETWEEN CITY OF LIVINGSTON AND FOSTER POULTRY FARMS**

This Economic Development Incentive Agreement is made by and between the City of Livingston, a California municipal corporation (“City”), and Foster Poultry Farms, Inc., a \_\_\_\_\_ corporation (“Foster Farms”) as of \_\_\_\_\_, 2019.

**Recitals**

Whereas, Foster Farms is currently located within the City and employs approximately 2,000 people; and

Whereas, Foster Farms is preparing to expand its operations and has considered relocation outside the City and the State of California; and

Whereas, the loss of Foster Farms as a local employer would have a significant, negative economic impact on the City and its residents; and

Whereas, the retention and expansion of Foster Farms within the City will increase local employment opportunities and contribute significantly to the economic prosperity of the City; and

Whereas, the City Council has established an Economic Opportunity Fund for the purpose of improving the economic well-being and quality of life for the community by creating and/or retaining jobs and supporting or growing incomes and the tax base; and

Whereas, the City Council has determined that the use of that fund to provide an incentive to Foster Farms to remain and expand its operation in the City will further the purposes of that Fund through the retention and creation of jobs in the community.

Now Therefore, the Parties agree as follows:

1. Economic Development Incentive. Subject to the terms set forth in this Agreement, the City will provide Foster Farms with an economic development incentive to remain and expand its operations in, the City (“Incentive”). The Incentive shall be in an amount not to exceed \$553,773.67 and shall be provided as set forth below.
2. Project. The term “Project,” as used in this Agreement means an addition to and remodel of an industrial/commercial facility located at 843 Davis Street, Livingston, California, and which, after the expansion, will total 298,024 square feet of building occupancies.
3. Fee Deferral and Payment. The form of the Incentive shall be the payment by the City from City’s Economic Opportunity Fund of certain fees which are required to be paid as a condition of Project construction (“Fees”). The Fees which will be paid by the City pursuant to this Agreement are the following:

4 <sup>th</sup> Plan Check	\$250
Building	\$96,958.75
Mechanical	\$7,264.89
Plumbing	\$8,072.10
Electrical	\$8,072.10
CBSC	\$1,200.00
S.M.I.	\$8,400.00
Municipal Facilities	\$60,540.75
Fire Mitigation	\$16,144.20
Police Mitigation	\$22,601.88
General Plan Update	\$150,000.00
Site Plan Review	\$75.00
Winton Parkway Road Expansion	\$21,118.00
Winton Parkway/99 Improvements	\$123,970.00
Main Street Roundabout	\$29,106.00

4. Term. The Term of this Agreement shall commence on the date first set forth above and shall expire on the third anniversary date of the date on which a certificate of occupancy is first issued for the Project.

5. Location of Foster Farms in the City. Foster Farms acknowledges that the Incentive provided by this Agreement is in consideration of Foster Farms' agreement to maintain its business operations in the City. Therefore, if Foster Farms ceases operations in the City during the term of this Agreement, Foster Farms shall be responsible for the payment of the total amount of the Fees less the amount of 184,591.20 for each full year that its operations continued after the date on which a certificate of occupancy was first issued for the Project .

6. Prevailing Wages. The Parties agree that the Project shall be wholly undertaken by Foster Farms rather than by City and that the City shall award no contracts for or pertaining to the construction of the Project. Foster Farms is fully aware of the provisions of California Labor Code Section 1720 et seq., regarding payment of prevailing wages in connection with public works and has consulted with its own legal counsel regarding such wage issues and to determine whether receipt of the incentive granted herein will result in the requirement that prevailing wages be paid for any work undertaken by Foster Farms for the Project. In the event prevailing wages are required, it shall be Foster Farms' sole responsibility to comply with all prevailing wage requirements. Foster Farms' execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it. Neither the City nor any of its employees, agents, or representatives have rendered opinions to Foster Farms respecting the applicability of Labor Code Section 1720 et seq., to the Project, and Foster Farms has not relied on any such representation in entering into this Agreement. In the event any claim of any kind or nature based on Labor Code Section 1720 et seq. (including Section 1781) is brought or made against the City in connection with this Agreement or the Project, Foster Farms shall be obligated to defend and indemnify the City with respect to such claim in accordance with Section 10, below.

7. Documentation of Construction Costs. Foster Farms shall provide City with documentation evidencing the total construction costs for the Project within 30 days of the completion of the Project. If 1.75% of the total amount of construction costs is less than the Incentive provided by City herein, Foster Farms will reimburse City the amount necessary to bring the total amount of the Incentive to an amount equal to no more than 1.75% of the total construction costs. Such reimbursement shall be due and payable within 60 days of completion of the Project.

8. Use Tax. Foster Farms agrees to file, or cause to be filed, such permits or other documentation for qualifying construction contracts and purchases in order to have the use tax paid pursuant to those contracts and purchases allocated to the City.

9. Point of Sale for Fuel Sales. Foster Farms agrees to future discussions with City, if City so requests, regarding the designation of the City as a point of sale for the sale of fuel purchased by Foster Farms and other point of sale opportunities.

10. Indemnity. Foster Farms agrees to protect, defend (with legal counsel acceptable to the City), indemnify and hold harmless the City, its council members, officers, agents, independent contractors and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries and liabilities of every kind arising out of the execution and performance of this Agreement including, but not limited to, whether the benefits conferred by the City under this Agreement create a public work for prevailing wage purposes thereby requiring the payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including but not limited to the City's authority to provide the Incentive provided for herein. This Section shall apply regardless of whether or not the claim, damage, penalty, loss, cost, expense, injury and/or liability complained of arises out of or relates in any way to any negligence on the part of the City. The City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by the Foster Farms and/or Foster Farms' contractors, subcontractors, agents and/or employees. In the event that the City tenders the defense and indemnification of a claim contemplated by this Agreement to the Foster Farms and/or to Foster Farms' contractors, subcontractors, agents and/or employees, the City shall be entitled to actively supervise the claim and/or the defense of the same, shall be authorized to select and retain its own separate, independent counsel, at Foster Farms and/or Foster Farms' contractors, subcontractors, agents and/or employees' expense, as necessary, which decision shall be made solely and exclusively by the City, and the City must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.

11. Tax Consequences. Foster Farms is solely responsible for any tax consequences and responsibility from receiving the Incentive provided for herein. Foster Farms has consulted with its own legal counsel regarding such tax consequences. Foster Farms' execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it. Neither the City nor any of its employees, agents, or representatives have rendered opinions to Foster Farms respecting any tax consequences which may result from Foster Farms receiving the Incentive and

Foster Farms has not relied on any such representation in entering into this Agreement. Foster Farms acknowledges that City may issue an IRS 1099 Form reflecting the payment of the Incentive based on independent legal advice obtained from City's Counsel. Foster Farms will submit a W9 prior to receipt of the Incentive Payment.

12. Notices. All notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at the addresses set forth below, or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section.

City: Jose Antonio Ramirez  
City Manager  
City of Livingston  
1416 "C" Street  
Livingston, Ca 95334

Foster Farms:

13. Authority to Execute. Each individual signing this Agreement represents and warrants that he or she has the full authority to execute the same on behalf of the Party on whose behalf he or she so signs.

14. Entire Agreement. It is expressly understood and agreed that this Agreement contains the entire Agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties whether written or oral.

15. Attorneys Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

16. Governing Law. This Agreement shall be governed by the law of the state of California.

17. Amendments: The Parties may amend this Agreement only by a writing signed by all the Parties.

18. Assignment. This Agreement may not be assigned by Foster Farms to any other party without the written consent of City.

City:

Foster Farms:

The City of Livingston,  
a California Municipal Corporation

By: \_\_\_\_\_  
Name: Jose Antonio Ramirez  
Title: City Manager

By: \_\_\_\_\_  
Name:

APPROVED AS TO FORM

\_\_\_\_\_  
Jose M. Sanchez, City Attorney

3158137.1



**GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT**  
STATE OF CALIFORNIA • OFFICE OF GOVERNOR EDMUND G. BROWN JR.

**CALIFORNIA COMPETES TAX CREDIT ALLOCATION AGREEMENT**

This California Competes Tax Credit Allocation Agreement ("Agreement") is by and between Foster Poultry Farms, a California corporation ("Taxpayer"), and the California Governor's Office of Business and Economic Development ("GO-Biz"), hereinafter jointly referred to as the "Parties" or individually as the "Party." All capitalized terms not defined in this Agreement shall have the same meaning as in California Revenue and Taxation Code ("RTC") sections 17059.2 and 23689, and California Code of Regulations, title 10, section 8000 et seq., as in effect on the Effective Date of this Agreement.

In consideration for the mutual covenants and promises in this Agreement, the Parties agree as follows:

- 1. Effective Date.** The effective date ("Effective Date") of this Agreement shall be the date that this Agreement is approved by the California Competes Tax Credit Committee ("Committee").
- 2. Total Credit Award.** GO-Biz, upon approval by the Committee and conditioned upon the requirements set forth in this Agreement, will award Taxpayer a California Competes Tax Credit ("CCTC") in the amount of three million two hundred thousand dollars (\$3,200,000.00) ("Credit"). Specifically, Taxpayer is receiving a CCTC against the "net tax" as defined in RTC section 17039, or the "tax" as defined in RTC section 23036, as applicable, pursuant to RTC section 17059.2 or 23689, as applicable.
- 3. Project/Milestones.** Taxpayer is a poultry processor. Taxpayer has certified in its application that absent award of the CCTC, the project may occur in another state and may terminate all or a portion of its employees in California or relocate all or a portion of its employees in California to another state. Taxpayer has further certified that at least 75% of its net increase of full-time employees will work at least 75% of the time in Livingston (Merced County). Livingston was an Area of High Unemployment at the time Taxpayer submitted its application. In consideration for the Credit, Taxpayer agrees to hire full-time employees and invest in a facility as part of its expansion in Livingston, California (collectively, the "Project"). Further, Taxpayer agrees to satisfy the milestones as described in Exhibit A ("Milestones"). In addition, Taxpayer must maintain the three (3) employee based Milestones ("Total California Full-Time Employees," "Minimum Annual Wage of California Full-Time Employees Hired," and "Cumulative Average Annual Wage of California Full-Time Employees Hired") for a minimum of three (3) taxable years thereafter. In the event Taxpayer employs more than the number of full-time employees, determined on an annual full-time equivalent basis, than required in Exhibit A, for purposes of satisfying the "Minimum Annual Wage of California Full-time Employees Hired" and the "Cumulative Average Annual Wage of California Full-time Employees Hired," Taxpayer may use the wages of any of the full-time employees hired within the required time period. For purposes of calculating the "Minimum Annual Wage of California Full-time Employees Hired" and the "Cumulative Average Annual Wage of California Full-time Employees Hired," the wage of any full-time employee that is not employed by Taxpayer for the entire taxable year shall be annualized. In addition, the wage of any full-time employee hired to fill a vacated position in which a full-time employee was employed during Taxpayer's Base Year shall be disregarded.
- 4. Credit.** The Credit awarded in section 2 of this Agreement will be allocated to Taxpayer by taxable year as set forth in Exhibit A, provided that Taxpayer achieves the Milestones associated with the applicable taxable year, which includes all investments agreed to in the prior years, as set forth in Exhibit A. Taxpayer acknowledges and agrees that, an allocated portion of the Credit is earned by Taxpayer in the taxable year when the Milestones

associated with that allocated portion of the Credit are achieved and to avoid recapture, Taxpayer must maintain the three (3) employee based Milestones for three (3) subsequent taxable years. All required Milestones identified on a taxable year basis in Exhibit A, must be met in order to earn the allocated portion of the Credit. In the event Taxpayer satisfies the taxable year Milestones in an earlier taxable year than described in Exhibit A (no earlier than taxable year 2018), upon written approval from GO-Biz, Taxpayer may claim the allocated portion of the Credit in the earlier taxable year when the Milestones are achieved. If Taxpayer satisfied certain taxable year Milestones in an earlier taxable year than described in Exhibit A (no earlier than taxable year 2018), and received written approval from GO-Biz to claim the Credit in the earlier taxable year, then Taxpayer need only maintain the three (3) employee based Milestones for three (3) subsequent taxable years to avoid recapture as further described in Section 10. In the event that Taxpayer fails to satisfy each Milestone identified in Exhibit A in the taxable year associated with those Milestones including all Investments agreed to in the prior years, no portion of the Credit will be considered earned in that taxable year, but GO-Biz will not unreasonably deny the Credit to Taxpayer for immaterial variances from the Milestones. For purposes of determining whether a variance from the "Net Increase of Full-Time Employees Compared to the Base Year" Milestones is immaterial, GO-Biz shall consider both the number of base year employees Taxpayer retained during the taxable year and any net increase of full-time employees for that taxable year. In determining whether Taxpayer satisfies each Investment Milestone, Taxpayer may include the aggregate amount of Investment made in prior taxable years (beginning with taxable year 2018) that was in excess of the cumulative Investment Milestones for such taxable years. Any allocated portion of the Credit associated with a specific taxable year in Exhibit A, which is not earned in that year due to failure to achieve the Milestones associated with that taxable year will be earned in the taxable year in which the Milestones are met, but in no event later than the last taxable year identified in Exhibit A.

- 5. Taxpayer – Representations and Warranties.** Taxpayer represents and warrants that:
- (a) Taxpayer is validly existing and in good standing under the laws of the State of California, has, or will have the requisite power, authority, licenses, permits, and the like necessary to carry on its business as it is now being conducted and as contemplated in this Agreement, and will, at all times, lawfully conduct its business in compliance with all applicable federal, state, and local laws, regulations, and rules.
  - (b) Taxpayer is not a party to any agreement, written or oral, creating obligations that would prevent Taxpayer from entering into this Agreement or satisfying the terms herein.
  - (c) All the information in the Application and all materials submitted to GO-Biz in Phase II, including, but not limited to, the Statement Regarding California State Tax Liabilities is true and accurate.
  - (d) Taxpayer authorizes the California Franchise Tax Board ("FTB") and GO-Biz to do all of the following:
    - i. To provide and receive information and documents as requested for the purpose of proper determination and administration of the Credit allocated to Taxpayer, including determination of the amount of any recapture of the Credit.
    - ii. To discuss relevant issues pertaining to proper determination and administration of the Credit allocated to Taxpayer, including determination of the amount of any recapture of the Credit.
  - (e) Taxpayer has read the applicable RTC sections 17059.2 and 23689 and California Code of Regulations, title 10, section 8000 et seq. and acknowledges and agrees that such sections are hereby incorporated by reference into this Agreement.
  - (f) None of the Investment identified in Exhibit A will be purchased or leased from a person or entity that is treated as related to Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or from any member of a "controlled group of corporations" (as defined in RTC section 23626) in which Taxpayer is a member.
  - (g) None of the Investment identified in Exhibit A will be due to Taxpayer's acquisition of, or merger with, another business or due to a conversion from a purchase to a lease or vice versa of real or personal property Taxpayer already controls or has acquired.
  - (h) None of the net increase of full-time employees identified in Exhibit A will be due to Taxpayer's acquisition of, or merger with, another business unless the net increase of California full-time employees attributable to that business are above the number of California full-time employees employed by the business at the time of acquisition or merger. In addition, if Taxpayer acquires or merges with a business located outside of

California, and subsequently moves any or all of acquired or merged with business's employees to California on a full-time basis, such employees shall count towards the net increase of full-time employees identified in Exhibit A, including existing employees at the time of acquisition or merger and any subsequently hired full-time employees.

- (i) None of the net increase of full-time employees identified in Exhibit A will be due to a transfer of employees from a person or entity that is treated as related to Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or from any member of a "controlled group of corporations" (as defined in RTC section 23626) in which Taxpayer is a member, unless the transfer is of an employee employed outside of California by a related person or entity and the employee is transferred to California on a full-time basis.
- (j) None of the net increase of full-time employees identified in Exhibit A will be due to employment of any employees that were previously employed by a person or entity that is treated as related to Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or by any member of a "controlled group of corporations" (as defined in RTC section 23626) in which Taxpayer is a member, unless the employment is of an employee that was employed outside of California by a related person or entity.

**6. Reporting Requirements.** On or before the first day of the fourth month after the close of each taxable year as referenced in Exhibit A, and prior to claiming the Credit on its tax return, Taxpayer shall complete a worksheet provided by GO-Biz to verify successful achievement of the applicable Milestones for the prior taxable year. If Taxpayer successfully achieved the Milestones for the prior taxable year, Taxpayer shall retain the worksheet pursuant to section 16 and submit the worksheet to GO-Biz or the FTB upon request. If Taxpayer did not achieve the applicable Milestones for the prior taxable year, Taxpayer shall submit to GO-Biz the worksheet and a written description of any issues or challenges in achieving the Milestones and any corrective actions being taken or anticipated to be taken in subsequent years. Such submission shall be due to GO-Biz by the first day of the fourth month after the close of each taxable year as referenced in Exhibit A.

**7. Franchise Tax Board Review.**

- (a) In addition to the reporting requirements in section 6, Taxpayer agrees to comply with the FTB's review of the books and records for purposes of determining if Taxpayer has complied with the requirements of this Agreement.
- (b) For any business other than a Small Business, Taxpayer acknowledges that the FTB shall review the books and records of all taxpayers allocated a Credit pursuant to this Agreement to ensure compliance with the terms and conditions of this Agreement and agrees to cooperate with the FTB in such a review. In the case of a taxpayer that is a Small Business, Taxpayer acknowledges that a review of the books and records of a taxpayer shall be made when, in the sole discretion of the FTB, a review of those books and records is appropriate and agrees to cooperate with the FTB in such a review. If the FTB exercises its discretion to review the books and records of a Small Business taxpayer, the review will be conducted to ensure compliance with this Agreement. The guidelines and procedures for these reviews are outlined in the FTB's Notice #2014-2 dated November 7, 2014.
- (c) These reviews will not constitute an audit of the tax return under Part 10.2 (commencing with section 18401) of the RTC and the regulations thereunder, and will not preclude the FTB from auditing any issue in any taxable year, including a taxable year included in the term of this Agreement.
- (d) If during the review of the books and records, the FTB determines there is a potential material breach of this Agreement by Taxpayer, and notwithstanding RTC section 19542, the FTB shall notify GO-Biz and provide, in writing, detailed information regarding the basis for that determination.

**8. Assignment/Transfer.** The Credit (or a portion thereof as earned) under this Agreement may be assigned to an "Affiliated Corporation" in accordance with RTC section 23663. As stated in RTC section 23689(i)(1), this Agreement shall not restrict, broaden, or alter the ability of Taxpayer to assign the Credit in accordance with RTC section 23663. In order to transfer this Agreement as a result of a sale or merger, prior written consent of GO-Biz must be obtained or the transfer will be void. Such transfer shall be permitted if GO-Biz determines that the transfer would further the purposes of the CCTC program and benefit California. Prior to GO-Biz consenting to the transfer, the new entity must disclose to GO-Biz the number of California full-time employees it employed at



the time of acquisition or merger and any other information GO-Biz requests that applicants for a CCTC provide pursuant to a CCTC application.

- 9. Material Breach.** A material breach for purposes of this Agreement shall include, but not be limited to:
- (a) Failure to timely furnish the documents described in Section 6 or the information requested by GO-Biz or the FTB relating to Taxpayer's compliance with this Agreement.
  - (b) Material misstatements in any information provided to GO-Biz as part of the application process and/or after this Agreement is signed.
  - (c) Failure to materially satisfy applicable Milestones as set forth in Exhibit A, materiality of which shall be determined by GO-Biz, by the end of the last taxable year identified in Exhibit A.
  - (d) Failure to maintain any of the three (3) employee based Milestones for a minimum of three (3) subsequent taxable years after achieving the Milestone(s).
- 10. Recapture.** In the event of a material breach of the requirements of this Agreement, GO-Biz will notify Taxpayer in writing of the breach and provide Taxpayer with the opportunity to cure the breach within thirty (30) calendar days or such longer period as mutually agreed to in writing between the Parties. If Taxpayer fails to cure the breach within the prescribed timeframe, GO-Biz will notify Taxpayer of the failure, the amount of the Allocation that it will recommend to the Committee to be recaptured, and may recommend termination of this Agreement to the Committee. If the material breach is solely the failure of Taxpayer to satisfy Milestones with respect to an Allocation for a particular taxable year, then the recapture will be limited to that particular taxable year's Allocation and in no event shall a recapture under this Agreement include any Allocation or Allocations that Taxpayer had previously earned provided that Taxpayer satisfies its obligation to maintain the three (3) employee based Milestones for three (3) subsequent taxable years. Upon receipt of recommendations from GO-Biz, the Committee will determine whether to accept or reject GO-Biz's recommendation of recapture, the amount thereof, and the termination of this Agreement, based on Taxpayer's failure to fulfill the terms and conditions of this Agreement. Upon approval of the Committee to recapture some or all of the Allocation awarded for failure of Taxpayer to fulfill the terms of this Agreement, GO-Biz will notify the FTB in writing as required under the applicable statutes and regulations. Any amount of additional tax resulting from that recapture shall be assessed by the FTB in the same manner as provided by RTC section 19051. The additional tax resulting from a recapture will be assessed in the taxable year of Taxpayer in which the Committee's recapture determination occurred.
- 11. Public Records.** Taxpayer acknowledges that GO-Biz is subject to the California Public Records Act (PRA) (Gov. Code, § 6250 et seq.). This Agreement and materials submitted by Taxpayer to GO-Biz may be subject to a PRA request. In such an event, GO-Biz will notify Taxpayer, as soon as practicable that a PRA request for Taxpayer's information has been received, but not less than five (5) business days prior to the release of the requested information to allow Taxpayer to seek an injunction. GO-Biz will work in good faith with Taxpayer to protect the information to the extent an exemption is provided by law, including, but not limited to, notes, drafts, proprietary information, financial information, and trade secret information. GO-Biz will also apply the "balancing test" as provided for under Government Code section 6255, to the extent applicable. Notwithstanding the foregoing, GO-Biz agrees that any information provided to GO-Biz by the FTB, in connection with this Agreement will be treated as confidential tax information protected by Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the RTC, assuming that FTB can rely on such a section and shall not be disclosed to any party, other than personnel of GO-Biz or the Committee, without Taxpayer's prior written consent. Taxpayer acknowledges that this Agreement in whole or in part will be made available to the public at least ten (10) calendar days prior to the Committee hearing. Pursuant to RTC sections 17059.2 and 23689, in the event of approval by the Committee of this Agreement, Taxpayer acknowledges and agrees that GO-Biz will post on its website the following information:
- (a) The name of each taxpayer allocated a Credit;
  - (b) The estimated amount of the Investment by each taxpayer;
  - (c) The estimated number of jobs created or retained;
  - (d) The Credit allocated to each taxpayer; and,

(e) The portion of the Credit recaptured from each taxpayer, if applicable.

12. **Media Release.** Taxpayer may elect to issue a press release related to this Agreement, but any release shall be approved by GO-Biz in writing prior to such release. Such approval shall not be unreasonably withheld.
13. **Indemnification/Warranty and Disclaimer/Limitation of Liability.** Taxpayer shall defend, indemnify, and hold GO-Biz and the FTB, its agents or assigns, harmless from and against all claims, damages, and liabilities (including reasonable attorneys' fees) arising from this Agreement due to Taxpayer's breach of this Agreement, or the result of Taxpayer's negligence or willful misconduct. EXCEPT AS PROVIDED FOR UNDER SECTION 14, UNDER NO CIRCUMSTANCES WILL THE STATE OF CALIFORNIA, GO-BIZ, ITS AGENTS OR EMPLOYEES, THE COMMITTEE MEMBERS, THE FTB OR ANYONE ELSE INVOLVED IN THIS AGREEMENT BE LIABLE TO TAXPAYER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT ARISE FROM THIS AGREEMENT.
14. **Limitation of Remedy.** The only remedy that Taxpayer shall have in the event of breach or alleged breach by GO-Biz, shall be the normal administrative and judicial rights accorded to a taxpayer in the state of California who has been denied a tax credit claimed on its return.
15. **Integration.** This Agreement (including the exhibits hereto and any written amendments hereof executed by the Parties) constitutes the entire Agreement between the Parties related to this Credit and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to this Credit described herein.
16. **Record Retention.** Taxpayer shall retain a copy of this Agreement, any exhibits related to this Agreement and any other documents that support the achievement of the milestones in connection with Taxpayer's Application and Credit for a period of no less than four (4) years from the end of the last taxable year identified in Exhibit A.
17. **Notice.** Within thirty (30) days of the effective date of this Agreement, Taxpayer shall notify GO-Biz, in writing, of the name, address, phone number, and email of its contact person for future communication relating to this Agreement. In addition, Taxpayer agrees to immediately inform GO-Biz of any changes to the name, address, phone number, and email of its contact person. Any notices required or permitted to be given under this Agreement to GO-Biz shall be emailed to [CalCompetes@gobiz.ca.gov](mailto:CalCompetes@gobiz.ca.gov) or mailed to:  
  
GO-Biz  
1325 J Street, 18<sup>th</sup> Floor  
Sacramento, California 95814  
Attention: Deputy Director, California Competes Tax Credit Program
18. **Modification.** This Agreement may be amended or modified only in writing signed by all parties. Any modifications to this Agreement that do not alter the amount of the Investment, the net increase in full-time employees, or the minimum and average wages will not require Committee approval. If Committee approval is necessary, the modification of this Agreement will not be valid until the amendment is approved by the Committee.
19. **Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any cure period allowed in this Agreement.
20. **Ambiguities.** Each Party has had the opportunity to seek the advice of counsel or has refused to seek the advice of counsel. Each Party and its counsel, if appropriate, have participated fully in the negotiation, drafting, review, and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

- 21. Necessary Acts, Further Assurances.** The Parties shall at their own cost and expense execute and deliver any further documents and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.
- 22. Sections and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 23. Consultants' and Attorneys' Fees.** Each of the Parties shall be responsible for, and pay in their entirety, its respective fees, costs, and expenses in connection with the subject matter of this Agreement and any audit that may be conducted as a result of the transaction contemplated herein. Notwithstanding RTC section 19717, under no circumstances is any Party to this Agreement entitled to attorneys' fees with regard to litigation resulting from this Agreement.
- 24. Representation on Authority of Parties/Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.
- 25. Severability.** If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
- 26. Approval.** This Agreement shall not be binding until it has been approved by the Committee during a duly noticed Committee meeting.
- 27. Execution.** This Agreement may be executed in parts, by fax, or other similar electronic means.
- 28. Governing Law and Consent to Jurisdiction.** This Agreement will be governed, construed, and enforced according to the laws of the State of California without regard to its conflict of laws rules. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of any state court located within Sacramento County, State of California in connection with any matter arising out of this Agreement or the transactions contemplated under this Agreement.

*Remainder of the page is intentionally left blank. Signature page immediately follows.*

**Governor's Office of Business and Economic Development**

By:   
Name: Cheryl Akin

Title: Deputy Director

Date: October 23, 2018 | 13:16 PDT

**TAXPAYER**  
**Foster Poultry Farms**

By:   
Name: Doug Kooren

Title: CFO

Date: October 23, 2018 | 08:07 PDT

## Exhibit A Milestones

**Taxpayer: Foster Poultry Farms**

	2017 Tax Year (Base)	2018 Tax Year	2019 Tax Year	2020 Tax Year	2021 Tax Year	2022 Tax Year	Total
<b>Total California Full-Time Employees<sup>1</sup></b>	2,039	2,042	2,043	2,044	2,045	2,046	
<b>Net Increase of Full-Time Employees Compared to the Base Year</b>		3	4	5	6	7	
<b>Minimum Annual Wage of California Full-Time Employees Hired</b>		\$33,000	\$33,000	\$33,000	\$33,000	\$33,000	
<b>Cumulative Average Annual Wage of California Full-Time Employees Hired</b>		\$33,000	\$33,000	\$33,000	\$33,000	\$33,000	
<b>Investments</b>		\$0	\$16,875,000	\$16,875,000	\$16,875,000	\$16,875,000	\$67,500,000
<b>Tax Credit Allocation</b>		\$640,000	\$640,000	\$640,000	\$640,000	\$640,000	\$3,200,000

<sup>1</sup> Determined on an annual full-time equivalent basis



**James L. Brown**  
County Executive Officer

2222 "M" Street  
Merced, CA 95340  
(209) 385-7636  
(209) 385-7673 Fax  
[www.countyofmerced.com](http://www.countyofmerced.com)

Equal Opportunity Employer

**FOR IMMEDIATE RELEASE**

CONTACT: Mike North 209.726.2744

February 7, 2019

**FOSTER FARMS ANNOUNCES MULTI-MILLION DOLLAR EXPANSION OF LIVINGSTON PLANT**

MERCED – Today, Foster Farms President and CEO Laura Flanagan announced a multi-million dollar capital investment project that will support an expansion and upgrade of the company's poultry processing facility in Livingston.

The multi-million dollar investment will expand the facility's product lines, which currently provide 2,032 jobs in Merced County. Additional jobs will be added as part of the expansion.

Construction for the Foster Farms expansion project has already begun, with completion scheduled for September 2019. The expansion has been made possible by a \$6.5 million economic incentive package, developed by state and local government leaders working in concert with Foster Farms executive staff.

The package includes resources from California Competes, the California Energy Commission Food Production Investment Program, the Merced County Expanded Subsidized Employment Program, the Merced County On-the-Job Training Program, as well as incentives from the City of Livingston.

The following organizations played major roles in developing the incentive package:

- The Office of Assemblyman Adam Gray
- The Governor's Office of Economic Development
- The Merced County Board of Supervisors
- The Merced County Department of Community and Economic Development
- Worknet Merced County
- The City of Livingston

"This is a perfect example of government working with local business to help keep jobs in the Valley and grow our economic base," said Chairman Lloyd Pareira of the Merced County Board of Supervisors. "Not only do we tell people that we're business friendly—we show it."

"The expansion of a local company that employs more than 2,000 people is of particular importance in a community where every job and source of revenue counts," said Vice-Chairman Rodrigo Espinoza of the Merced County Board of Supervisors, who also represents Livingston as the District 1 Supervisor. "I would like to personally thank the Merced County Community and Economic Development team for spearheading this and working so hard to create a competitive incentive package."

"This investment by Foster Farms is a major win for the entire Merced County community," said Mark Hendrickson, Director of Community and Economic Development for Merced County. "I'm quite proud of the facilitative role my organization played and wish to congratulate each of our partners who worked at the speed

of business to support their effort.”

“The City of Livingston prides itself for having such a dynamic and community-oriented company and we are pleased to see Foster Farms continue to grow and prosper here,” said Gural Samra, Mayor of the City of Livingston. “We look forward to continuing our close and rewarding partnership for many more years.”

“Foster Farms is expanding its Livingston operation to allow for future growth and diversification of our customer mix on the West Coast,” Flanagan said. “Foster Farms first opened a plant in the City of Livingston in 1959. Since then, we have been very pleased with the quality of the workforce, the access the location provides us to California markets, and the partnership of state and local officials in helping us to succeed in California.”

### About Foster Farms

Since 1939, West Coast families have depended on Foster Farms for premium quality chicken and turkey products. Family-owned and operated, the company continues its legacy of excellence and commitment to quality established by its founders, Max and Verda Foster. Foster Farms specializes in fresh, all-natural chicken and turkey products. Based in California’s Central Valley, with ranches in the Pacific Northwest, the company’s fresh chicken and turkey are produced in or near each region served. Foster Farms also produces delicious pre-marinated, ready-to-cook and fully cooked products that meet the quality and convenience needs of today’s home cooks, retailers, warehouse clubs and foodservice customers. The company’s commitment to excellence, honesty, quality, service and people is a source of great pride, and, a longtime family tradition. For more information, visit [www.fosterfarms.com](http://www.fosterfarms.com).

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For more information regarding Merced County, please visit our website at [www.countyofmerced.com](http://www.countyofmerced.com)

## STAFF REPORT

**AGENDA ITEM:** CHANGES TO THE SPECIAL TAX RATES FOR COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES)

**MEETING DATE:** April 16, 2019

**PREPARED BY:** Willdan Financial Services

**REVIEWED BY:** Jose Antonio Ramirez, City Manager

---

### **RECOMMENDATION:**

Staff recommends that the City Council declare the results of the ballot election for Community Facilities District No. 2017-1 (Public Services) (the “CFD”).

Once the results of the ballot election have been declared, staff recommends that the City Council adopt the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON DECLARING THE RESULTS OF A SPECIAL ELECTION IN CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES) AND DIRECTING THE RECORDING OF A NOTICE OF SPECIAL TAX LIEN

Once the resolution has been adopted, staff recommends that the City Council have the first reading of the following ordinance:

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO 2017-1 (PUBLIC SERVICES) AUTHORIZING THE LEVY OF A SPECIAL TAX THEREIN

### **BACKGROUND:**

On October 3, 2017, the City Council adopted a resolution declaring its intention to establish a CFD and authorizing the imposition of a special tax to finance the impact of new development on Police Protection, Fire Suppression, and Paramedic Services, Park and Landscaping Services, and Street and Drainage Maintenance Services. In addition, the City Council set November 21, 2017, or as soon thereafter as practical, as the public hearing date to receive public testimony and protests over the formation of the proposed CFD. Due to the complexity of the proposed CFD, City staff postponed the public hearing to April 17, 2018, which is within six months of the originally proposed date, as provided in the Act. After receiving public testimony, the City Council adopted a Resolution of Formation to establish CFD 2017-1.



After the April 17, 2018 public hearing on the formation of the CFD, city staff met to discuss and evaluate the comments offered by the property owner of the Livingston Community Health Center located at the southwest corner of B Street and Winton Parkway. The property owner requested that the CFD special tax rates be lowered considering most of the land area of the property was for surplus parking and the rates are based on land area, yielding a burdensome amount of special tax. City staff felt the argument had merit and recommends lowering the overall special tax rates of the CFD to help encourage business development in the City, while maintaining the special tax rates at levels that are reasonable and justifiable based on cost.

On November 20, 2018, the City Council adopted a resolution of consideration to make changes to the rate and method of apportionment of special tax to lower the special tax rates. The new proposed special tax rates are included in the Amended Rate and Method of Apportionment of Special Tax shown in Exhibit B of the Resolution of Intention to Make Changes included herein.

On January 15, 2019, the City Council held a public hearing and, after the public hearing, adopted resolutions to make changes to the rate and method of apportionment of special tax of the CFD and to submit the establishment of an appropriations limit and the levy of annual special taxes to qualified electors thereof.

**DISCUSSION:**

After submitting ballot materials to the property owners within the CFD, the city received one ballot back from property owner Livingston Community Health indicating a “yes” vote. Such ballot will be used in the tabulation of the ballot results of this special election. After declaring the election results, adopting the recommended resolution and having the first reading of the ordinance, city staff cause the recordation of the Notice of Special Tax Lien and shall schedule the second reading.

**FISCAL IMPACT:**

None to City; costs are borne by property owners within the proposed CFD.

**ATTACHMENTS:**

1. Resolution No. 2019- \_\_\_\_\_
2. Ordinance No. 2019- \_\_\_\_\_

**RESOLUTION NO. 2019-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON  
DECLARING THE RESULTS OF A SPECIAL ELECTION IN CITY OF  
LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC  
SERVICES) AND DIRECTING THE RECORDING OF A NOTICE OF SPECIAL  
TAX LIEN**

**WHEREAS**, in proceedings heretofore conducted by the City Council of the City of Livingston (the “City Council”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311, of the California Government Code (the “Act”), the City Council adopted Resolution No. 2019-03, on January 15, 2019, entitled “RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON CALLING A SPECIAL ELECTION AND SUBMITTING TO THE QUALIFIED ELECTORS OF CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES) PROPOSITIONS REGARDING THE ESTABLISHMENT OF AN APPROPRIATIONS LIMIT AND THE ANNUAL LEVY OF A SPECIAL TAX WITHIN THE COMMUNITY FACILITIES DISTRICT” (the “Resolution Calling Election”), calling for a special election (the “Special Election”) of the qualified electors within Community Facilities District No. 2017-1 (Public Services) (the “District”); and

**WHEREAS**, pursuant to the terms of the Resolution Calling Election, which are by this reference incorporated herein, the Special Election was held on April 16, 2019, and the City Clerk has on file a Certificate of the City Clerk as to the Results of the Canvass of the Election Returns (the “Certificate”), a copy of which is attached hereto as Exhibit A and by this reference incorporated herein; and

**WHEREAS**, this City Council has reviewed said Certificate and hereby approves it.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LIVINGSTON HEREBY RESOLVES AS FOLLOWS:**

1. Recitals. The above recitals are all true and correct.
2. Ballot Measure. The ballot measure (the “Ballot Measure”) presented to the qualified electors is set forth in Exhibit B attached hereto and by this reference incorporated herein.
3. Election Results. The results of the Special Election are as set forth in the Certificate on file with the City Clerk and attached hereto as Exhibit A. Pursuant to the Certificate, the Ballot Measure presented at the Special Election was approved by the qualified electors of the District.
4. Ballot Measure Authorized. This City Council, acting in its capacity as legislative body of the District, is hereby authorized to levy on the land within the District the special tax described in the Ballot Measure for the purposes described therein and to take the necessary steps to levy the special tax authorized by the Ballot Measure. The appropriations limit as specified in the Ballot Measure is hereby established.
5. Finding of Validity. It is hereby found that all prior proceeding and actions taken by this City Council with respect to the District were valid and in conformity with the Act.

Resolution No. 2019 - \_\_\_\_\_

April 16, 2019

Page 2

6. Notice of Special Tax Lien. The City Clerk is hereby directed to record in the office of the County Recorder of the County of Merced within fifteen days of the date hereof a notice of special tax lien with respect to the District in substantially the form required by California Streets and Highways Code Section 3114.5.

Passed and adopted this 16<sup>th</sup> day of April, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

\_\_\_\_\_  
Gurpal Samra, Mayor  
of the City of Livingston

ATTEST:

I, hereby certify that the foregoing Resolution was regularly introduced, passed, and adopted at a regular meeting of the City Council of the City of Livingston, this 16<sup>th</sup> day of April, 2019.

\_\_\_\_\_  
Antonio Silva, City Clerk  
of the City of Livingston

**EXHIBIT A**

**CITY OF LIVINGSTON  
COMMUNITY FACILITIES DISTRICT NO. 2017-1  
(PUBLIC SERVICES)**

**CERTIFICATE OF THE CITY CLERK AS TO THE  
RESULTS OF THE CANVASS OF THE ELECTION RETURNS**

I, Antonio Silva, City Clerk of the City of Livingston, hereby certify that I canvassed the returns of the Special Election in the City of Livingston Community Facilities District No. 2017-1 (Public Services) (the "District"), that the election was held in the Chambers of the City Council at 1416 C Street Livingston, California 95334 on April 16, 2019.

I further certify that the total number of ballots cast in said election and the total number of votes cast for and against the measure are full, true and correct:

<b>Community Facilities District No. 2017-1 (Public Services) Special Tax Election, April 16, 2019</b>	<b>Qualified Eligible Votes</b>	<b>Votes Cast</b>	<b>Yes</b>	<b>No</b>
Ballot Measure	14	13	13	0

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 16th day of April, 2019.

By: \_\_\_\_\_  
City Clerk  
City of Livingston

## **EXHIBIT B**

### **Ballot Measure:**

Shall special taxes with a rate and method of apportionment as set forth in Exhibit "B" to the resolution entitled "RESOLUTION OF INTENTION TO MAKE CHANGES TO THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX OF THE CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES) AND TO SUBMIT THE ESTABLISHMENT OF AN APPROPRIATES LIMIT AND THE LEVY OF SPECIAL TAXES TO THE QUALIFIED ELECTORS THEROF" (the "Resolution of Intention to Make Changes") be levied annually on taxable property within City of Livingston Community Facilities District No. 2017-1 (Public Services), to pay for police and fire protection services, parks, lighting, and landscaping maintenance, and streets and drainage maintenance, and incidental expenses related thereto, and shall the appropriations limit be established, all as set forth in the Resolution of Intention to Make Changes?

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON ACTING IN ITS  
CAPACITY AS THE LEGISLATIVE BODY OF CITY OF LIVINGSTON COMMUNITY  
FACILITIES DISTRICT NO 2017-1 (PUBLIC SERVICES) AUTHORIZING THE LEVY OF A  
SPECIAL TAX THEREIN**

The City Council of the City of Livingston does ordain as follows:

**WHEREAS**, on October 3, 2017, the City Council adopted a resolution entitled “A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON TO ESTABLISH CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX WITHIN CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES)” (the “Resolution of Intention”), stating its intention to form Community Facilities District No. 2017-1 (Public Services) (the “CFD”), of the City pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the “Act”) to finance certain services to serve the CFD (the “Services”); and

**WHEREAS**, the Resolution of Intention set November 21, 2017, or as soon thereafter as practical, as the date of a public hearing on all matters pertaining to the formation of the CFD, the extent of the CFD, the furnishing of Services to serve the CFD, and the proposed rate and method of apportionment of the special tax within the CFD (the “Rate and Method”); and

**WHEREAS**, due to the complexity of the proposed CFD, City staff postponed the public hearing to April 17, 2018, which is within six months of the originally proposed date, as provided in the Act; and

**WHEREAS**, a notice of public hearing was published in accordance with the Act; and

**WHEREAS**, at the public hearing, evidence was presented to the City Council on such matter before it, including a special report (the “Report”) describing the services necessary to adequately meet the needs of the CFD and the estimated costs of financing such Services as required by Section 53321.5 of the Act; and

**WHEREAS**, at the public hearing, all persons desiring to be heard on all matters pertaining to the formation of the CFD, the extent of the CFD, the furnishing of Services to serve the CFD, and the Rate and Method were heard, and a full and fair hearing was held; and

**WHEREAS**, after receiving public testimony, the City Council adopted a Resolution of Formation to establish CFD 2017-1 entitled “RESOLUTION OF FORMATION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON TO ESTABLISH CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES), TO ESTABLISH AN APPROPRIATIONS LIMIT THEREFOR, TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN, AND TO SUBMIT THE ESTABLISHMENT OF AN APPROPRIATIONS LIMIT AND THE LEVY OF SPECIAL TAXES TO THE QUALIFIED ELECTORS THEREOF; and

**WHEREAS**, after the April 17, 2018 public hearing on the formation of the CFD, city staff met to discuss and evaluate the comments offered by the property owner of the Livingston Community Health Center located at the southwest corner of B Street and Winton Parkway. The property owner requested that the CFD special tax rates be lowered considering most of the land area of the property was for surplus parking and the rates are based on land area, yielding a burdensome amount of special tax. City staff felt the argument had merit and recommends lowering the overall special tax rates of the CFD to help encourage business development in the City, while maintaining the special tax rates at levels that are reasonable and justifiable based on cost; and

**WHEREAS**, on November 20, 2018, the City Council adopted a resolution entitled “RESOLUTION OF CONSIDERATION TO MAKE CHANGES TO THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX OF THE CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES)”; and

**WHEREAS**, a notice of public hearing was published in accordance with the Act; and

**WHEREAS**, at the public hearing, evidence was presented to the City Council on such matter before it, specifying the new lower special tax rates in the Amended Rate and Method of Apportionment of Special Tax which would be levied to pay for public services; as required by Section 53334 of the Act; and

**WHEREAS**, at the public hearing, all persons desiring to be heard on all matters pertaining to the CFD, the furnishing of Services to serve the CFD, and the Amended Rate and Method were heard, and a full and fair hearing was held; and

**WHEREAS**, after receiving public testimony, on January 15, 2019, the City Council adopted a resolution entitled “RESOLUTION OF INTENTION TO MAKE CHANGES TO THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX OF THE CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES) AND TO SUBMIT THE ESTABLISHMENT OF AN APPROPRIATIONS LIMIT AND THE LEVY OF SPECIAL TAXES TO THE QUALIFIED ELECTORS THEROF”; and

**WHEREAS**, subsequent to the public hearing, the City Council also adopted a resolution entitled “RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON CALLING A SPECIAL ELECTION AND SUBMITTING TO THE QUALIFIED ELECTORS OF CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES) PROPOSITIONS REGARDING THE ESTABLISHMENT OF AN APPROPRIATIONS LIMIT AND THE ANNUAL LEVY OF A SPECIAL TAX WITHIN THE COMMUNITY FACILITIES DISTRICT”; and

**WHEREAS**, pursuant to the terms of the Resolution Calling Election, an election was held in which qualified electors of the CFD approved the establishment of an appropriations limit for the CFD and the levy of a special tax (the “Special Tax”) within the CFD; and

**WHEREAS**, on April 16, 2019, the City Council adopted a resolution entitled “RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON DECLARING THE RESULTS OF A SPECIAL ELECTION IN THE CITY OF LIVINGSTON COMMUNITY FACILITIES DISTRICT NO. 2017-1 (PUBLIC SERVICES) AND DIRECTING THE RECORDING OF A NOTICE OF SPECIAL TAX LIEN” (the “Resolution Declaring Results of Election”) which certified the results of the election conducted by the City Clerk, which results showed that more than two-thirds of the votes cast in

the CFD were in favor of the proposition to levy the Special Tax and the proposition to establish an appropriations limit for the CFD; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LIVINGSTON DOES HEREBY ORDAIN AS FOLLOWS:**

1. Recitals. The above recitals are all true and correct.
2. Authorization of the Levy of a Special Tax. By the passage of this Ordinance, the City Council authorizes the annual levy of the Special Tax in the CFD in accordance with the Amended Rate and Method of Apportionment of Special Tax set forth in Exhibit A.
3. Annual Rate Determination. The City Manager, or his/her designee, is hereby further authorized to determine on or before August 10 each year, or such other date as is established by law or by the County Auditor-Controller of the County of Merced, the specific Special Tax to be levied on each parcel of land in the CFD, except that special taxes to be levied shall not exceed the maximum rates set forth in the Amended Rate and Method, but the special tax may be levied at a lower rate.
4. Exempt Property. Except as provided in Section 53340.1 of the Act and except for properties that a local agency is a landowner of within the meaning of subdivision (f) of Section 53317 of the Act, pursuant to Section 53340 of the Act, properties of entities of the state, federal and local governments shall be exempt from the levy of the Special Tax. Reference is hereby made to the Amended Rate and Method of Apportionment of Special Tax for a description of other properties or entities that are expressly exempted from the levy of the Special Tax.
5. Use of Collections. All of the collections of the Special Tax shall be used only as provided by the Act and in the Resolution of Formation. The Special Tax shall be levied only so long as needed for the purposes as described in the Resolution of Formation.
6. Collection. The Special tax shall be collected in the same manner as ordinary ad valorem taxes and shall be subject to the same penalties and the same procedure, sale and lien in any case of delinquency as applicable for ad valorem property taxes; provided, however, that the Special Tax may be collected by direct billing by the City of the property owners in the CFD or in such other manner as may be provided by the City Council. In addition, the provisions of Section 53356.1 of the Act shall apply to any delinquent Special Tax payments.
7. Authorization. The specific authorization for adoption of the Ordinance is Section 53340 of the Act.
8. Severability. If for any reason any portion of the Ordinance is found to be invalid, or if the Special Tax is found inapplicable for any particular parcel within the CFD, by a court of competent jurisdiction, the balance of this Ordinance, and the application of the Special Tax to the remaining parcels within the CFD shall not be affected.



9. Certification. The City Clerk shall certify the passage of this Ordinance and cause it to be published or posted in accordance with law.

This Ordinance shall become effective thirty (30) days after its final passage and adoption.

Introduced: April 16, 2019

Passed and Adopted:

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Gurpal Samra, Mayor  
of the City of Livingston

ATTEST:

State of California)  
County of Merced)  
City of Livingston)

I, hereby certify that the foregoing Ordinance was duly introduced at a Regular Meeting of the City Council of the City of Livingston on the 16<sup>th</sup> day of April, 2019, and was passed and adopted at a Regular Meeting of the City Council of the City of Livingston this \_\_\_\_ day of May, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Antonio Silva, City Clerk  
of the City of Livingston

## Exhibit A

### City of Livingston Community Facilities District No. 2017-1 (Public Services)

#### Amended Rate and Method of Apportionment of Special Tax

A Special Tax of City of Livingston Community Facilities District No. 2017-1 (Public Services) (“CFD”) shall be levied on all Assessor's Parcels within the CFD and collected each Fiscal Year commencing in Fiscal Year 2018-19 in an amount determined by the Special Tax Administrator through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property in the CFD, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

#### A. **DEFINITIONS**

The terms hereinafter set forth have the following meanings:

“**Act**” means the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California, as amended.

“**Administrative Expenses**” means the following actual or reasonably estimated costs incurred by the City as administrator of the CFD, provided that such costs are directly related to administration of the CFD: costs to determine, levy and collect the Special Taxes, including an allocable share of the salaries and benefits of City employees, the fees of consultants, and legal counsel; the costs of collecting installments of the Special Taxes upon the general tax rolls, including any charges levied by County departments; and the preparation of required reports and any other costs required to administer the CFD in accordance with the Act, as determined by the City.

“**Annual Escalation Factor**” means the greater of (i) two percent (2%) or (ii) the annual percentage increase in the Consumer Price Index for All Urban Consumers for San Francisco-Oakland-Hayward Area as determined by the Bureau of Labor Statistics for the twelve months ending the previous December. If said index is discontinued, then an alternative index may be used as determined by the Special Tax Administrator.

“**Assessor's Parcel**” means a Lot or parcel of land shown on an Assessor's Parcel Map with a parcel number assigned by the Assessor of the County that corresponds to a number shown on the County Assessor's roll.

“**Assessor's Parcel Map**” means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

“**Attached Residential**” means an Assessor's Parcel within the CFD for which a Building Permit has been issued for purposes of constructing a residential structure or structures sharing common walls and/or common spaces, qualified as Attached Residential at the City's discretion, consisting of two or more Dwelling Units, including,

but not limited to duplexes, triplexes, and apartment units, as of May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied.

**“Base Year”** means Fiscal Year ending June 30, 2019.

**“Building Permit”** means a permit issued for new construction of a residential or non-residential structure. For purposes of this definition, “Building Permit” shall not include permits issued solely for grading, utility improvements, or other such improvements that are constructed and installed and are not intended for human occupancy.

**“CFD”** means City of Livingston Community Facilities District No. 2017-1 (Public Services).

**“City”** means the City of Livingston.

**“City Clerk”** means the City Clerk for the City or his or her designee.

**“City Engineer”** means the City Engineer for the City or his or her designee.

**“Commercial Property”** means an Assessor's Parcel of Developed Property for which a building permit(s) has been issued for purposes of constructing non-residential property for any commercial use, including related parking, including hotels, motels, and Office Property, and all other property considered commercial, as coded by the County's assessor or as determined by the City, as of May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied.

**“Council”** means the City Council of the City, acting as the legislative body of the CFD.

**“County”** means the County of Merced, California.

**“Detached Residential”** means an Assessor's Parcel within the CFD for which a Building Permit has been issued for purposes of constructing a residential structure consisting of one single-family detached Dwelling Unit, including Mobile Homes, as of May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied.

**“Developed Property”** means, for Detached Residential, Attached Residential, Commercial Property, or Industrial/Business Park/Agricultural Processing Property, an Assessor's Parcel within the CFD for which a Building Permit was issued on or prior to May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied, based on the number of Dwelling Units or Lot Area, as applicable, per City or County records for that Assessor's Parcel. **“Developed Property means”**, for Farm Property, an Assessor's Parcel within the CFD for which the City has granted permission to allow farming operations or for which Land Use Class of Farm Property is designated at the City's discretion on or prior to May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is

being levied, based on the Lot Area, as applicable, per City or County records for that Assessor's Parcel.

**“Dwelling Unit”** means each separate residential unit that comprises an independent facility capable of conveyance or rental separate from adjacent residential units, in which a person or persons may live, which comprises an independent facility and is not considered to be for non-residential use only, and as defined in the City of Livingston's Municipal Code.

**“Exempt Property”** means for each Fiscal Year, an Assessor's Parcel within the CFD not subject to the Special Tax. Exempt Property includes: (i) Public Property, (ii) Property Owner Association Property, (iii) Assessor's Parcels with public or utility easements making impractical their utilization for other than the purposes set forth in the easement such as railroad parcels, roads and landscape lots, (iv) Undeveloped Property and (v) property reasonably designated by the City or Special Tax Administrator as Exempt Property due to deed restrictions, conservation easement, or similar factors that may make development of such property impractical for human occupancy.

**“Farm Property”** means property used to grow crops or raise animals, which county use code starts with 07 or the City designates as Farm Property.

**“Final Map”** means an Assessor's Parcel Map, a Final Subdivision Map, parcel map, condominium plan, or any other map functionally considered to be an equivalent development map that has been recorded in the Office of the County Recorder.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Industrial/ Institutional/ Agricultural Processing Property”** means an Assessor's Parcel of Developed Property for which a building permit(s) has been issued for purposes of constructing non-residential property for any allowable industrial, institutional, or agricultural use, including related parking, and all other property considered industrial or institutional, including Medical Property, private schools and daycares, or used for agricultural processing, which is not a Commercial Property or Office Property, as coded by the County's assessor or as determined by the City, as of May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied.

**“Land Use Class”** means any of the classes listed in Table 1 and defined herein.

**“Lot”** means an individual legal lot created by an Assessor's Parcel Map or Final Map.

**“Lot Area”** means the gross horizontal area of the Lot or Assessor's Parcel.

**“Maximum Special Tax”** means the maximum Special Tax, determined in accordance with Section C below, that can be levied by the CFD in any Fiscal Year on any Assessor’s Parcel.

**“Medical Property”** means an Assessor's Parcel of Developed Property for which a building permit(s) has been issued for purposes of constructing non-residential property for any medical use, including related parking, including hospitals, convalescent homes, medical property, dental property, clinics, medical offices, and dental offices, and all other property used for medical purposes, which is not a Commercial Property or Office Property, as coded by the County’s assessor or as determined by the City, as of May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied,

**“Mixed-Use Property”** means an Assessor’s Parcel of Developed Property containing or planned for containing a structure or structures that consists of one or more Dwelling Units, but also has dedicated space for Non-Residential use.

**“Mobile Home”** means a vehicle designed and equipped for human habitation as defined by the California Health & Safety Code § 18008.

**“Non-Residential”** means an Assessor’s Parcel of Taxable Property within the CFD for which a Building Permit has been or could be issued for a non-residential use, including Commercial Property and Industrial/ Institutional/ Agricultural Processing Property or which the City may designate as Farm Property.

**“Office Property”** means an Assessor’s Parcel of Developed Property for which a building permit(s) has been issued for purposes of constructing non-residential property for office use other than Medical Property, including related parking, including savings and loans property, property for legal assistance, and other office buildings, as determined by the City, as of May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied.

**“Park”** means a public park, open space, trail, dog park dedicated to and/or managed by the City of Livingston.

**“Park and Landscaping Maintenance”** means the labor, material, administration, personnel, equipment, contract services, and utilities (i.e., water and power) necessary to maintain landscaping improvements within, and associated with, the CFD, including trees, turf, ground cover, shrubs, weed removal, irrigation systems, sidewalk, drainage facilities, lighting, signs, monuments, graffiti removal, walkways, and associated appurtenant facilities located within, or associated with, the CFD and reasonable costs of providing park maintenance, including but not limited to (i) the costs of contracting for park maintenance services, including trees, plant material, restrooms, irrigation systems, sidewalks, drainage facilities, weed control, lighting, and parking lot maintenance, (ii) the

salaries and benefits of City staff, including maintenance staff, that directly provide park maintenance services, (iii) the expense related to equipment, apparatus, and supplies related to these services and authorized by the Act, (iv) utility costs such as water, sewer, lighting and power and (v) City overhead costs associated with providing such services within the CFD.

**“Park and Landscaping Maintenance Requirement”** means, for any Fiscal Year in which Special Taxes are levied, the amount equal to the budgeted costs for Park and Landscaping Maintenance applicable to the CFD for such Fiscal Year.

**“Police, Fire, and/or Paramedic Services”** means the estimated and reasonable costs of providing Police Services, Fire Suppression Services, and/or Paramedic services including but not limited to (i) the costs of contracting for police, firefighters, and paramedics, (ii) the salaries and benefits of City staff, if the City directly provides Police Services, (iii) the expense related to equipment, apparatus, and supplies related to these services and authorized by the Act, and (iv) City overhead costs associated with providing such services within the CFD.

**“Police, Fire, and/or Paramedic Services Requirement”** means, for any Fiscal Year in which Special Taxes are levied, the amount equal to the budgeted costs for Police, Fire, and/or Paramedic Services applicable to the CFD for such Fiscal Year.

**“Property Owner Association Property”** means for each Fiscal Year any property within the CFD that is owned by, or irrevocably dedicated as indicated in an instrument recorded with the County Recorder, to a property owner association, including any master or sub-association, which consists of property owned in common by owners of surrounding properties and it is intended for use for community purposes.

**“Proportionately”** means, for Taxable Property, that the ratio of the actual Special Tax levied per Assessor’s Parcel of Taxable Property to the Maximum Special Tax per Assessor’s Parcel of Taxable Property is equal for all Assessor’s Parcels of Taxable Property.

**“Public Property”** means for each Fiscal Year any property within the CFD that is, or is expected to be, used for rights-of-way, parks, public schools or any other public purpose determined by the Special Tax Administrator or is owned by or irrevocably offered for dedication to the federal government, the State, the County, the City or any other public agency.

**“Reserve Fund”** means a fund that shall be created and maintained for the CFD for each Fiscal Year to provide necessary cash flow to cover maintenance and operational cost overruns, and delinquencies in the payment of Special Taxes.

**“Special Tax”** means the Special Tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property to fund the Special Tax Requirement, and shall include Special Taxes levied or to be levied under Sections C and D, below.

**“Special Tax Administrator”** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

**“Special Tax Requirement”** means that amount required in any Fiscal Year for the CFD to pay for (i) the Park and Landscaping Maintenance Requirement, (ii) the Police, Fire, and/or Paramedic Services Requirement, (iii) the Street and Drainage Maintenance Requirement, (iv) Administrative Expenses of the CFD, and (v) and any amounts required to establish or replenish a Reserve Fund for that Fiscal Year.

**“State”** means the State of California.

**“Street and Drainage Maintenance”** means the labor, material, administration, personnel, equipment and utilities necessary to maintain streets, streetlights, drainage, storm systems, and associated appurtenant facilities within, and associated with, the CFD, including City overhead costs associated with providing such services within the CFD.

**“Street and Drainage Maintenance Requirement”** means, for any Fiscal Year in which Special Taxes are levied, the amount equal to the budgeted costs for Street and Drainage Maintenance applicable to the CFD for such Fiscal Year.

**“Taxable Property”** means all Assessor’s Parcels of Developed Property within the CFD that are not Exempt from the Special Tax pursuant to law or as defined herein.

**“Undeveloped Property”** means, for each Fiscal Year, an Assessor’s Parcel within the CFD for which a Building Permit has not been issued, or the City has not designated as Farm Property, on or prior to May 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied and is not classified as Property Owner Association Property or Public Property, including an Assessor’s Parcel that is designated as a remainder parcel by any final documents and/or maps available to the Special Tax Administrator.

## ***B. ASSIGNMENT TO LAND USE CATEGORIES***

For each Fiscal Year, commencing with Fiscal Year 2018-19, using the definitions above, each Assessor’s Parcel within the CFD shall be classified as Taxable Property or Exempt Property. In addition, each Fiscal Year, beginning with Fiscal Year 2018-19, Taxable Property shall be further classified as Attached Residential, Detached Residential, Mixed-Use Property, Commercial Property, or Industrial/ Institutional/ Agricultural Processing Property.

**C. MAXIMUM SPECIAL TAX RATE**

**1. Developed Property**

**Table 1  
Maximum Special Tax for Developed Property  
Community Facilities District No. 2017-1 (Public Services)  
Fiscal Year 2018-19**

<b>Land Use Class</b>	<b>Description</b>	<b>Maximum Special Tax</b>
1	Detached Residential	\$763.00 per Dwelling Unit
2	Attached Residential	\$572.00 per Dwelling Unit
3	Mixed-Use Property	Sum of Maximum Special Tax for each applicable Land Use Class
4	Commercial Property	\$0.130 per square foot of Lot Area
5	Industrial/ Institutional/ Agricultural Processing	\$0.077 per square foot of Lot Area
6	Farm Property	\$0.007 per square foot of Lot Area
7	Medical Property	\$0.077 per square foot of Lot Area
8	Office Property	\$0.130 per square foot of Lot Area

For each Fiscal Year following the Base Year, the Maximum Special Tax rates in Table 1 shall be increased by the Annual Escalation Factor. A different Maximum Special Tax may be added to the CFD as a result of future annexations or if future annexations involve a new Land Use Class.

**2. Exempt Property**

No Special Tax shall be levied on Exempt Property as defined in Section A.

For each Fiscal Year, if the use or ownership of an Assessor's Parcel of Exempt Property changes so that such Assessor's Parcel is no longer classified as one of the uses set forth in Section A, therefore making such Assessor's Parcel no longer eligible to be classified as Exempt Property, such Assessor's Parcel shall be deemed to be Taxable Property and shall be taxed pursuant to the provisions of Section C.1.



#### ***D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX***

Commencing with Fiscal Year 2018-19, and for each subsequent Fiscal Year, the Special Tax Administrator shall calculate the Special Tax Requirement based on the definitions in Section A and levy the Special Tax as follows until the amount of the Special Tax levied equals the Special Tax Requirement:

The Special Tax shall be Proportionately levied each Fiscal Year on each Assessor's Parcel of Developed Property up to 100% of the applicable Maximum Special Tax. The applicable Maximum Special Tax shall be based on the Developed Property's classification as Detached Residential, Attached Residential, Mixed-Use Property, Commercial, Industrial/ Institutional/ Agricultural Processing Property, or Farm Property.

#### ***E. APPEALS***

Any landowner who pays the Special Tax and believes that the amount of the Special Tax levied on their Assessor's Parcel is in error shall first consult with the Special Tax Administrator regarding such error. If following such consultation, the Special Tax Administrator determines that an error has occurred, the Special Tax Administrator may amend the amount of the Special Tax levied on such Assessor's Parcel. If following such consultation and action, if any, the landowner believes such error still exists, such person may file a written notice with the City Clerk of the City appealing the amount of the Special Tax levied on such Assessor's Parcel. Upon the receipt of any such written notice, the City Clerk shall forward a copy of such notice to the City Finance Director, who shall either (1) refer the matter to the City's existing hearing board for administrative appeals; or (2) establish as part of the proceedings and administration of the CFD, a special three-member Review/Appeal Committee. The Review/Appeal Committee may establish such procedures, as it deems necessary to undertake the review of any such appeal. The hearing board or Review/Appeal Committee shall interpret this Rate and Method of Apportionment and make determinations relative to the annual administration of the Special Tax and any landowner appeals, as herein specified. The decision of the hearing board or Review/Appeal Committee shall be final and binding as to all persons.

#### ***F. MANNER OF COLLECTION***

Special Taxes levied pursuant to Section D above shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided however that (i) the CFD may directly bill the Special Tax, and (ii) the CFD may collect Special Taxes at a different time or in a different manner if necessary to meet the financial obligations of the CFD or as otherwise determined appropriate by the City Council.

#### ***G. TERM OF SPECIAL TAX***

Taxable Property in the CFD shall remain subject to the Special Tax in perpetuity or until the City Council takes appropriate actions to terminate the Special Tax pursuant to the Act.

## STAFF REPORT

**AGENDA ITEM:** Approval of Warrant Register dated April 10, 2019  
**MEETING DATE:** April 16, 2019  
**PREPARED BY:** Nancy Fuentes, Sr. Account Clerk  
**REVIEWED BY:** Jose Antonio Ramirez, City Manager

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**RECOMMENDATION:**

Approve warrant register dated April 10, 2019

**DISCUSSION:**

In accordance with Section 37202 of the Government Code of the State of California there is presented here with a summary of the demands against the City of Livingston covering obligations to be paid during the period of:

April 2, 2019 – April 16, 2019

Each demand has been audited and I hereby certify to their accuracy and that there are sufficient funds for their payment as of this date.

**IT IS HEREBY RECOMMENDED THE CITY COUNCIL  
APPROVE THE REGISTER OF DEMANDS AS FOLLOWS:**

<b>GENERAL WARRANTS.....\$</b>	<b>\$ 255,007.20</b>	<b>#92606-92684</b>
<b>PAYROLL WARRANTS.....\$</b>	<b>\$ 172,444.37</b>	<b>#40808-40841</b>
<b>TOTAL WARRANTS.....\$</b>	<b>\$ 427451.57</b>	

**ATTACHMENTS:**

Accounts payable checks by date, summary by check number register.

# Accounts Payable

## Checks by Date - Summary by Check Date

User: nfuentes  
 Printed: 4/10/2019 5:13 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
92606	att1	AT & T Mobility	03/28/2019	302.71
92607	Bradshaw	Chuck Bradshaw	03/28/2019	834.87
92608	FAMILYSU	California State	03/28/2019	2,366.29
92609	S&A	S & A Manufacturing	03/28/2019	262.91
Total for 3/28/2019:				3,766.78
92610	FAMILYSU	California State	04/04/2019	133.11
92611	GARCMELA	Melanie Garcia	04/04/2019	759.50
92612	GillDavi	Davinder Gill	04/04/2019	740.37
92613	kimbroke	Kevin Kimbro	04/04/2019	119.64
92614	ramire	Alvaro Ramirez	04/04/2019	399.00
92615	UCP	United Cerebral Palsy of Stanislaus County	04/04/2019	500.00
Total for 4/4/2019:				2,651.62
92616	A&APORTA	A & A Portables Inc.	04/16/2019	168.23
92617	AandP	A and P Construction	04/16/2019	21,150.00
92618	ABLERIBB	Able Ribbon Technology Inc.	04/16/2019	220.94
92619	abs	ABS Direct, Inc.	04/16/2019	1,593.65
92620	springbr	ACCELA, INC. #774375	04/16/2019	2,663.75
92621	ALHAMBRA	Alhambra & Sierra Springs	04/16/2019	173.60
92622	allstael	All Star Elite Sports	04/16/2019	9,896.96
92623	AMEREXPR	American Express	04/16/2019	661.04
92624	TatyanaA	Tatyana Anderson	04/16/2019	150.00
92625	APPLIED	APPLIED INDUSTRIAL TECHNOLOGIE	04/16/2019	139.08
92626	calnet	AT&T	04/16/2019	236.89
92627	Axon	Axon Enterprise, Inc.	04/16/2019	344.80
92628	belcorp	Belcorp Ag, LLC	04/16/2019	399.58
92629	brenntag	Brenntag Pacific Inc.	04/16/2019	4,031.59
92630	bsk	BSK Associates	04/16/2019	2,582.50
92631	CALTRAFF	Cal-Traffic	04/16/2019	5,330.42
92632	cisoluti	Card Integrators Corporation	04/16/2019	795.00
92633	UB*01813	CASTLE ASSETS, LLC.	04/16/2019	162.58
92634	CenCalHo	CenCal Holdings Inc.	04/16/2019	840.00
92635	charter	Charter Communications	04/16/2019	169.20
92636	AnahiCis	Anahi Cisneros	04/16/2019	250.00
92637	cityliv	City of Livingston c/o L & L Dist. Irrigation	04/16/2019	4,031.78
92638	collinss	Collins & Schoettler Planning Consultants,	04/16/2019	5,425.00
92639	corelogi	CoreLogic Information Solution	04/16/2019	200.00
92640	DOMINGM	Maria G. Dominguez	04/16/2019	150.00
92641	ELITEUNI	ELITE UNIFORM	04/16/2019	401.29
92642	ETCHTHIS	Etch This And That	04/16/2019	430.30
92643	Flender	Flender Corp	04/16/2019	74.40
92644	Florjose	Jose Flores	04/16/2019	150.00
92645	frontier	Frontier	04/16/2019	3,201.84
92646	GARZA	Garza Tire & Wheel Inc.	04/16/2019	42.50

Check No	Vendor No	Vendor Name	Check Date	Check Amount
92647	gilton	Gilton Solid Waste	04/16/2019	79,389.91
92648	GreatAme	GreatAmerica Financial Svcs.	04/16/2019	144.81
92649	RogelioG	Rogelio Gutierrez	04/16/2019	150.00
92650	HINDER	Hinderliter De LLamas & Assoc.	04/16/2019	2,495.57
92651	HOFFMAN	Hoffman Security, Inc.	04/16/2019	46.95
92652	Imagesou	Image Source	04/16/2019	538.45
92653	interbat	Interstate Batteries	04/16/2019	44.05
92654	jlanal	J L Analytical Services Inc.	04/16/2019	239.50
92655	Lowes	Lowe's	04/16/2019	272.44
92656	mailfin	Mailfinance	04/16/2019	1,906.41
92657	merctfir	Merced County Fire Department	04/16/2019	1,782.00
92658	mid2	Merced Irrigation District	04/16/2019	4,855.49
92659	MERCOMM	Merced Pest Control	04/16/2019	80.00
92660	meyers	Meyers Nave	04/16/2019	16,741.29
92661	midvalle	Mid Valley IT	04/16/2019	9,746.58
92662	MISSION	Mission Linen Supply	04/16/2019	751.29
92663	Officede	Office Depot	04/16/2019	971.15
92664	oreillya	O'Reilly Automotive Store Inc.	04/16/2019	64.02
92665	PGE	Pacific Gas & Electric Company	04/16/2019	38,331.26
92666	PARAMOUN	Paramount Pest Control Inc.	04/16/2019	273.00
92667	ROBERTS	Rhonda Roberts	04/16/2019	40.00
92668	RosaMari	Rosa Maria Salazar	04/16/2019	150.00
92669	sjvapcd	San Joaquin Valley APCD	04/16/2019	136.00
92670	SHANNON	Shannon Pump Company Inc.	04/16/2019	42.11
92671	SW	Silver & Wright LLP	04/16/2019	1,446.33
92672	Gurprees	Gurpreet Singh Bhatti	04/16/2019	150.00
92673	skyblue	Sky Blue Mobile Glass LLC	04/16/2019	170.00
92674	STERLING	Sterling Codifiers Inc.	04/16/2019	223.00
92675	MODESTOB	The Modesto Bee	04/16/2019	579.44
92676	TRANSUNI	Trans Union LLC	04/16/2019	259.74
92677	USBANK1	U.S. Bank Equipment Finance	04/16/2019	2,533.77
92678	VERIZON	Verizon Wireless	04/16/2019	197.04
92679	BRESHEAR	W.H. Breshears, Inc.	04/16/2019	7,802.35
92680	WARD	Ward Enterprises	04/16/2019	32.42
92681	WGRSOUTH	WGR SOUTHWEST, INC.	04/16/2019	2,160.00
92682	willdan	Willdan Financial Services	04/16/2019	7,619.51
92683	xerox	Xerox Financial Services	04/16/2019	127.03
92684	ZEEMED	Zee Medical Service Co., Inc.	04/16/2019	28.97

Total for 4/16/2019: 248,588.80

Report Total (79 checks): 255,007.20

# STAFF REPORT

**AGENDA ITEM:**        **Resolution Adopting Policies for the Administration and Procurement of Architectural and Engineering (A&E) Services for State and Federal Funded Transportation Projects**

**MEETING DATE:**    **April 16, 2019**

**PREPARED BY:**     **Jose Antonio Ramirez, City Manager**

---

## **RECOMMENDATION:**

Adopt Resolution No. 2019-\_\_\_, adopting policies for the administration and procurement of Architectural and Engineering (A&E) services for state and federal funded transportation projects.

## **BACKGROUND:**

The City of Livingston is responsible for constructing transportation projects that are state and federally funded. These Federal funds are provided by the Federal Highways Administration (FHWA). In order to comply with the Federal regulations and due to limited staffing and expertise, certain services including Architectural and Engineering (A&E) are contracted out to qualified firms. The Federal regulations set forth standards for procuring and administering A&E contracts.

The provisions of the Brooks Act (40 United States Code, Section 1104) requires local agencies to award federally funded engineering and design related contracts, otherwise known as A&E contracts, on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 31.201-3).

Pursuant to 23 CFR 172.5(b), local agencies shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with Federal-Aid Highway Program funding as specified in 23 U.S.C. 106(g)(4)(A).

The provision 23 CFR 172.5(b)(1) requires local agencies to adopt written policies and procedures for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable Federal and State laws and regulations.

The State of California Department of Transportation (Caltrans) has developed the Local Assistance Procedures Manual (LAPM), Chapter 10, which sets forth policies and procedures to be utilized by local agencies in the procurement and management of A&E contracts on state and federal funded transportation projects to ensure compliance with applicable Federal and State laws and regulations and to maintain eligibility for Federal-Aid reimbursement.

The City of Livingston has developed additional policies for procuring and administering A&E contracts to ensure avoidance of conflict of interests in the performance of A&E services for state and federal funded transportation projects.

**DISCUSSION:**

Recent Federal regulations require that Caltrans review and approve the local agencies' procurement of A&E contracts for federally funded transportation projects. Caltrans is primarily focusing on compliance with competitive procurement and conflict of interest guidelines for these contracts.

The City has followed the attached Caltrans' LAPM, Chapter 10, guidelines for awarding and managing past A&E contracts for federally funded projects. The City hereby formally adopts the current Chapter 10 guidelines and any updates thereto so that Caltrans may approve all future contracts for FHWA services and to remain compliant with Federal regulations. The City is also adopting the attached written policies for avoiding conflict of interests which mirror current City practices for administering A&E contracts.

**FISCAL IMPACT:**

There is no fiscal impact associated with this item.

**ATTACHMENTS:**

1. Resolution No. \_\_\_\_\_
2. Caltrans LAPM, Chapter 10 Consultant Selection
3. A&E Procurement and Administration Policies dated September 11, 2018

**RESOLUTION NO. 2019-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON  
ADOPTING POLICIES FOR THE ADMINISTRATION AND PROCUREMENT OF  
ARCHITECTURAL AND ENGINEERING (A&E) SERVICES FOR STATE AND FEDERAL  
FUNDED TRANSPORTATION PROJECTS**

**WHEREAS**, the City of Livingston is responsible for constructing transportation projects that are state and federally funded; and

**WHEREAS**, in order to comply with the Federal regulations and due to limited staffing and expertise, certain services including Architectural and Engineering (A&E) are contracted out to qualified firms; and

**WHEREAS**, the Federal regulations set forth standards for procuring and administering A&E contracts; and

**WHEREAS**, the provisions of the Brooks Act (40 United States Code, Section 1104) requires local agencies to award federally funded engineering and design related contracts, otherwise known as A&E contracts, on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 31.201-3); and

**WHEREAS**, pursuant to 23 CFR 172.5(b), local agencies shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with Federal-Aid Highway Program funding as specified in 23 U.S.C. 106(g)(4)(A); and

**WHEREAS**, the provision 23 CFR 172.5(b)(1) requires local agencies to adopt written policies and procedures for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable Federal and State laws and regulations; and

**WHEREAS**, the State of California Department of Transportation (Caltrans) has developed the Local Assistance Procedures Manual (LAPM), Chapter 10, Consultant Selection which sets forth policies and procedures to be utilized by local agencies in the procurement and management of A&E contracts on state and federal funded transportation projects to ensure compliance with applicable Federal and State laws and regulations and to maintain eligibility for Federal-Aid reimbursement; and

**WHEREAS**, the City of Livingston has developed additional policies, dated September 11, 2018, to ensure avoidance of conflict of interests in the performance of A&E services for state and federal funded transportation projects; and

**WHEREAS**, the City of Livingston desires to adopt Caltrans' LAPM Chapter 10 and the City's conflict of interest policies for compliance with Federal regulations on the procurement and administration of A&E contracts.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Livingston as follows:

**Section 1.** The above recitals are true and correct findings of the Livingston City Council.

**Section 2.** The Local Assistance Procedures Manual, Chapter 10, Consultant Selection dated January, 2019, or as amended, is approved and adopted.

**Section 3.** The A&E Services Administration and Procurement Policies developed by the City of Livingston for State and Federal Funded Projects dated September 11, 2018, are approved and adopted.

**Section 4.** Authorizes the City Manager to approve amendments to the City's adopted A&E Services Administration and Procurement Policies in consultation with the Federal Highways Administration.

Passed and adopted this 16<sup>th</sup> day of April, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

---

Gurpal Samra, Mayor  
of the City of Livingston

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a Regular Meeting of the City Council of the City of Livingston this 16<sup>th</sup> day of April, 2019.

---

Monica Cisneros, Deputy City Clerk  
of the City of Livingston



# Chapter 10 **Consultant Selection**

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## Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[Exhibit 10-A: A&E Consultant Financial Document Review Request](#)

[Exhibit 10-B: Suggested Consultant Evaluation Sheet](#)

[Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)

[Exhibit 10-G: Individual A&E Task Order DBE Utilization \(needs linked\)](#)

[Exhibit 10-H: Sample Cost Proposal \(Example#1 thru #4\)](#)

[Exhibit 10-I: Notice to Proposers DBE Information](#)

[Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System](#)

[Exhibit 10-01: Consultant Proposal DBE Commitment](#)

[Exhibit 10-02: Consultant Contracts DBE Commitment](#)

[Exhibit 10-Q: Disclosure of Lobbying Activities](#)

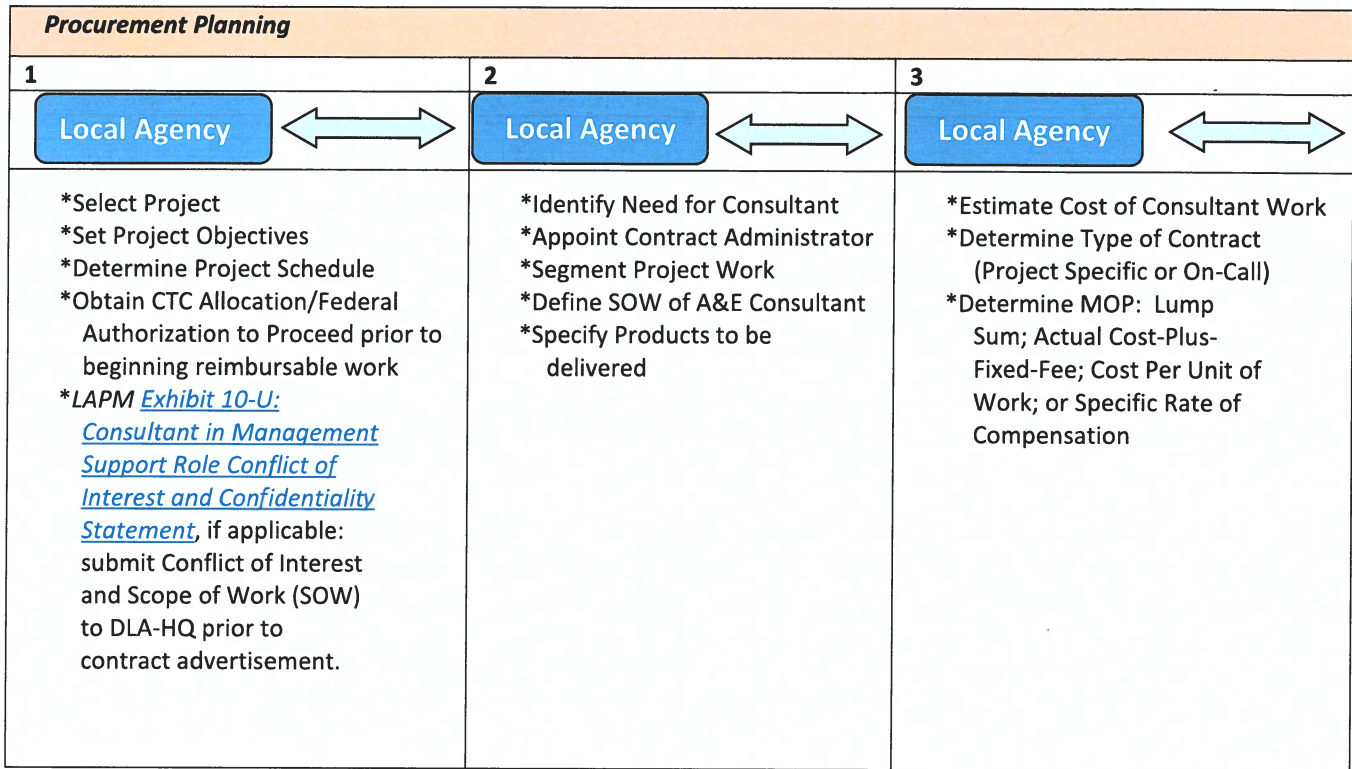
[Exhibit 10-R: A&E Sample Contract Language](#)

[Exhibit 10-S: Consultant Performance Evaluation](#)

[Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#)

[Exhibit 10-U: Consultant in Management Support Role Conflict of interest and Confidentiality Statement](#)

**SECTION 10.1: FEDERALLY FUNDED A&E CONTRACTS**



**A&E = Architectural and Engineering**  
**IOAI = Caltrans Independent Office of Audits and Investigations**  
**CT = Caltrans**  
**DBE = Disadvantaged Business Enterprise**  
**DLA = Division of Local Assistance**  
**DLAE = District Local Assistance Engineer**  
**DLA-HQ = Division of Local Assistance-Headquarters**  
**LAPG = Local Assistance Program Guidelines**  
**LAPM = Local Assistance Procedures Manual**  
**MOP = Method of Payment**  
**RFP = Request for Proposal**  
**RFQ = Request for Qualifications**  
**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

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

Solicitation Documents and Advertisement		
4	5	6
<div style="border: 1px solid black; background-color: #4f81bd; color: white; padding: 5px; display: inline-block;">Local Agency</div> <span style="font-size: 2em; margin: 0 10px;">↔</span>	<div style="border: 1px solid black; background-color: #4f81bd; color: white; padding: 5px; display: inline-block;">Local Agency</div> <span style="font-size: 2em; margin: 0 10px;">↔</span>	<div style="border: 1px solid black; background-color: #4f81bd; color: white; padding: 5px; display: inline-block;">Local Agency</div> <span style="font-size: 2em; margin: 0 10px;">↔</span>
<ul style="list-style-type: none"> <li>*Determine Solicitation Document; RFP or RFQ</li> <li>*Appoint Consultant Selection Committee</li> <li>*Collect signed Conflict of Interest forms and Confidentiality Statements (see <a href="#">Exhibit 10-T: Conflict of Interest &amp; Confidentiality Statement</a>) from all members involved in process</li> <li>*Determine Procurement Schedule</li> <li>*Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare RFP or RFQ documents</li> <li>*Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see <a href="#">Exhibit 10-H: Sample Cost Proposal</a>) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see <a href="#">Exhibit 10-I: Notice to Proposers DBE Information</a>), submittal deadline</li> <li>*Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites)</li> <li>*Issue RFP or RFQ (direct mailing, web posting)</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare to respond to RFP/RFQ questions</li> <li>*Conduct Proposers Conference, if applicable</li> <li>*Receive Proposals or SOQs</li> </ul>

**A&E = Architectural and Engineering**  
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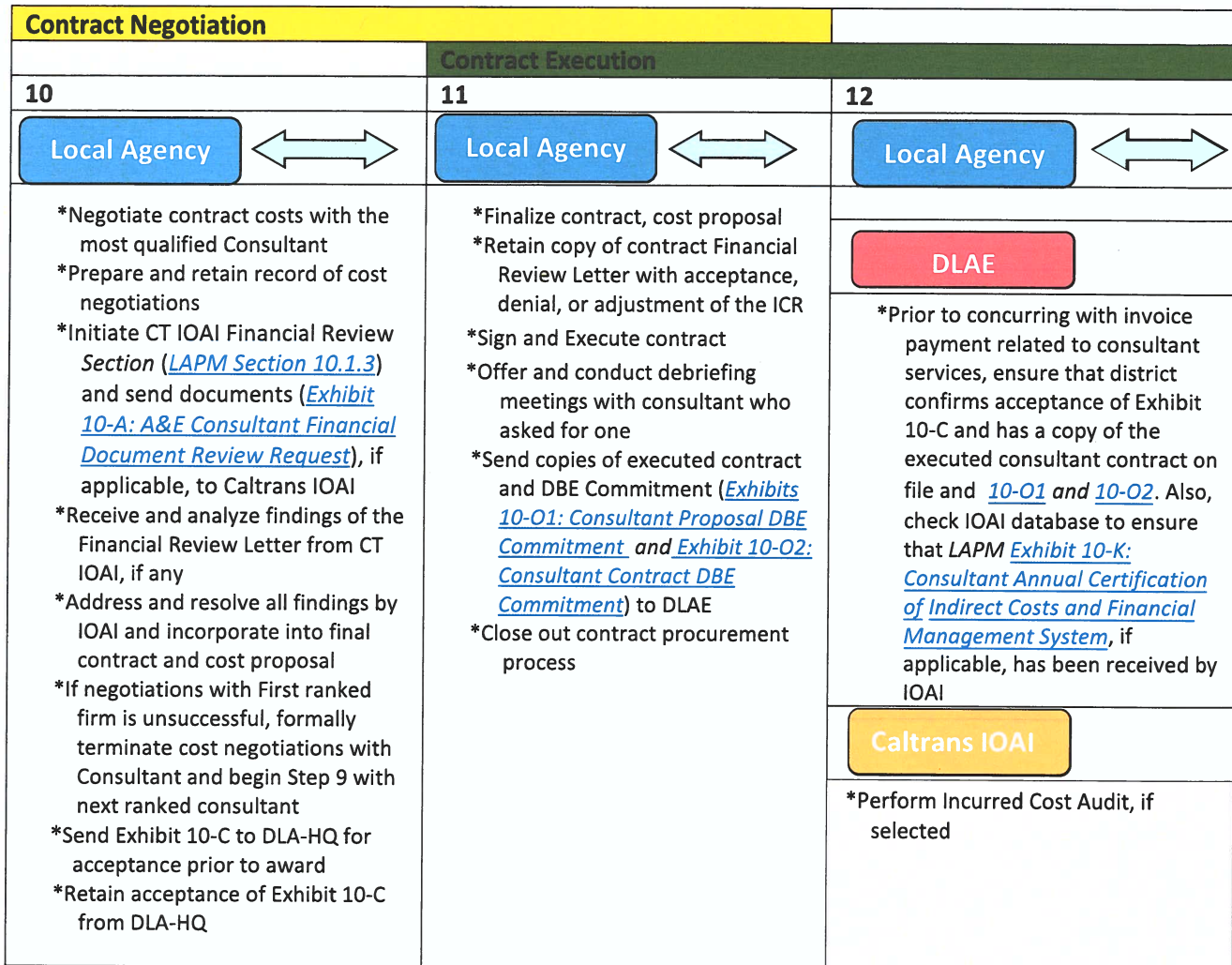
**Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued**

Evaluation and Selection of Consultant		
		Contract Negotiation
<b>7</b>	<b>8</b>	<b>9</b>
Local Agency ↔	Local Agency ↔	Local Agency ↔
<ul style="list-style-type: none"> <li>*Distribute Proposals or SOQs to Selection Committee members</li> <li>*Ensure Committee members receive the appropriate score sheet to use (see <a href="#">Exhibit 10-B: Suggested Consultant Evaluation Sheet</a>)</li> <li>*Convene Selection Committee and evaluate submittals; Perform reference checks</li> <li>*Develop Final Ranking or Short List</li> <li>*Notify proposers of ranking/Short List</li> <li>*Retain all original score sheets and summaries</li> </ul>	<ul style="list-style-type: none"> <li>*Send out RFPs to Short List (two-step process)</li> <li>*Conduct Interview of Short List (if needed)</li> <li>*Develop Final Ranking of Consultants, and notify all interviewees</li> <li>*Retain all original score sheets and summaries</li> <li>*Provide a copy of Standard Contract language to top ranked consultant and invite for negotiations (see <a href="#">Exhibit 10-R: A&amp;E Sample Contract Language</a> for standard contract language and provisions)</li> </ul>	<ul style="list-style-type: none"> <li>*Open and analyze cost proposal from the Highest Ranked firm</li> </ul> <div style="border: 1px solid black; background-color: #fff9c4; padding: 5px; text-align: center; margin: 5px 0;">Caltrans IOAI</div> <ul style="list-style-type: none"> <li>*Review and evaluate <a href="#">10-A package</a> and supporting documents, if applicable</li> <li>*Issue Financial Review Letter, if applicable</li> <li>*Perform contract audits and reviews, if applicable, or review of CPA audited ICR workpapers to issue Cognizant Letter of Approval</li> </ul>

**A&E = Architectural and Engineering**  
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**RFQ = Request for Qualifications**  
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**SOW = Statement/Scope of Work**

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





**A&E = Architectural and Engineering**  
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**SOW = Statement/Scope of Work**

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

## 10.1.1 GENERAL

### Introduction

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

### Definition of an Architectural and Engineering Consultant

23 Code of Federal Regulations §172 and CA State Law further defines A&E services and includes those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management are termed Architectural and Engineering (A&E) Consultants.

### Architectural and Engineering Consultants

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

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

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

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

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

Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting

treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

- [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevalingWage.html) website:  
[http://www.dir.ca.gov/OPRL/FAQ\\_PrevalingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevalingWage.html)
- [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:  
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- [Caltrans Prevailing Wage Interpretive Guidance](http://www.dot.ca.gov/hq/audits/documents/prevaling-wage-interpretive-guidance.pdf):  
<http://www.dot.ca.gov/hq/audits/documents/prevaling-wage-interpretive-guidance.pdf>

### **Non-A&E Consultants**

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal.

For more details on non-A&E consultants, see Section 10.3 *Non-A&E Contracts* of this chapter.

### **Selecting the Project**

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

### **Subcontracted Services**

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C. 106(g)(4) 2 CFR 200.331.

### **Organizational and Consultant Conflicts of Interest**

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees (including the contract administrator) engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest in accordance with 23 CFR 172.7(b)(4)

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

**Federal Regulation Governing Conflict of Interest (23 CFR 172.7(b)(4)) Requires that:**

- Local agency shall maintain a written code of standards of conduct for employees engaged in the award and administration of engineering and design service contracts;
- No contracting agency employee who participates in the procurement, management, or administration of federal funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;
- No person or entity performing services for a contracting agency in connection with a federal funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements;
- Local agency shall disclose in writing any potential conflict of interest to FHWA

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

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

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

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) (see [Section 10.1.9: Miscellaneous Considerations](#) in this chapter) and retain it in the local agency files.

### **Miscellaneous Considerations Authorization to Proceed**

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the [LAPM Chapter 3: Project Authorization](#)). For state funded projects see [Section 10.2: State-Only Funded A&E Contracts](#) and the [Local Assistance Program Guidelines \(LAPG\), Chapter 23: Local Agency State Transportation Improvement Program Projects](#), for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

## **10.1.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS**

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

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

### **Appointing the Contract Administrator**

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

The Contract Administrator's duties are listed in 23 CFR 172.9(d)(1) and include:

- Contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
- 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;
- Documenting contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.333;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;

- Ensures that fee/profit negotiation is conducted and keeps records;
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- 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;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports ([Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors](#)).

### Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see [LAPM Chapter 6 Environmental Procedures](#) and [Standard Environmental Reference \(SER\) Chapters 31: Environmental Assessment \(EA\) and Finding of No Significant Impact \(FONSI\)](#) and [Chapter 32: Environmental Impact Statement \(EIS\)](#)). Final design shall not begin until NEPA environmental approval has been received if federal reimbursement is desired.

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

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

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

**Specify Products to be Delivered**

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

**Scope of Consultant Work**

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

**Non-Discrimination Clause**

The Non-Discrimination Clause ([Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the non-discrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

**Disadvantaged Business Enterprise (DBE) Participation**

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Refer to *Chapter 9: Civil Rights and Disadvantaged Business Enterprises* for DBE requirements for A&E Consultant Contracts.



## Estimated Cost of Consultant Work

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

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

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

Some of the costs estimating techniques are:

### **Analogous Estimating:**

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

### **Parametric Estimating:**

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

### **Bottom-up Estimating:**

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

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

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

### Determine Type of Contract

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-phase contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.
- On-call contract is a contract that may be utilized for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172). The maximum dollar amount for all contracts awarded under the solicitation is stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. If the solicitation lists that up to 5 contracts may be awarded, the aggregate amount of these 5 contracts is the maximum contract dollar amount. How many contracts are anticipated to be awarded must be stated in the solicitation. How task orders will be issued must be stated in the solicitation (two options exist: geographically designated areas or additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation).
  - To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
    - Must define a general scope of work, complexity, and professional nature of services.
    - Specify a task order procedure the local agency uses to procure project specific work under the contract.
    - No task order is valid unless the on-call contract is still enforced. For example, if the on-call contract is expired, all task orders issued after the contract expiration date will become invalid.

- If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the number of consultants that may be selected or contracts that may be awarded must be identified.
- Specify procurement procedures in the contracts the local agency will use to award/execute task orders among the consultants:
  - Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only. The RFP may list multiple regions that allow consultants to crossover or be a “backup” to other consultants that for specifically documented reasons are not able to perform the work in their assigned region. Per 23 CFR 172.9 (a)(3)(B)(2). The “backup” option needs to be listed in the respective contracts.
- *An example of acceptable contract wording in multiple on-call contracts for the same type of service:*
  - *“Agency has or will enter into three (3) task order contracts for performance of the Scope of Services identified in Exhibit “A”, including this Agreement (“CM Services Task Order Contracts”). The other CM Services Task Order Contracts are [identify other two contracts by agreement numbers and consultant firms]. The total amount payable by Agency for the CM Services Task Order Contracts shall not exceed a cumulative maximum total value of Seven Million, Five Hundred Thousand Dollars (\$7,500,000) (“NTE Sum”). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the CM Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the CM Services Task Order Contracts, the Agency shall send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice shall identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency shall not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant shall not enter into a Task Order that exceeds the NTE Sum.”*

### **Determining the Project Schedule**

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

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

## Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed reference 23 CFR 172.9(b):

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

The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used. Both of these methods are explicitly prohibited by Federal Regulations.

### Actual Cost-Plus-Fixed Fee

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

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H: Sample Cost Proposal Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, *Option 1* in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

### Cost Per Unit of Work

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitive and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of

contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #3 and [Exhibit 10-R](#), Article V *Option 2*).

### **Specified Rates of Compensation**

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

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

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

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see [Exhibit 10-H: Sample Cost Proposal, Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, *Option 4*). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

Changes to Exhibit 10-H requiring resubmittal to Independent Office of Audits and Investigations for review:

- Consultant name change
- New participating subconsultant
- Change in ICR rate

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

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are

subject to audit or review by Caltrans' Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

### Applicable Standards

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

Local agencies, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

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

See section [10.10 "References"](#) of this Chapter for links to above referenced standards.

### Audit Guidance Available

The American Association of State Highway and Transportation Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)), which is referred to frequently in this section, is a valuable tool to guide local agencies, consultants and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR compliant Indirect Cost Rates

(ICR). The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

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

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

If consultants desire training on how to build an ICR and basic timekeeping, there are Indirect Cost Rate and Timekeeping webinars created by the Washington State Department of Transportation. The link to the webinars is available at <http://www.dot.ca.gov/audits/> (click on Architectural & Engineering Contracts/General A&E Contract Resources/Other State DOT Training Module). For training and additional information provided by Caltrans Local Assistance, visit Caltrans Local Assistance Blog at <http://www.localassistanceblog.com/>. For FHWA's Q&A for ICRs and audits, and A&E related services, visit FHWA at <http://www.fhwa.dot.gov/programadmin/172qa.cfm>.

### **Allowable Costs**

23 USC 112 (b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles.

Local agencies are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Examples of Cost Analysis Worksheets are provided at Exhibit 10-H1 through 4.

Local agencies are required to apply Caltrans accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or audited by Caltrans. Consultants shall update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

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

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

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

Generally, whenever local agencies, consultants and/or contractors are unable to provide requested documentation, it shall be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and **disallowed costs**. For more references, refer to Applicable Standards in this chapter.

## **Approval or Acceptance of Indirect Cost Rates**

### **Cognizant Letters of Approval**

A cognizant approved ICR has been audited by a Cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant's accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (per 48 CFR part 31) and the cognizant agency has either 1) issued an audit report of the consultant's indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

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

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

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31; and issue an audit report;
- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency;



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

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

### Financial Review Performed Prior to Contract Execution

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

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

## Local Agencies' Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (*A&E Consultant Financial Document Review Request*) and the Exhibit 10-A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" and Exhibit 10-H "*Cost Proposal*" for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in Exhibit 10-K and the consultant's ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR's are only reviewed for consultants that are being awarded a contract, not consultants on a bench or shortlist.

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

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

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR, Chapter 1, Part 31, and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Exhibit 10-A on the requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to:  
[conformance.review@dot.ca.gov](mailto:conformance.review@dot.ca.gov).

Alternatively, if you do not have Internet access, you can mail Financial Review packets to:

Department of Transportation  
Independent Office of  
Independent Office of Audits and  
Investigations, MS 2 Attention:  
External Audit Manager

P.O. Box 942874 Sacramento, CA 94274-0001

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

A&E prime consultants and subconsultants in contract with local agencies using state or federal-aid highway funds should refer to Exhibit 10-A and the 10-A Checklist for the ICR financial documents required to be submitted to their local agency. Consultants must complete the "Annual Certification of Indirect Costs and Financial Management System" (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR, Chapter 1, Part 31) and that the consultant's financial management system is adequate to accumulate and segregate, reasonable, allowable, and allocable direct and indirect project costs. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Exhibit 10-K to the Local Agency. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to IOAI along with all other related and required financial documents. For guidance see Training Module for Financial Document Requirements for A&E Contracts with Local Agencies on IOAI's website <http://dot.ca.gov/audits/> (click on Architectural & Engineering Contracts/A&E Contracts with Local Agencies/Training Modules).

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

ICR schedules for both prime consultants and sub-consultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles. Figure 10-3 at the end of this chapter provides an example of a Standard Indirect Cost Rate Schedule that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. Prime and sub-consultants must include prevailing wage rate information in the cost proposal (see Exhibit 10-H4 for example) and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated. The policy must document the accounting treatment for prevailing wage deltas and including the following information:

- Description of types of work that require payment of prevailing wage rates.
- Explanation of how the firm pays prevailing wage deltas (e.g. pay directly to employee as single amount to cover delta base and delta fringe, pay delta base to employee and pay delta fringe amount to a third-party plan, etc.)
- Accounting method used for prevailing wage delta base costs.
- Accounting method used for prevailing wage delta fringe costs.

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

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant's labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant's employees.

The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with Federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

### **Independent Office of Audits and Investigations' Responsibilities**

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

Contracts will be executed after IOAI either accepts or adjusts the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

### **Audits and Reviews to be Performed**

After contract execution, a consultant's ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

### **Indirect Cost Rate Audits**

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

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. There is also a review program at Appendix A which serves as a guide for CPAs and IOAI when performing ICR audits and can also be used as a resource for consultants when preparing for an ICR audit.

### **CPA Workpaper Reviews**

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA's audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA's audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA

adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations.

Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

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

### **Contract Audits**

During a Contract Audit, auditors will review a consultant's financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable and supported adequately;
- The contract contains all required fiscal provisions;
- Proper state and federal procurement requirements were followed.

### **Incurred Cost Audits**

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

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

### **Audit Findings and Review Deficiencies**

If a consultant's ICR is audited or reviewed, local agencies are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). Local agencies should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The local agencies may be subject to sanctions outlined in [LAPM Chapter 20: Deficiencies and Sanctions](#) if the state or federal government determines that any reimbursements to the

consultant are the result of lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

### Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company

Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx

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

Total Indirect Costs	\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates	126.17%	151.59%	66.84%

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

**FAR References:**

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

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

### 10.1.4 CONSULTANT SELECTION METHODS

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

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

**Consultant Selection**

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

Beginning with [Section 10.1.5: Consultant Selection Using the One-Step RFP Method](#), each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

**One-Step RFP**

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

**One-Step RFQ**

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. A RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

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

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in [Section 10.1.2: Identifying & Defining a Need for Consultants](#). This method requires substantially more work and time than the other two methods described above.



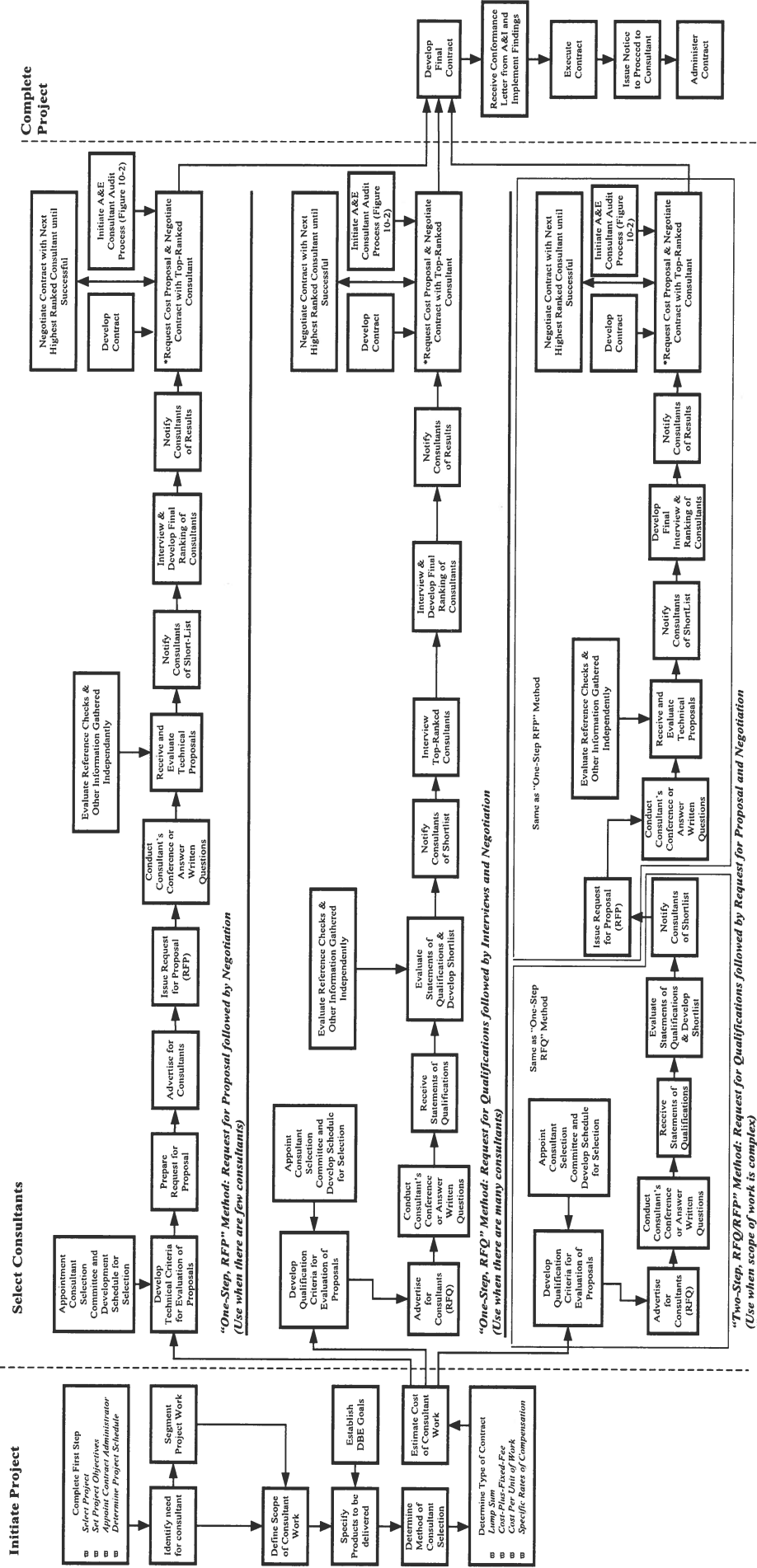


Figure 10-4: Consultant Selection Flowchart

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

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

#### Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

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

#### Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-State or local preference shall not be used as factor in the evaluation, ranking, and selection phase. All non-technical evaluation criteria, including DBE participation, shall not exceed 10 percent (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

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

## Develop Schedule for Consultant Selection

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

## Prepare RFP

The information required in an RFP solicitation includes the following:

- Description of project;
- Clear, accurate, detailed Scope of work, technical requirements, and qualifications;
- Services to be performed;
- Deliverables to be provided;
- Procurement schedule;
- Applicable standards, specifications, and policies;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate concealed format. Cost proposals are requested from the highest ranked firm. If these negotiations are formally terminated, the cost proposal is then requested from the next highest ranked firm. See [Exhibit 10-H: Sample Cost Proposal \(Example 3\)](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- Requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- Specify contract type;
- Special provisions or contracts requirements;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#);
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k), 2 CFR 172.5(c)(18).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. A minimum of fourteen (14) calendar days is required between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

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

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

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

### **Advertise for Consultants**

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

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

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

### **Issue/Publish RFP**

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

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

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

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

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

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. The justification should state that the solicitation did not contain conditions or requirements that arbitrarily limited competition per 23 CFR 172(a)(1)(iv) (D) and competition is determined to be inadequate and it is not feasible or practical to re-compete under a new solicitation per 23 CFR 172(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

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

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

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

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

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

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System of Costs and Financial Management System](#) and [Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist](#), whichever is applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

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

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor

costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) in this chapter). Local agency Contract Administrator ensures that all required documentations are 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 indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

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

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

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

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

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

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



### **Appoint Consultant Selection Committee**

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

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

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

### **Develop Technical Criteria for Evaluation of Qualifications**

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

### **Develop Schedule for Consultant Selection**

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

### **Prepare RFQ**

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);

- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See [Exhibit 10-H: Sample Cost Proposal](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.1.3: A&E Consultant Audit and Review Process](#));
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#); Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

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

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

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

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

### **Advertise for Consultants**

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

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

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

### **Issue/Publish RFQ**

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

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

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

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

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

### **Notify Consultants of Shortlist**

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

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

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

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

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

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

Two types of questions may be asked:

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

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only

information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

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

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

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

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

### **Conduct Scoping Meeting**

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

### **Request Cost Proposal**

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

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

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

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) and [Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist](#), whichever

applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

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

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

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

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

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

A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

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

- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

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

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

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

### 10.1.7 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

#### Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals. This procurement procedure involves a multiphase process with issuance of a request for qualifications (RFQ) whereby responding consultants are evaluated and ranked based on qualifications and an RFP is then provided to three or more of the most highly qualified consultants.

A different process may also be used that includes assessing minimum qualifications of consultants to perform services under general work categories or areas of expertise through a prequalification process whereby annual statements of qualifications and performance data are encouraged. These consultants are not ranked, and an RFP must be submitted to the entire list for evaluation and consideration. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

The initial steps in this method (up to the development and notification of the shortlist) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One-

Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is not clearly known, very complex or unusual.

The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through a single solicitation. The outcome of the first step RFQ will be multiple contracts, or on-call list of consultants. For multiple on-call contracts, project work will be procured thru subsequent competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

Local agencies may also use this method to develop and maintain a pre-qualified file/list of consultant firms by specific work categories or areas of expertise or to create a bench list of evaluated and ranked consultants. The pre-qualified data file or interest list can be updated annually or every two years. This list contains minimum qualifications and has not gone through the evaluation process. The pre-qualification list must be maintained by the agency.

The mini-RFP contains evaluation criteria that matches the strengths of the qualified firms to the specifics of the known tasks, thereby selecting the most qualified firm for each task. The evaluation can include: availability of personnel, staff capabilities, DBE (10% or less of overall score), completion time, experience of consultant, specialized expertise, and past performance. The overall DBE goal was established at the master on-call contract.

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

### **Categorize work**

Descriptions of the categories of work, deliverables and the minimum qualification standards for each category must be clearly identified.

The local agency may prequalify consulting firms in the following (or more) categories:

- Roadway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Environmental Services
- Roadway Construction Inspection and Administration
- Landscape Architecture
- Land Surveying
- Intelligent Transportation System (ITS)
- Federal-aid Highway Project Development Support Services



### **Establish Minimum Qualifications**

In an effort to ensure quality performance and results, a consultant should be required to meet certain minimum qualifications to be eligible for consideration in the pre-qualification process.

General criteria guidelines should be established for consultant selection for a pre-qualified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

Criteria for evaluating statements of qualifications, may include but are not limited to:

- Special expertise and experience of the firm's key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Consultant DBE Commitment document (see Exhibit 10-O1)
- Professional references by the firm with the local agency
- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the local agency
- Use of sub-consultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedure
- Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices.

### **Issue RFQ**

The need for services of a consulting firm may be advertised in appropriate national, state, and local publications and web sites. Notices can also be sent to firms known to be qualified to do specific work, to professional societies, and to recognized Disadvantaged Business Enterprises (DBE) organizations. The advertisements and notices seek statements of interest and qualifications from consultants who are interested in the project. The DBE goal is established at the master on-call contract and included in the solicitation document.

The SOQ should list consulting firm details, names of principals, office locations, personnel by discipline, project experience and examples, current workload, types of service the firms are qualified to perform, and previous performance. Also, resumes of key persons, specialists, and other associates that may be assigned to the project or projects should be included. This

information should be the basis for evaluating and placing a consulting firm on a general pre-qualification list.

Federal regulations require that any procedures related to pre-qualifying consultant cannot restrict competition.

Pre-qualification of consultants may be allowed as a condition for submitting a technical proposal for a contract only if the period between the date of the issuance of the RFP and the deadline for submitting a technical proposal affords sufficient time to enable a consultant to obtain pre-qualification status.

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

Appropriate Federal-aid requirements should be complied with on Federal-aid projects.

### **Set-Up Evaluation Process**

The first step in the evaluation process is to determine that each SOQ contains all forms, qualifications and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Documentation of when each SOQ was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

If all required information is not provided, a SOQ may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Local agency must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a per-qualified list. Whether the Local agency has a "committee" of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well defined, open and transparent. The pre-qualification process must also allow for consultants to be re-evaluated in cases of denials. The local agency must specify how long the pre-qualified list last, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

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

### **Evaluate Qualifications and Add Firm to List**

All SOQs received should first be reviewed for completeness. Each response must contain all required forms and any other information requested in the advertisement. The response may be considered incomplete and rejected without further evaluation if all required information is not provided or if the submittal is late.

The qualifications of all responding firms are then reviewed according to established evaluation criteria or factors. The agency then establishes a short list of at least three consultants that are determined to be the most highly qualified to perform the required work. Firms not selected should be notified in writing.

### **Maintain List**

Pre-qualification of a consultant expires in two years. Pre-qualified consultants must renew their pre-qualification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm's organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

If the consultant does not meet the minimum requirements and their SOQ is rejected, the committee must respond to the consultant explaining the reason for their rejection. The consultant is allowed to reapply to be on the list again provided the reasons for rejection are corrected.

The list of qualified firms can be maintained online through the agency's website. Firms can also apply to be on the list through the agency website for ease of operation.

### **Issue RFP to Pre-Qualified Consultants on List**

An RFP is sent to the short-listed firms. The RFP should indicate the content of the technical proposal, technical review procedures, anticipated schedule of activities, scope of work, project description, where the technical proposals are to be delivered, the number of copies required, and the due date.

Some agencies receive the technical proposal orally as part of an interview conducted for this purpose. In these cases, written documentation may not be required.

Items typically required in a technical proposal include:

- Work plan
- Organization plan
- Schedule for meeting time frame
- Available computer equipment and programs
- Staffing plan and resumes including sub-consultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Sub-consultants, DBE, their proposed participation, and other related information

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

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

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

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

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated.

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (LAPM Exhibit 12-F) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

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

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

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

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

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

### **Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant**

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

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

Cost proposal (for both prime and all subconsultants) and contract audit and review documents, such as Exhibit 10-K and Exhibit 10-A, whichever applicable (see *Section 10.1.3: A&E Consultant Audit and Review Process*), will be submitted in a separate sealed envelope.

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

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

A contract audit and review may be required (see *Section 10.1.3: A&E Consultant Audit and Review Process*). The local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan
- Schedule and deadlines (for deliverables and final duration of contract)
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned

- Other Direct Cost items, and profit or fee

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

The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

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

## 10.1.8 COMPLETING THE PROJECT

### Develop the Final Contract

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

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

### Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal *Exhibit 10-O2: Consultant Contract DBE Commitment* is included for all contracts regardless of goal.;
- [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subs), and [Exhibit 10-A: A&E Consultant Financial Document Review Request](#) and Checklist and all supporting documents, if applicable (contracts above \$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 Reviewers Checklist](#) must be used to ensure that required documentation has been provided;
- A cost proposal (see [Exhibit 10-H: Sample Cost Proposal](#)), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

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

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.
- Is not disbarred or suspended from state or federally funded contracts. Per 23 CFR 172.7(b)(3) "A contracting agency 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.

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

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

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

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

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

consultant costs incurred prior to the execution of the consultant contract. All executed contracts shall have a begin and end date. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be 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.

### **Administer the Contract**

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

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

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

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

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written



approval from the local agency. Refer to LAPM Chapter 9: *Civil Rights & Disadvantaged Business Enterprise* and Title 49 CFR 26 for DBE substitution requirements. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

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

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

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

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

- Copy of Executed Consultant contract;
- [Exhibit 10-O1: Consultant Proposal DBE Commitment](#)
- [Exhibit 10-O2: Consultant Contract DBE Information](#)

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

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

### **Contract Amendments**

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

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

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

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and can not include any new work. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments shall be negotiated following the same procedures as the negotiation of the original contract and must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. For any additional engineering and design related services outside of the scope of work established in the original solicitation, a contracting agency shall either procure the series under a new solicitation, perform the work itself using agency staff, or use a different, existing contract under which the services would be within the scope of work. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. [Section 10.1.3: A&E Consultant Audit and Review Process](#) of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment. All amendments shall incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit [Exhibit 10-C: Consultant Contract Reviewers Checklist to aeoversight@dot.ca.gov for review](#) completing Section D for amendments.

### **Performance Evaluation**

Pursuant to 23 CFR §172.9(d)(2) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See [Exhibit 10-S: Consultant Performance Evaluation](#) for a suggested format for use by the local agency.

### **Project Records**

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

200). These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

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

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) and [Exhibit 10-O2: Consultant Contract DBE Commitment](#));
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#));
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) for contracts over \$150,000 or more;
- A&E Consultant Audit Request Letter and Checklist ([Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) for contracts over \$150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#) and [Exhibit 10-H: Sample Cost Proposal](#));
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#));
- Consultant contract checklists (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#));

- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms ([Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#), all personnel involved in the procurement of the agreement should complete Exhibit 10-T [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) and [Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate). Exhibit 10-Q is included in the solicitation and shall be completed if the consultant needs to disclose any lobbying activities.

### Retention Clauses

At the option of the local agency, a retention clause may be included in the consultant contract. A retention clause in the consultant contract is recommended (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XXXI).

### Review of Local Agency Actions

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

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

## 10.1.9 MISCELLANEOUS CONSIDERATIONS

### Agreements with Other Governmental Agencies

Intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed. See 2 CFR 200 and CA Government Codes 10340 and 11256.

### Small Purchase Contracts

Contracts that are less than \$250,000 are considered small contracts in accordance with federal regulations. However, within the State of California, there is not a recognized small purchase procedure. For federal contracts that are less than \$250,000 and are not anticipated to exceed this amount, the agency shall use the *State-Only Funded A&E Contracts: Section 10.2*. If the contract is anticipated to exceed \$250,000, use one of the accepted procurement procedures listed in the previous sections. Small contracts using the simplified acquisition procedure shall not exceed \$250,000 or the additional costs are considered not reimbursable. The entire contract could also be considered ineligible by FHWA depending on circumstances. The scope of work, project phases, and contract requirements shall not be broken down into smaller components to

permit the use of small purchase procedure. DBE requirements apply for all federally funded projects.

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

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)).

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

Conditions under which noncompetitive negotiated contracts may be acceptable include:

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

The local agency shall:

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

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

A Public Interest Finding (see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects.).

### **Personal Services Contracts**

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

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

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

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

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

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

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

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

The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. Consultants in a Management Support Role funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;

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

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

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

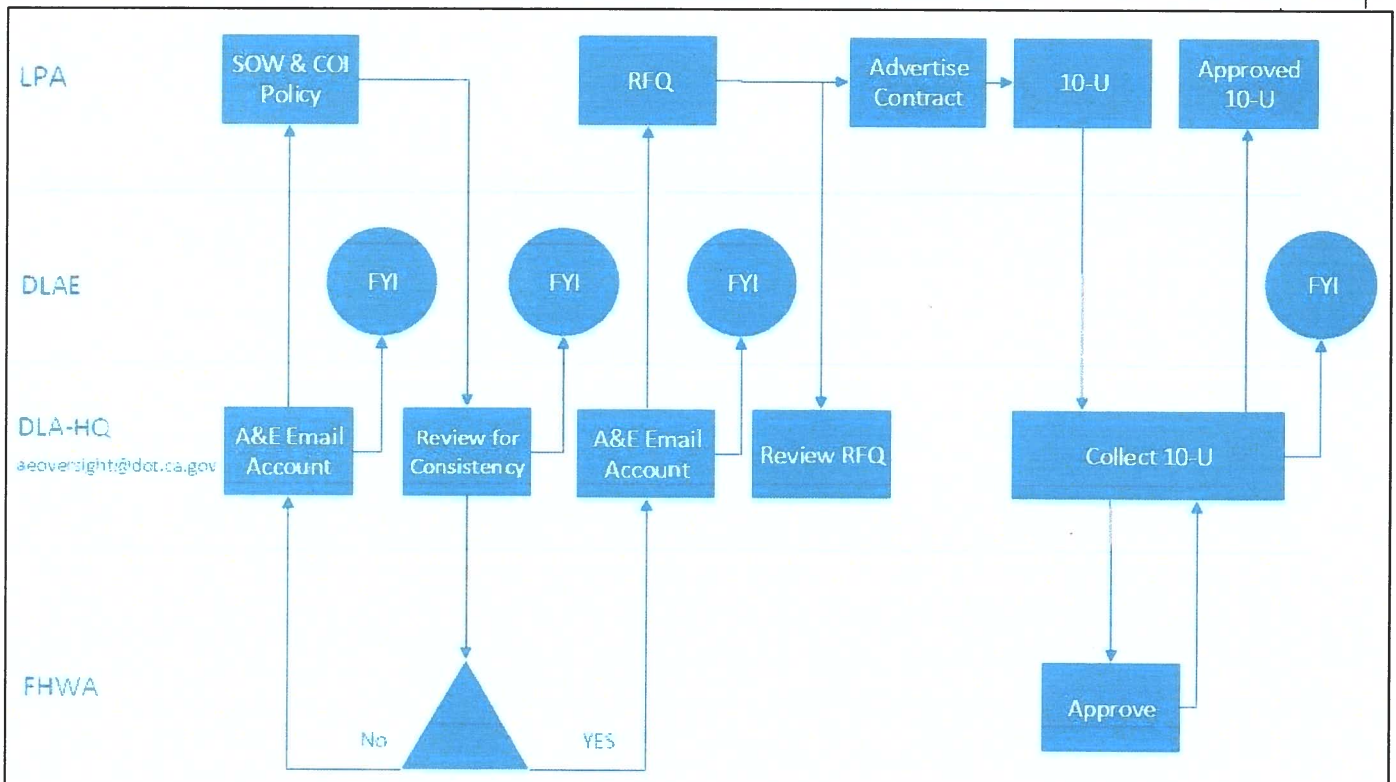
- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- Subparagraph of 23 CFR §172.7(b) requires that the local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as Projects of Division Interest may also need approval from FHWA.

- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov), prior to solicitation.
- Once the local agency receives FHWA’s written response, the local agency may need to revise the documents reflecting FHWA’s opinions and can proceed with the RFQ.
- After consultant selection, the local agency shall submit the completed [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) to the DLA-HQ at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Local agency will receive FHWA’s approved [Exhibit 10-U](#) via email.



**Figure 10-5: Consultant in a Management Support Role Flowchart**



## Construction Engineering Services

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

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

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

### 10.1.10 PROGRAM MANAGEMENT

According to 23 CFR §172.5, local agencies are required to adopt written policies and procedures prescribed by Caltrans. The local agency shall adopt Caltrans Local Assistance Chapter 10: *Consultant Selection*. Local agencies 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;

- Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- Closing-out a contract;
- Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;
- Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and

- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

An example resolution is located at:

<http://www.dot.ca.gov/hq/LocalPrograms/AE/2018/P&P-Adoption-Resolution.doc>












### 10.1.11 REFERENCES

- [23 CFR, Part 172](#)  
Administration of Engineering and Design Related Service Contracts  
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- [40 USC, Section 1104](#)  
Brooks Act <http://www.fhwa.dot.gov/programadmin/121205.cfm>
- [41 CFR](#)  
Public Contracts and Property Management  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)
- [41 USC](#)  
Public Contracts  
<http://law.onecle.com/uscode/41/index.html>
- [23 USC](#)  
Letting of Contracts  
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- [48 CFR, Chapter 1, Part 15.404](#)  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [48 CFR, Chapter 1, Part 31](#)  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [Title 48, Part 16 – Types of Contracts](#)  
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>
- [48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts](#)  
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- [48 CFR 31.201-3](#)  
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- [48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900](#)  
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>

- [2 CFR Part 200](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)  
[http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- [49 CFR, Part 26](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)  
Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](http://audit.transportation.org/Pages/default.aspx)  
<http://audit.transportation.org/Pages/default.aspx>
- [Caltrans Division of Procurement and Contracts Website](http://www.dot.ca.gov/dpac/index.html)  
<http://www.dot.ca.gov/dpac/index.html>
- [California Labor Code, Section 1775](http://law.onecle.com/california/labor/1775.html)  
<http://law.onecle.com/california/labor/1775.html>
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](http://www.gao.gov/yellowbook/overview)  
<http://www.gao.gov/yellowbook/overview>
- [Government Code Sections 4525 through 4529.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5)  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>
- [OMB Circular A-110](https://www.whitehouse.gov/omb/circulars_a110)  
Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations  
[https://www.whitehouse.gov/omb/circulars\\_a110](https://www.whitehouse.gov/omb/circulars_a110)
- [Standard Environmental Reference \(SER\)](http://www.dot.ca.gov/ser/)  
<http://www.dot.ca.gov/ser/>

**FHWA:** this is the new State-Only funded section that will be used for state-only funded projects.

## 10.2: STATE-ONLY FUNDED A&E CONTRACTS

A&E State-Only	<i>Division of Local Assistance Minimum Requirements for State-only funded A&amp;E Contracts</i>
	A. Written Procedures
	B. Conflict of Interest
	C. Records
	D. Full & Open Competition
	E. Selection Basis
	F. Publication
	G. Solicitation
	H. Cost Analysis
	I. Negotiations
	J. Audit and Review Process
	K. Exhibit 10-C.2: State-Only Funded A&E Consultant Contracts

## 10.2.1 GENERAL

Local Agencies are required to follow all applicable local and state regulations including those listed in LAPM Chapter 10 in accordance with their State Master Agreement. Although the requirements listed in this section are minimum requirements, the local agency shall use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections.

All consultants must comply with 48 Code of Federal Regulations (CFR) Part 31: *Contract Cost Principles and Procedures*. Also, consultants and Local Agencies must comply with 2 CFR Part 200: *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, excluding sections §200.318-200.326 *Procurement Standards* (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance, Attachment A).

Agency state-only funded (SOF) agreements must contain the required federal fiscal provisions from 2 CFR 200 in all Division of Local Assistance funded agreements. Exhibit 10-R: *A&E Boilerplate Agreement Language* contains 2 CFR 200 requirements and may also be used in SOF agreements. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

All proposed A&E contracts and supporting documents (including state-only funded) are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government and required to follow LAPM Section 10.1.3 *A&E Consultant Audit and Review Process*.

For consultant contracts, procured with local or state funds, to provide services for federal-aid projects, or to oversee or manage other consultants providing these services, the Consultant in Management Support Role process must be completed to be eligible for reimbursement. Refer to Chapter 10.1.9 Miscellaneous Considerations: *Retaining a Consultant as an Agency Engineer or in a Management Support Role* <http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf>.

DBE contract goals are not required for state-only funded contracts.

This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

Non-A&E consultant contracts reference LAPM Section 10.3: *Non-A&E Contracts*.

**Reference:** *California Government Code Title 1, Division 5, Chapter 10, Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms §4525-4529.5.*

## 10.2.2 DEFINITION OF A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

Construction project management means those services provided by a licensed architect, registered engineer, or licensed general contractor. Any individual or firm proposing to provide construction project management services shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Environmental services mean those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

**Reference:** *California Government Code §4527*

### **10.2.3 MINIMUM AUDIT REQUIREMENTS**

#### **A. Written Procedures**

Local agencies shall follow the minimum requirements listed below in addition to any local laws and regulations.

**Reference:** *California Government Code §4526*

#### **B. Conflict of Interest**

The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of state funded contracts, including the prevention of conflicts of interest.

#### **References:**

*California Government Code §4526*

*California Government Code §1090*

*California Government Code §4529.12*

#### **C. Records**

Local agencies shall keep adequate records of all contracts including the procurement, project management, accounting and financial administration.

#### **References:**

*California Government Code §4529.14*

*California Government Code §4006*

#### **D. Full & Open competition**

All A&E contracts shall be procured through a qualifications based selection utilizing open and fair competition. Evaluate at least three consultants using published evaluation criteria and rank these firms in order of preference.

#### **References:**

*California Government Code §4526*

*California Government Code §4527*

**E. Selection Basis**

Selection of a firm shall be based on qualifications and the order of ranked preference.

**References:**

*California Government Code §4526*

*California Government Code §4527*

**F. Publication**

Solicitations for A&E contracts shall be in a manner that is open and competitive.

Reference: *California Government Code §4527*

**G. Solicitation**

The solicitations shall include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

Reference: *California Government Code §4527*

**H. Cost Analysis**

An independent cost comparison to the consultant's cost proposal shall be done in order to ensure the contract is negotiated at a fair and reasonable price.

Reference: *California Government Code §4528*

**I. Negotiations**

Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.

Reference: *California Government Code §4528*

**J. Audit and Review Process**

A&E contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits. All agencies shall follow the Audit and Review Process as stated in LAPM Section 10.3: *A&E Consultant Audit and Review Process*.

<http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf>

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10a.pdf>

Reference: *California Government Code §4529.14*

**K. Exhibit 10-C.2: State-Only Funded A&E Contracts**

Exhibit 10-C.2: *State-Only Funded A&E Consultant Contract Reviewers Checklist* must be sent to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for review prior to contract award.

### CA Government Code References

#### **California GOV §1090**

*(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they*

*are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.*

*(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).*

*(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.*

#### **California GOV §4006**

*Plans, specifications, work authorizations describing work to be performed, and all other information referred to in this chapter are open to inspection and examination as a public record.*

#### **California GOV §4525**

*For purposes of this chapter, the following terms have the following meaning:*

*(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.*

*(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.*

*(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.*

*(d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.*

*(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.*

*(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.*

#### **California GOV §4526**

*Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public*



agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

#### **California GOV §4527**

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

#### **California GOV §4528**

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

#### **California GOV §4529**

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

**California GOV §4529.12**

*All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.*

**California GOV §4529.14**

*Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.*

**California GOV §4529.20**

*This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.*

**Federal Highway Administration Memorandum 2 CFR 200 Implementation Guidance****12/4/2014****Attachment A: FHWA 2 CFR 200 Uniform Guidance – Questions and Answers**

*Question 21: “Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?”*

*Answer: Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.*

**Figure 10.2 State-Only Funded Procurement Criteria**

To comply with CA Government Code (GC) 4525-4529.5, 48 Code of Federal Regulations (CFR) Part 31: Contract Cost Principles and Procedures, 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (excluding sections 200.318-200.326), Caltrans Local Assistance Procedures Manual (LAPM) and other applicable STATE and FEDERAL regulations.

A&E Consultants		
Requirements for LGAs that use State funding		Use State requirements below
A.	Written Procedures	GC 4526
B.	Conflict of Interest	GC 1090, GC 4527(b), GC 4529.12
C.	Records	GC 4529.14, 4006
D.	Full & Open Competition	GC 4526, GC 4527, GC 4529.12
E.	Selection Basis	GC 4526*, 4527
F.	Publication	GC 4527
G.	Solicitation	GC 4527
H.	Cost Analysis	GC 4528
I.	Negotiations	GC 4528
J.	A&I Audit & Review Process	GC 4529.14, LAPM Ch. 10, 2 CFR 200
K.	Exhibit 10-C.2: State-Only Funded A&E Consultant Contracts	LAPM Ch. 10.2

\*Mini Brooks Act - State regulation requiring the initial selection of engineering and architecture firms be based upon qualifications and experience rather than by price. Price is then later negotiated.

## 10.3: NON-A&E CONTRACTS

### SCOPE

This section covers the procurement requirements for the services that are not included in Section 10.1 Federal and Section 10.2 State-Only. This guidance is for contracts utilizing federal-aid funds and state funds. Federal regulations refer to state and local regulations for non-A&E type contracts. Although local agencies are required to follow 2 CFR 200: *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* for all contracts, the Procurement Standards section §200.318-200.326 is exempt. The guidance in this section follows the established regulations in the California Public Contract Code. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

Local agency shall designate one person within the local agency as a contract manager.

(PCC 10348.5)

### DETERMINING NON-A&E

After identifying that there is a need for consulting services, the local agency shall determine that the services needed are more of a technical nature and involve minimal professional judgement and that requiring a cost proposal would be in the public's best interest. These type of consultant services that are not directly related to a highway construction project or that are not included in the definition of engineering and design related services are considered non-A&E. The services must not be included in Section 10.2.2 Definition of A&E.

The determining factor is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect.

### EXAMPLE OF DETERMINING NON-A&E

Material testing has been requested to ensure quality assurance on a construction project. The service includes only performing the material test and providing material test data. Although the service is related to a construction project, the overall service did not provide an evaluation or a discipline report. In this example, the local agency can determine that the service provided is more of a technical nature and is therefore a non-A&E service.

The following is a list of the more common non-A&E services:

- Right-of-Way Appraisal
- Right-of Way acquisition activities
- Conducting public outreach during environmental clearance or construction
- Active Transportation Program educational and outreach activities
- Intelligent Transportation System (ITS)
- Non-Infrastructure

## INTELLIGENT TRANSPORTATION SYSTEM (ITS) PROJECTS

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

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

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for assistance.

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

Examples of non-A&E consultant contracts are:

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

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

## NON-INFRASTRUCTURE PROJECTS

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

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

## **GOVERNING REGULATIONS AND CODES FOR NON-A&E**

When procuring non-A&E services with federal-aid funds, Local agencies must comply with 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections §200.318-200.326 Procurement Standards (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance, Attachment A). Local agencies must follow the same policies and procedures that the State uses for procurement with its non-Federal funds. When procuring non-A&E services with federal-aid and state-only funds, the governing procurement code is Public Contract Code 10335-10381.

## **PROCUREMENT OF NON-A&E CONSULTANT CONTRACTS**

All non-A&E procurements contracts must be conducted in a manner providing full and open competition consistent with federal and state standards. Local agency must meet the code of conduct governing the performance of its employees engaged in the award and administration of federal-aid and state-funded contracts, including the preventions of conflict of interest in PCC 10410.

The following are the fundamental rules when procuring a non-A&E consultant contract.

1. The request for proposal (RFP) shall not limit the competition directly or indirectly to any one consultant. The RFP must be publicized and all evaluation factors and their relative importance identified. (PCC 10339)
2. Splitting a single transaction into a series of transactions for the purpose of evading the procurement requirements is not allowed. (PCC 10329)
3. Local agency shall secure at least three competitive proposals for each contract. (PCC 10340)  
When receiving less than three proposals, refer to the Cost-Effective/Public Interest Finding in this section as an alternative to re-advertisement.
4. No proposals shall be considered which have not been received at the place, and prior to the closing time as stated in the RFP. (PCC 10344(a))
5. Local agency must have a written procedure for evaluating proposals. (PCC 10344)

## **RFP BASIC REQUIREMENTS**

- A. There are two general types of consulting service contract solicitations:
- B. Request for Proposal using Cost only
- C. Request for Proposal using Cost and Qualifications

The local agency must include the following in the request for proposal:

- A. A clear, precise description of the work to be performed or services to be provided.
- B. Description of the format that proposals shall follow and the elements they shall contain
- C. The standards the agency will use in evaluating proposals. This includes qualifications and certifications if applicable.
- D. The date the proposals are due.

- E. The procurement schedule that the local agency will follow in reviewing and evaluating the proposals.

(PCC 10344)

### **ADDITIONAL REQUIREMENTS AND EVALUATION CRITERIA**

#### Additional Requirements for Request for Proposal using Cost only

- A. Local agency must require consultants to submit their proposals and cost in a separate, sealed envelope.
- B. Local agency shall determine those that meet the format requirements and the standards specified in the request for proposal.
- C. The sealed envelopes containing the price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.
- D. Contract must be awarded to the lowest responsible consultant meeting the standards.

(PCC 10344(b))

#### Additional Requirements for Request for Proposal using Cost and Qualifications

- A. Local agency must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized shall be given to the cost amount proposed by the consultant.
- B. Local agency shall determine those that meet the format requirements specified in the RFP.
- C. Local agency evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets shall be available for public inspection after the committee scoring process. Evaluation committee should comply to the prevention of conflict of interest in PCC 10410.
- D. The non-A&E contract shall be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

(PCC 10344(c))

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

An example RFP for non-A&E is provided on the Local Assistance website at <http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/RFP-Example-Non-AE.docx> and may be modified.

Submission of *Exhibit 10-C Consultant Contract Reviewers Checklist* to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

### **CONSULTANT'S PROPOSAL**

The consultant's proposal should include the following information:

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

### **COST PROPOSAL WORKSHEET**

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

Local agency is not required to award a contract if it is determined that the contract price is not reasonable. (PCC 10340(c))

### **DBE CONSIDERATION**

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

### **ADMINISTRATIVE REQUIREMENTS**

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days. The solicitation should inform potential qualified consultants that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to consultant's questions shall be provided to all potential consultants. Written responses to all questions will be collectively compiled and provided as an addendum.

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

No consultant who has been awarded a consulting service contract may be awarded a subsequent contract for the services or goods which are required as an end product of the consulting service contract, unless the subcontract is no more than 10 percent of the total monetary value of the consulting services contract. Excludes A&E contracts.



(PCC 10365.5)

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

### **ORAL PRESENTATIONS OPTIONAL**

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

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

### **COST-EFFECTIVE/PUBLIC INTEREST FINDING**

A minimum of three proposal must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract shall document the names and addresses of the firms or individuals it solicited for proposals. Prepare an explanation as to why less than three proposals were received. When only two proposals are received, a justification must be documented to proceed with the procurement. When only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding) must be documented. In either case, the re-advertisement of the RFP should be considered as an option. Retain document as supporting documentation in the contract file.

(PCC 10340(c))

### **PROTEST/APPEALS/REINSTATEMENT PROCEDURES**

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthen the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with PCC 10345.

CITY OF LIVINGSTON  
A & E SERVICES ADMINISTRATION AND PROCUREMENT POLICIES  
FEDERAL AND STATE FUNDED TRANSPORTATION PROJECTS

INTRODUCTION

In an effort to ensure the avoidance of fraud, waste and abuse in the performance of Architectural and Engineering (A&E) services, the City of Livingston (City) has established the following consultant selection and procurement procedures to be implemented on all federal and state funded transportation projects. The intent of these policies are to facilitate compliance with federal regulations and the State of California Department of Transportation (Caltrans) Local Assistance Procedures Manual. Deviation from these policies should only be considered in special cases and in consultation with Caltrans Local Assistance personnel.

I. Consultant Procurement Manual (CSPM)

The City shall adopt and follow the procedures contained within Caltrans' Consultant Procurement Manual relating to the procurement and management of A&E contracts on federally and state funded transportation projects.

II. Contract Administrator

The City Manager shall serve as the Contract Administrator and have authority over advertisement, selection, and management of consultant contracts. City Manager shall also have primary responsibility for ensuring compliance with the CSPM and associated federal and state regulations related to the procurement and management of consultant services contracts.

III. Contract City Engineer

If City has secured the services of a Contract City Engineer, that person or firm shall not serve in a management role related to federal and/or state funded transportation projects. Specifically, the Contract City Engineer shall not perform any of the following management duties related to federally and state funded transportation projects:

- a. Hire, manage or supervise any City employee.
- b. Procure the services of any private person or firm to provide the City with contracted services.
- c. Approve any payments to City employees or contracted persons and/or firms.
- d. Approve any changes in the scope of work of a project.
- e. Approve any changes in the costs associated with a project

A & E SERVICES ADMINISTRATION AND PROCUREMENT  
POLICIES

- f. Approve any change orders on a project.

The Contract City Engineer may perform the following duties under the supervision of the Contract Administrator:

- a. Perform design services
- b. Prepare and submit to Caltrans Local Assistance on the City's behalf the following documents subject to the prior review and approval of the Contract Administrator:
  - i. Authorizations to Proceed
  - ii. Progress Invoices for Reimbursements
  - iii. DBE Goals Documentation
  - iv. Contract Award Documentation
  - v. Final Report of Expenditures
- c. Assist the City in responding to inquiries from Caltrans Local Assistance and/or Federal Highway Administration (FHWA) related to the project(s).
- d. Provide construction phase services

If the Contract City Engineer has been engaged to provide construction phase services for projects in which the Contract City Engineer also will or has provided design phase services, the following controls shall be followed:

- a. Contract City Engineer shall only prepare progress estimates based on field observations of in-place work and such estimates shall be subject to the review and approval by Contract Administrator and/or Public Works Director prior to submission to the City's finance department for payment.
- b. Contract City Engineer may respond to RFI's that are merely clarifications of the project plans and specifications or the design intent and which do not result in a change of scope and/or cost of the work. In the event a change in scope and/or cost of the work is necessary, the RFI shall be reviewed by the Public Works Director and approved by the Contract Administrator.
- c. All change orders shall be reviewed by the Public Works Director and approved by the Contract Administrator.
- d. Federal reimbursement requests may be prepared by the Contract City Engineer, however, must be reviewed and approved by the Contract Administrator prior to submission to Caltrans Local Assistance for processing.

A & E SERVICES ADMINISTRATION AND PROCUREMENT  
POLICIES

IV. PUBLIC WORKS DIRECTOR

- a. During the course of the design and construction phases of a federally or state funded transportation project, the Public Works Director shall review and oversee proposed designs and related construction activities of public works projects to ensure compliance with City industry standards as well as to ensure the project conforms to the proposed scope of work and goals of the project. In the event of a conflict between the opinion of the Public Works Director and Contract City Engineer, the matter shall be referred to the Contract Administrator to resolve the conflict.

V. CONFLICT OF INTEREST

- a. In the event that a conflict of interest occurs resulting from changes in personnel, contract changes, or other unforeseen conditions, the Contract Administrator shall immediately take steps to remedy the conflict including suspension of work and/or termination of contracts and shall notify Caltrans Local Assistance of the conflict of interest and steps to remedy and resume the work.

VI. FEDERAL AND STATE REGULATIONS

- a. It is the intent of these policies and procedures to ensure the absence of fraud, waste and abuse on federal and state funded transportation projects. As such, these policies will be updated if new regulations are developed not included in these policies or the CSPM. Revisions to these policies will be included in new contracts procured through these policies or will be included by amendment into existing contracts as determined appropriate by the Contract Administrator.

# STAFF REPORT

**AGENDA ITEM:** Adopt a Resolution approving the City of Livingston FY 19/20 List of Eligible Projects for Funding from the Road Maintenance and Rehabilitation Account (RMRA) created by Senate Bill (SB) 1 Road Repair and Accountability Act of 2017, and Authorizing the City Manager to file with the California Transportation Commission the Project List and Annual Expenditure Report for FY 19/20 RMRA Funding

**MEETING DATE:** April 16, 2019

**PREPARED BY:** Noe Martinez, Gouveia Engineering

**REVIEWED BY:** Jose Antonio Ramirez, City Manager

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## **RECOMMENDATION:**

Staff recommends that the City Council adopt Resolution No. \_\_\_\_, as follows:

1. Approving the City of Livingston FY 19/20 List of eligible projects for funding from the Road Maintenance and Rehabilitation Account administered by the California Transportation Commission in partnership with the State Controller's office, and
2. Authorizing the City Manager to file with the California Transportation Commission (CTC) the Project List and Annual Expenditure Report for FY 19/20 RMRA Funding.

## **BACKGROUND:**

Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and signed into law by the Governor on April 28, 2017, in order to address the transportation funding shortfalls statewide. The 2016 California Statewide Local Streets and Roads Needs Assessment found that a majority of the city streets and roads in California are at an "at-risk" condition and this funding will provide for improving the roads system. It is anticipated that over the next decade, SB 1 will contribute to restoring streets and roads into a "good" condition. SB 1 funding will be generated from increased gasoline and diesel fuel excise taxes and additional vehicle registration fees for California residents.

SB 1 includes accountability and transparency provisions to ensure the funding is used on a fiscal year basis for eligible transportation projects including, but not limited to, road maintenance and rehabilitation, safety projects, railroad grade separations, complete streets components, and traffic control devices. Funding recipients must prepare a list of eligible projects to receive funding from the Road Maintenance and Rehabilitation Account on a fiscal year basis with these funds appropriated in the City budget. This list must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement. Funding recipients will also be required to prepare annual reports to indicate expenditure levels and completion status for each proposed project on a fiscal year basis.

Cities and counties will receive an annual allocation, determined from a population formula, which will be distributed on a monthly basis. SB 1 mandates that this new RMRA funding must not be used to

supplant the current level of General Fund expenditures for street improvements and will be subject to oversight by the State Controller as part of the accountability and transparency provisions.

**DISCUSSION:**

This year's allocation corresponds to the third year of funding and the second consecutive full allocation since the program's inception. The funds were first made available to cities and counties during Fiscal Year 2017-2018 as a partial allocation from the regular fiscal year amount.

In order to receive the FY 19/20 SB 1 funding, the City of Livingston must submit to the California Transportation Commission by May 1, 2019, a list of eligible projects approved by resolution by the City Council. The current submittal process requires the submittal of projects using the CTC-developed online tool.

The City of Livingston's FY 19/20 allocation is estimated at \$237,152 per the Local Streets and Roads – Projected Revenues dated January 22, 2019 and as published by the California City Finance website. It is recommended that these funds be appropriated for the following eligible projects:

1. Winton Parkway Rehabilitation (from Joseph Gallo Drive to SR 99)
2. Hammatt Avenue Rehabilitation (from Campbell Boulevard to SR 99)
3. Stefani Avenue Rehabilitation (from Davis to Campbell Boulevard)

The attached project list provides more detail including the project description, location, estimated completion date, and useful life.

The City's FY 19/20 Budget will include the following revenue and expenditure items for the FY 19/20 SB 1 Allocation:

Revenue: Road Maintenance and Rehabilitation Account: \$237,152

Expenditure: Road Maintenance and Rehabilitation Projects: \$237,152

**FISCAL IMPACT:**

The expenditures for the FY 19/20 eligible projects is anticipated to be funded 100% from the City's Road Maintenance and Rehabilitation Account. The proposed project expenditures for FY 19/20 are anticipated to match the estimated revenue of \$237,152 for FY 19/20.

**ATTACHMENTS:**

1. Resolution No. \_\_\_\_\_
2. FY 19-20 Project List

**RESOLUTION NO. 2019-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON  
APPROVING THE CITY OF LIVINGSTON FY 19/20 LIST OF ELIGIBLE PROJECTS FOR  
FUNDING FROM THE ROAD MAINTENANCE AND REHABILITATION ACCOUNT (RMRA)  
CREATED BY SENATE BILL 1: ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017,  
AND AUTHORIZING THE CITY MANAGER TO FILE WITH THE CALIFORNIA  
TRANSPORTATION COMMISSION THE PROJECT LIST AND ANNUAL EXPENDITURE  
REPORT FOR FY 2019/2020 RMRA FUNDING**

**WHEREAS**, the City of Livingston is eligible to receive funding from the Road Maintenance and Rehabilitation Account (RMRA) created by Senate Bill (SB) 1, Road Repair and Accountability Act of 2017; and

**WHEREAS**, SB 1 was passed by the Legislature and signed into law by the Governor on April 28, 2017, in order to address the transportation funding shortfalls statewide; and

**WHEREAS**, RMRA funding will be generated from increased gasoline and diesel fuel excise taxes and additional vehicle registration fees for California residents; and

**WHEREAS**, SB 1 includes accountability and transparency provisions to ensure the funding is used on a fiscal year basis for eligible transportation projects including, but not limited to, road maintenance and rehabilitation, safety projects, railroad grade separations, complete streets components, and traffic control devices; and

**WHEREAS**, funding recipients must prepare a list of eligible projects to receive funding from the Road Maintenance and Rehabilitation Account on a fiscal year basis with these funds appropriated in the City budget. This list must include a description and location of each proposed project, a proposed schedule for completion, and the estimated useful life of the improvements; and

**WHEREAS**, funding recipients must prepare an annual report to indicate expenditure levels and completion status for each proposed project on a fiscal year basis; and

**WHEREAS**, cities and counties will receive an annual allocation, determined from a population formula, which will be distributed on a monthly basis; and

**WHEREAS**, SB 1 mandates that this new RMRA funding must not be used to supplant the current level of General Fund expenditures for street improvements and will be subject to oversight by the State Controller's office; and

**WHEREAS**, the City of Livingston's FY 2019/2020 allocation for RMRA funding is estimated at \$237,152 and the City intends to appropriate these funds on its FY 19/20 Budget; and

**WHEREAS**, the City's FY 2019/2020 allocation will be appropriated for the following eligible projects:

1. Winton Parkway Rehabilitation (from Joseph Gallo Drive to SR 99)
2. Hammatt Avenue Rehabilitation (from Campbell Boulevard to SR 99)
3. Stefani Avenue Rehabilitation (from Davis to Campbell Boulevard); and

**WHEREAS**, the City is required to submit to the California Transportation Commission by May 1, 2019, the FY 2019/2020 List of eligible projects and a resolution that shows these projects were approved to

receive FY 19/20 SB 1 funds.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Livingston as follows:

**Section 1.** The above recitals are true and correct findings of the Livingston City Council.

**Section 2.** The City Council hereby approves the proposed FY 2019/2020 List for eligible projects to receive funding from the Road Maintenance and Rehabilitation Account.

**Section 3.** The FY 19/20 SB 1 funds will be appropriated on the City's FY 19/20 Budget.

**Section 4.** The City Manager is hereby authorized and directed to submit to the California Transportation Commission the Project List and Annual Expenditure Report for FY 2019/2020 RMRA Funding.

Passed and adopted this 16<sup>th</sup> day of April, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

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Gurpal Samra, Mayor  
of the City of Livingston

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a Regular Meeting of the City Council of the City of Livingston this 16<sup>th</sup> day of April, 2019.

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Monica Cisneros, Deputy City Clerk  
of the City of Livingston



## Local Streets and Roads Program

<b>Agency Name:</b>	<b>Agency Contact:</b>		
Livingston	Jose Antonio Ramirez		
	(209) 394-8041		
<b>LoCode:</b>	5256	citymanager@livingstoncity.com	

FY
<b>19/20</b>

### Summary of Proposed Project List

Project No.	Project Title	Project Description	Project Location	Estimated Completion Date (mm/dd/yyyy)		Estimated Useful Life (# of yrs)	
				Pre-Construction	Construction	Min.	Max.
PP01	Winton Parkway Rehabilitation	Roadway rehabilitation	In the City of Livingston between Joseph Gallo Drive and SR 99	08/2019	08/2020	10	20
PP02	Hammatt Avenue Rehabilitation	Roadway rehabilitation	In the City of Livingston between Campbell Boulevard and SR 99	08/2019	08/2020	10	20
PP03	Stefani Avenue Rehabilitation	Reconstruction of the roadway structural section.	In the City of Livingston between Davis Street and Campbell Boulevard	08/2022	08/2023	10	20
PP04							
PP05							
PP06							
PP07							
PP08							
PP09							
PP10							
PP11							
PP12							
PP13							
PP14							
PP15							
PP16							
PP17							
PP18							
PP19							
PP20							
PP21							

## STAFF REPORT

**AGENDA ITEM:** City Council to Provide Staff Direction for Appointment of the Second Alternate to the Planning Commission.

**MEETING DATE:** April 16, 2018

**PREPARED BY:** Randy Hatch, Contract City Planner

**REVIEWED BY:** Jose Antonio Ramirez, City Manager

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### **RECOMMENDATION:**

City Council to provide staff direction for appointment of the second alternate to the Planning Commission.

### **BACKGROUND AND DISCUSSION:**

At the Council's meeting of February 19, 2019, the City Council filled vacancies on the Planning Commission by appointing Adanan Bath and Steve Bassi to regular terms. The Council also directed staff to amend the Municipal Code to allow for an additional alternate to the Planning Commission. Staff prepared an amendment to the Livingston Municipal Code revising "Title 2 Boards and Commissions, Chapter 2 Planning Commission, Section 2-2-2, Membership and Terms of Office" to allow an additional alternate member. This Ordinance (No. 637), introduced on March 5, 2019 and adopted on March 19, 2019, will be effective on April 19, 2019.

Staff seeks direction from Council on how to obtain names of interested applicants for this alternate position. One option is to use the list of applicants that were interested but not appointed for the February 19, 2019, appointment consideration. There are 5 individuals who submitted applications that were not appointed; Brandon Espinoza, David Blevins, Jose Moran, Wapinder Kang, and Renee Waite. These individuals may no longer be interested or available to serve. A second option is for Council to direct staff to advertise and accept applications for the alternate position for the usual time period of 45 days. Those new applications would be brought back to a future Council meeting for consideration well past the April 19 date when the new Ordinance would be effective.

### **FISCAL IMPACT:**

None.

### **ATTACHMENTS:**

None.