

D4 Local Program Gazette

PSU Certification Q&A



September 2013

Certification for the Procurement of Professional Services

What services are considered Professional Services?

The Competitive Consultant Negotiation Act (CCNA) defines professional services as architecture, professional engineering, landscape architecture, and registered surveying and mapping. Additionally under FDOT's Statute 337, right of way services and planning services may also use the professional services procurement process

If the local agency plans to be reimbursed for these services, the local agency's professional services must meet the CCNA and the **Brooks Act**. The review of the Local Agency process will take place during the LAP Certification Process.

What is it?

This is the portion of LAP Certification that allows a Local Agency to hire a consultant to do design or CEI. This is in addition to the main LAP Certification; that is only needed for federal reimbursement for consultant services. (If there is no phase 68 or 38 programmed for the project and FDOT is not reimbursing for CEI or design fees, then the local agency doesn't need to do this.) Procurement of Professional services is governed by the federal Brooks Act, which is **not** exactly the same as the Florida Statute. Remember, this is a *Federal* program, not State.

Where do I start?

After you have taken care of the main LAP Certification with form [525-010-43](#) and its associated reference materials, [Construction Narrative](#), and [Computer Based Training](#), then you turn your attention to; I am sure you guessed correctly, another form. [Form 525-010-49](#) to be exact.

Now that I have the form, now what?

Treat this form like a research project or test. Think of it as questions and short answers with attached footnote materials. The checklist has two areas, **Requirements** and **Compliance Documentation** which are the “question” part of the test. The checklist has **Requirements** that reference the federal code or act that needs to be followed. The corresponding **Regulatory Reference** column lists the applicable State and Federal regulations that apply. It also has the **Compliance Documentation** describes what reference materials the local agency should submit for FDOT review.

Requirement	Reference	Compliance Documentation	Reference	Local Agency Initial	FDOT District Initial
1. Fair, open, and competitive selection of qualified consultants	40 USC 1101-1104 (“Brooks Act”), 23 USC 112(b)(2)(A), 23 CFR 172.5(a)(1), 287.001, and 287.001, 287.055(4), Florida Statutes, http://www.fhwa.dot.gov/programad min/172qa.cfm	Local agency provides a copy of the project advertisement and request for proposal/qualifications ¹ . Provide a copy of Short List Provide copy of In-house staff-hour estimates done to check reasonableness of consultant estimate.			

What is the Reference column?

This is the spot where the local agency identifies how the requirement is satisfied. You might write something like “City Purchasing Manual, Engineering Section, section 5.3, page 15”. Simply stating “The City Purchasing Manual” is not an acceptable reference, and will fast-track your package to rejection. The specific page or section that satisfies the requirement must be referenced. After all, you should be the expert on your policies and procedures. The Invitation to Bid is NOT an appropriate reference here. This checklist is looking for policy and procedure. You would then place a bookmark in the PDF document to that and place a tab on the hard copy document.

Requirement	Reference	Compliance Documentation	Reference	Local Agency Initial	FDOT District Initial
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What do I do for the items that haven’t happened yet?

There are a few items listed in the [Compliance Documentation](#) that will not have occurred because the LAP Certification materials are due with the [Preliminary Submittal](#), over a year before you advertise for your CEI. Let’s look at the first requirement: “Fair, open, and competitive selection of qualified consultants”. This requirement has 5 [Compliance Documentation](#) that you need to send us to review:

1. proposed project advertisement
2. request for proposal/qualifications
3. *copy of Short List*
4. copy of your in-house staff-hour estimate
5. *copy of records of negotiations*

You would send in #1, #2 and #4 with your Certification package, and #3 and #5 later, after you have negotiated the contract. You should state that the *copy of Short List* and the *copy of records of negotiations* will be submitted when available.

What is my in-house staff hour estimate?

FHWA requires you (and FDOT) to prepare an estimate of the work effort involved with the task or project. The majority of LAP CEI contracts are based on quantifying the salary and other related costs as a percentage to salary and the construction contract time. (Remember, one of the items for LAP Certification is the local agency’s procedure for estimating construction, and thus contract, time.) This estimation of staff hours is the basis for your negotiations with the selected consultant.

How do I address overhead rates?

The Federal regulations do not allow overhead rates of direct salaries to be capped. If the company’s audited overhead rate is 192% and the PA makes \$50.50 per hour, then that is what should be in the contract. FDOT uses a very detailed Excel spreadsheet; what we call the [Automated Fee Proposal](#) that captures all of the elements. There is a very informative [Automated Fee Proposal User’s Guide](#) that may be useful. At a minimum, the final contract and fee proposal should clearly show something like the summary below:

SALARY RELATED COSTS:		\$22,500.00
OVERHEAD:	214%	\$48,150.00
OPERATING MARGIN:	12%	\$2,700.00
FCCM (Facilities Capital Cost Money):	1.45%	\$326.93
EXPENSES:	7.45%	\$1,676.93
SUBTOTAL ESTIMATED FEE:		\$75,353.86

Note: the percentages above are for illustrative purposes only. Your actual numbers will vary.

Where can I find the required Federal aid provisions?

These are the standard terms for Federal aid contracts, or Appendix I. They are a handy “form”, [Form 375-040-40](#) you can get from the FDOT website.

What about training?

There is an on-line computer based training ([CBT](#)) that is required for those people participating in the hiring your CEI, including the City Engineer, Project Manager and Purchasing Officer. Print the certificate at the end of the training and include this in your certification materials. Training is offered periodically in workshop forums periodically. You can also reference the website for publications and links to FHWA’s website.



There is also a *discontinued* checklist, [Form 525-010-48](#) that has lots of helpful information that you can use as a guide in compiling your reference materials, but don’t sign it and don’t turn it in.

What if my project is small? Do I still have to advertise for my consultant?

The local agency, under limited circumstances, professional services may be exempt from the Brooks Act by following the “Small Purchase” procedure as defined in 23 CFR 172.5(a)(2).

[LAP Bulletin 20-11](#) describes when you can skip the advertisement. You can also find a little more (condensed) information under item #2 on [Form 525-010-48](#). It is important to note that the regulation still requires certain documentation and consultant ranking.

What if my agency does not have a policy or procedure addressing a particular requirement?

If there is no policy or procedure in-place that satisfies a particular requirement, then the local agency may craft a “Council Packet” or “Commission package”. It is important to note that the Invitation to Bid is not a policy or procedure, so this is not an appropriate document or reference. This is formal acceptance via Commission resolution approval describing the needed procedure to satisfy the federal requirement for a particular LAP project or all LAP projects. This package can address one item, or several items. Simply include the approved resolution with your reference material, and reference the resolution on the checklist.

What do I submit for the Professional Services component of LAP Certification?

1. One signed and completed hard copy form 525-010-49 and PDF
2. Back-up material for 525-010-49 in tabbed hard copy and bookmarked PDF
3. CBTs for the people involved in the procurement process
4. Resumes for the people involved in the procurement process