

CHAPTER 18 - PROFESSIONAL SERVICES CONTRACT SELECTION & AWARD (Consultant Contracts)

18.1 OVERVIEW

A Local Agency may use consultant services for a variety of tasks in LAP including, but not limited to: planning; project development; preparation of design plans, specifications, and estimates; right of way acquisition support; and construction engineering and inspection (CEI). The Department must ensure that when a Local Agency seeks Federal-Aid reimbursement for consultant services, the Local Agency is in compliance with the procedures in this *Manual, Section 287.055, Florida Statutes (F.S.), 23 CFR 172, the Federal Brooks Act (40 USC 1101-1104)* and other applicable federal and state regulations. The Local Agency may use the Department's *Acquisition of Professional Services Procedure (Topic 375-030-002)* and the *LAP Checklist for Federally Funded Professional Services Contracts (Form No. 525-010-49)* as references for developing procurement procedures for LAP projects. If a Local Agency is not seeking Federal-Aid reimbursement for the consultant services related project phase(s), only state procurement law applies.

Chapter 18 identifies the most common federal and state contract requirements for professional services procurement and contract award. The Chapter is not inclusive of all state and local laws, requirements, or policies. Where state law and federal law are in conflict, the Local Agency should follow the most restrictive requirement, except in cases where the state or local requirement is in direct violation of federal requirements (e.g., local preference ordinances).

A Local Agency's consultant acquisition process may not proceed beyond contract negotiations, prior to receipt of the Federal Highway Administration (FHWA) authorization and a notice to proceed from the Department. Once FHWA authorization is received, the local agency may execute the consultant contract.

18.1.1 Department Pre-qualified Consultants

Local Agencies are required to use consultants pre-qualified by the Department for projects on the National Highway System (NHS) and State Highway System (SHS). **Chapter 14-75** of the *Florida Administrative Code (F.A.C.)* establishes minimum qualification standards by type of work for consultants. A link to **F.A.C. 14-75** and a complete listing of Department pre-qualified consultants may be found on the Office of Procurement's website on the [Professional Services Prequalification page](#).

If a Local Agency chooses to retain a consultant at its own cost, the local agency shall conform to procurement law pursuant to Chapter 287, F.S. In such instances, the Local Agency shall use its own consultant pre-qualification or qualifications process.

18.1.2 Local Agency Qualified Consultants

The Local Agency may use its own consultant pre-qualification or qualifications process for projects located off the National and State Highway Systems, referred to as “off-system”. Qualifications applied to Federal-Aid projects must be consistent to ensure fair competition in the selection process.

18.2 CONFLICT OF INTEREST

Conflict of Interest is addressed in **23 CFR 1.33** and in **Section 287.057 Florida Statutes**. A Local Agency must adhere to the Florida Department of Transportation’s **Topic No. 375-030-006 [Restriction of Consultants’ Eligibility to Compete for Department Contracts](#)** for projects:

- on the State Highway System (SHS),
- on the National Highway System (NHS), and
- on Federal-Aid eligible local roadways when construction and a related professional services phase are funded by the department.

The Office of Construction maintains [Conflicts of Interests- Frequently Asked Questions](#) to assist with further clarification where conflict may arise in the life cycle of a transportation project.

For each type of project listed above, local agencies must collect **Conflict of Interest Certification Form No. 375-030-50** from each consultant who submits a proposal on a solicitation for professional services. Each Local Agency staff member who participates in the selection process for department funded professional services contracts must also submit **Form No. 375-030-50**. The Forms should be uploaded into Local Agency Program Information Tool (LAPIT) with the final professional services contract package. District LAP staff will confirm the forms are in **LAPIT** with the executed contract package as part of their concurrence to award review process.

Allowing the Engineer of Record (EOR) to perform Construction, Engineering and Inspection (CEI) services on the same project is in violation of state conflict of interest procedure (**Topic No. 375-030-006**). Accordingly, local agencies are restricted from allowing the EOR and the CEI to be the same firm for an on-system LAP project and when the local agency is receiving funding from the department for design, CEI or both phases on a Federal-Aid eligible off-system local roadway.

For construction projects that are off the State and National Highway Systems and also do not have a related professional services phase funded by the department, the Local Agency may utilize guidance published by the Federal Highway Administration (FHWA) to govern conflict of interest on LAP projects. Since Federal regulations do not expressly prohibit use of the same firm for EOR and CEI services, a local agency may allow such for off-system LAP projects where both the design and CEI project phases are locally funded.

The local agency must ensure that there are compensating controls in the form of policies, procedures, practices, and other safeguards to guarantee a conflict of interest does not occur in the procurement, management, and administration of consultant services. The FHWA Program Administration website provides questions and answers and examples of controls at: http://www.fhwa.dot.gov/programadmin/172qa_08.cfm#q06.

18.3 METHODS OF PROCUREMENT

The procurement of professional consultant services for Federal-Aid funded contracts directly related to a highway construction project shall be subject to the provisions of **23 U.S.C. 112(a)** and shall be conducted in accordance with one of three methods:

- 1) Competitive negotiation also known as qualifications-based selection
- 2) Small purchase also known as simplified acquisition
- 3) Noncompetitive procurement, under specific conditions:
 - a. Emergency repairs
 - b. After solicitation it is determined that inadequate competition exists
 - c. Service is only available from a single source (Local Agency must first attempt to procure competitively before single sourcing)

In this chapter, we will describe the processes for competitive negotiation and small purchase procurement methods in detail. Contracts that may be procured under these methods include:

- 1) Project-specific- for the performance of services and defined scope of work related to a specific project or projects.
- 2) Multi-phase-- project specific contract where the defined scope of work is divided into phases which may be negotiated and authorized individually as the project progresses (example: Project Development and Environmental Studies; and design)
- 3) On-call or indefinite delivery/indefinite quantity (IDIQ)- continuing contract for a number of projects based on task work orders issued as needed for an established contract period.

This chapter also details the specific federal contract terms for these types of contracts that will make services performed eligible for reimbursement with federal funds.

Non-competitive procurement requires prior approval from both the District LAP Administrator and the FHWA Florida Division Office. Please contact your District LAP Administrator for additional information as needed. Applicable state laws, regulations, and procedures which are not in conflict with applicable federal laws must be followed.

18.3.1 Checklist for Professional Services Contracts

Once a procurement method and contract type is identified, the Local Agency shall draft the request for proposal (RFP) and/or the request for qualifications (RFQ) packages, based on the [LAP Checklist for Federally Funded Professional Services Contracts \(Form No. 525-010-49\)](#). The draft documents shall be submitted to the District LAP Administrator via LAPIT. The LAP Administrator provides concurrence that the RFP/RFQ is in compliance with all federal requirements. The District LAP Administrator confers with functional area experts as necessary to complete their review of the documentation. The final approved solicitation package is uploaded into LAPIT by the Local Agency.

The LAP Checklist for Professional Services Contracts identifies the requirements described in this chapter, the related compliance documentation the Local Agency shall retain or submit to the Department, and the District LAP staff's monitoring responsibilities for each procurement action.

18.4 COMPETITIVE NEGOTIATIONS / QUALIFICATIONS-BASED SELECTION

Competitive negotiations procurement of professional services applies when:

- the project construction cost exceeds the estimated threshold amount for **Category Five (\$325,000)** as set forth in **Section 287.017, F.S.** or
- the planning or study activity estimated fee exceeds the threshold amount provided for **Category Two (\$35,000)** as set forth in **Section 287.017, F.S.**

Federal small purchase thresholds shall also be applicable, as referenced in **Section 18.5**.

18.4.1 Solicitation

The most common solicitation method Local Agencies use in LAP is a single step process issuing only a request for proposal (RFP) specific to the project, task, or service that includes the evaluation method of a consultant's specific technical approach and qualifications. Local agencies may also use a multi-phase process where the solicitation is limited to a request for qualifications (RFQ) and the respondents are initially ranked based

on qualifications (long list). After long listing the consultants, the agency provides a minimum of the three (3) most highly qualified candidates with the RFP (shortlist) and proceeds with final ranking of the shortlisted respondents based on the RFP responses.

Either method is acceptable, but an RFP is required as the tool to evaluate consultants per **23 CFR 172**. The RFQ is optional. Regardless of the process chosen the solicitation shall:

- A. Publicly announce projects in a uniform and consistent manner pursuant to **Section 287.055(3)(a)1, F.S.**
- B. Be regionally published and cannot be limited by state or local preferences, providing fair opportunity for contract award to all consultants, per **23 CFR 172**.
- C. Be posted for a minimum of 14 days, unless unusual circumstances warrant a shorter period, and contain a submittal deadline. Solicitation periods should be consistent across local agency projects.

If the agency does not receive a minimum of 3 qualified responses, contact the District LAP Administrator for additional guidance. The project may need to be re-advertised.

18.4.2 Qualifications Verification

Upon receipt of the responses to the solicitation, the Local Agency shall verify consultant and subconsultant qualifications and disqualify those respondents that do not meet the minimum qualifications requirements. Department pre-qualified consultants are required as specified in **Section 18.1.1**. Records of the verification process shall be maintained in the local agency project file. Examples of common documentation include a copy of the Department issued pre-qualified letter(s), professional license(s), etc. The documentation shall include the verification of suspension debarment information as required per **Item No. 4** of the **LAP Checklist for Professional Services (Form No. 525-010-49)**.

18.4.3 Request for Proposal

Per **23 CFR 172.7**, the RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

- A. Provide a clear, accurate, and detailed scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered; including:
 - i. project purpose
 - ii. project description
 - iii. services to be performed
 - iv. deliverables to be provided

- v. estimated schedule for performance of work
 - vi. applicable standards, specifications, and policies
- B. Identify requirements for discussions that may be conducted with consultants following the submission and evaluation of proposals.
- i. Discussions may be written, by telephone, video conference, or by oral presentation/interview.
 - ii. Discussions are not required if proposals contain sufficient information to evaluate the consultants.
- C. Identify evaluation criteria, including weight (or point value) for each criterion.
- i. Allowed criteria include:
 - Technical approach (e.g. project understanding, innovative concepts or alternatives, quality control procedures)
 - Work experience
 - Specialized expertise
 - Professional licensure
 - Staff capabilities
 - Workload capacity
 - Past performance
 - Locality criterion of no more than 10%. *This criterion cannot be based on political boundaries and should be established on a case-by-case basis for projects where a need has been established and concurrence received from the District LAP Administrator. If a firm currently outside the locality criterion indicates as part of its proposal that it will satisfy the criterion in some manner, such as establishing a local project office, it should be considered to have satisfied the locality criterion.*
 - ii. Non-allowed criteria include:
 - Price
 - Cost (salaries, indirect or direct rates)
 - In-state or local preference
 - Disadvantaged Business Enterprise (DBE)
 - Other local minority, small or disadvantaged business programs
- D. Specify contract type (see **Section 18.3**) and method of payment (i.e. cost plus fixed fee, lump sum).
- E. Identify special provisions or contract requirements associated with services.
- F. Require submission of cost proposals or elements of cost be concealed and

separate from technical/qualifications proposals. **Proposers SHALL NOT be evaluated, ranked, or selected based on cost or price.**

- G. Include a schedule of key dates for the procurement process and establish submittal deadlines that provide sufficient time for interested consultants to prepare and submit a proposal (generally no less than 14 days).
- i. *Public meetings are held when necessary, are properly noticed, and minutes taken or recorded. Under Florida law, sealed bids, proposals, or replies received by a Local Agency pursuant to a competitive solicitation are exempt from public records until the Local Agency provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever is earlier. Oral presentations, negotiations, vendor question and answer sessions, and discussions of negotiation strategies are all exempt meetings. A complete recording shall be made of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording is exempt until such time as the Local Agency provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever occurs earlier, pursuant to **Section 286.0113(2)(c), F.S.***

18.4.4 Ranking

The Local Agency shall rank in order of preference a minimum of three consultants determined to be most highly qualified to perform the services **based on the established and published criteria**. All staff in a decision making or recommendation capacity must be free from conflicts of interest, or have recused themselves where conflicts exist (**23 CFR 1.33 and Topic 375-030-002, Section 1**). Signed conflict of interest forms from all parties must be uploaded to LAPIT (may use FDOT **Form No. 375-030-50**) with the fully executed contract package.

The Local Agency shall submit all ranking and scoring sheets to the District Lap Administrator for review and concurrence of the selected consultant prior to entering into negotiations.

18.5 SMALL PURCHASE OR SIMPLIFIED ACQUISITION PROCESS

When a project meets the criteria established in **Category Two or Category Five**, as set forth in **Section 287.017, F.S.**, the project can be exempt from formal advertising and selection using the process called "Small Purchase." In the event that a contract is procured under the small purchase criteria, the total fee cannot exceed the appropriate limits established in **41 U.S.C. 403(11)**, or the state limit, whichever is lower at the time of

the review. Although exempt from formal advertisement, **a minimum of three qualified consultants are considered and ranked in order of qualifications.**

The small purchase procedures may be used under the following conditions:

- Are the professional services directly related to the construction project? (e.g., Project Development and Environmental (PD&E) services, design services, surveying and mapping, or construction engineering inspection services).
 - If yes, is the construction project less than **\$325,000** (state Category Five threshold as set forth in **Section 287.017, F.S.**)?
 - If yes, is the total contract amount for the professional services less than **\$150,000 (48 CFR 2.101)**?
- If all are yes, then the small purchase process may be used.
- If the answer to one of the above questions is no, then the small purchase process cannot be used.

- Are the professional services for a study activity or for planning activity? (Professional services not directly related to a construction project are defined as a "study activity").
 - If yes, is the total contract amount for the study activity or planning activity less than the state threshold of **\$35,000** (state Category Two threshold as defined in **Section 287.017, F.S.**)?
- If yes, then the small purchase process may be used.
- Please note, since the state threshold of **\$35,000** per study or planning activity is the lesser when compared with the federal threshold, the state threshold is the limiting factor.

Once the Local Agency has contacted no less than three consultants and selected the most highly qualified, the Local Agency must conduct negotiations as described in the following section.

18.6 NEGOTIATING THE CONSULTANT AGREEMENT

The Local Agency will attempt to negotiate a contract with the most highly qualified firm selected in accordance with **40 USC 1103** and in accord with **Section 287.055, F.S.** For more details on negotiations, the Local Agency may consult the Department's Negotiation Handbook at <http://www.dot.state.fl.us/procurement/Negotiations.shtm>.

- The Local Agency must develop an independent staff-hour estimate **prior to receipt or review of the consultant's proposal** to check the reasonableness of the consultant estimate and conduct an analysis of costs proposed by the consultant. The Local Agency may request a copy of the Department's staff hour estimate guidance for assistance in developing their estimate. A copy of the Independent Man Hour estimate shall be uploaded to LAPIT for Department review.

- The Local Agency negotiator uses all resources available to conduct effective negotiations. These include, but are not limited to, the refined scope of work, the evaluation factors and their relative importance.
- If the Local Agency is unable to negotiate a satisfactory contract with the firm, the Local Agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified firm. This process will be repeated until agreement is reached.
- The Local Agency shall retain documentation of the negotiations activities in their files. The Department only collects the estimate. Documentation shall include the consultant cost certification and supporting documentation of the accepted indirect cost rate to be applied to the contract.

18.6.1 Securing Approval to Hire Consultants

Upon concluding negotiations, the Local Agency submits a request to the District LAP Administrator for approval to execute the consultant agreement with the most qualified firm. This request includes a completed copy of the ***Local Agency Program Checklist for Federally Funded Professional Services Contracts Federal and State Requirements (Form 525-010-49)*** and required supporting documentation (see **Section 18.3.1**).

The District LAP Administrator confers with functional area experts as necessary to complete their review of the documentation. The Local Agency may issue its notice to proceed once approval is obtained, in writing, from the District LAP Administrator. If work is performed prior to approval and/or a notice to proceed from the District LAP Administrator, the contract shall not be eligible for federal reimbursement.

18.7 PROFESSIONAL SERVICES PROVIDED ON A CONTINUING BASIS

In accordance with **Section 18.4** of this chapter, the Local Agency must publicly announce in a uniform and consistent manner each project that exceeds the thresholds specified in Section 18.4. FHWA and state law permit the use of on-call type contracts (referred to in Florida as continuing contracts) when specialized services are needed for a number of different projects. In accordance with state law, continuing contracts for professional services are restricted in use to services for projects in which the estimated construction cost of each individual project under the contract does not exceed **\$2,000,000** each, or for each study activity when the fee for such professional service does not exceed **\$200,000**, or for work of a specified nature as outlined in the contract (Ref. **Section 287.055(2)(g), F.S.**). Work of a specified nature refers to specific activities that may be performed by the consultant that are expressly referenced in the contract Scope of Services.

Continuing contracts shall be limited in duration to a period **not to exceed five (5) years** per Department procedure, and a **total cumulative contract amount of \$1.5 million** since federal law requires a reasonable maximum length of contract and maximum dollar amount of contract defined within the advertisement and contract provisions.

Continuing contracts must include the required federal provisions contained in the Department's **LAP Terms for Federal Aid Contracts (Form 375-040-84)**, and all required federal forms as noted in **Section 18.10**. The required federal forms must be signed as part of the continuing contract and the applicable federal provisions must be a part of the original contract. These items cannot be added via an amendment, supplemental agreement or task work order. Existing contracts executed without the federal requirements, or new contracts where the federal requirements were inadvertently omitted will not be eligible for federal reimbursement.

18.7.1 Solicitations for Continuing Contracts

All requirements for Federal-aid Highway Program funded engineering and design-related services contracts shall be made by public announcement with evaluation and selection based on demonstrated competence and qualifications for the type of services required (as specified in **23 U.S.C. 112(b)(2)(A)**, **40 U.S.C. 1101**, and **23 CFR 172.5(a)(1)**).

A local agency may advertise and award for any eligible professional services phase the agency is certified to perform in the Local Agency Program (per **Chapter 2**). Solicitations for professional services under continuing contracts must include the scope of work, clearly defined contract award procedures, the cost and time limits identified in the previous section, and reference the Federal provisions. Each continuing contract must be work type or phase specific.

Multiple work types or phases cannot be awarded under one contract. For example, a contract inclusive of both design and construction, engineering and inspection (CEI) services would be representative of multiple work types under one contract. These types of multi-work type/multi-phase contracts are General Engineering Consultant (GEC) contracts, providing management and oversight of a major project or series of projects, and are not eligible for use on federally funded projects.

Multiple continuing contracts for the same phase type may be awarded under one single solicitation, but ranking and award of each contract must comply fully with all state and federal requirements. The solicitation must expressly state that multiple contracts will be awarded. Where multiple contracts are being selected with one solicitation, at least two more Consultants than number of contracts being awarded shall be considered for evaluation of proposals and discussions. If multiple firms are to be procured through a single solicitation for specific on-call services, the procedures for assignment of task orders

among the selected firms must also be defined in the solicitation and contract provisions. After the multiple contracts have been awarded (using qualification based selection process), task orders may be assigned to the selected, qualified firms on a the basis of proximity to project, staff availability at the time services are required, or through an additional qualifications based procedure with opportunity for discussions between the contracting agency and qualified firms for each specific task order. The procedures for awarding task orders among the selected firms shall be based on scope and qualifications, and **not** based on a bidding process or cost proposals. In accordance with Florida law, firms providing professional services under continuing contracts shall not be required to bid against one another (**Section 287.055 (2)(g), F.S.**).

18.7.2 Qualifications

A Local Agency may elect not to require consultants be pre-qualified by FDOT, and use other established qualifications definitions. If the consultant firm(s) awarded the continuing contract is not FDOT prequalified, project tasks will not be eligible for reimbursement when the Federal-aid project is on the National or State Highway Systems, or for off-system Class C projects as defined in **LAP Bulletin 01-14**.

18.7.3 Scope of Services

The scope of services for a continuing contract shall identify the phase type to be performed. When utilizing the FDOT pre-qualification process, the Local Agency shall identify the types of work in accordance with **Chapter 14-75.003, Florida Administrative Code**. The tasks that may be potentially assigned under the phase type shall be clearly identified or listed in the scope. For example, a design scope may include design services, geotechnical, field surveying, traffic signal design, lighting design, etc. Known Federal-aid projects may be identified in the scope of services when advertised and new Federal-aid projects may be added by task work order after the continuing contract is awarded. New projects identified after contract award must include only those specific tasks identified in the original scope of the contract as awarded.

18.7.4 Independent Staff Hour Estimates and Negotiations

Continuing contracts typically establish classifications and rates of personnel to be included on the contract. Per [49 CFR 18.36 \(f\)\(1\)](#), the Local Agency must prepare independent staff-hour estimates before receiving bids or proposals for services associated with a task order. As identified and expanded in **Section 18.6**, negotiations may not be solely based on price. The Local Agency must also perform an analysis of the consultant's cost proposal. Records of negotiations shall be maintained by the Local Agency in accordance with [2 CFR 200](#) and should be available to FDOT and FHWA upon request.

Task orders on continuing contracts may be negotiated as either cost plus fixed fee or lump sum method of payment. It is especially critical that the lump sum fees be established based on negotiated staff hours and negotiated level of staffing, involving key staff as identified in the Consultant technical proposal.

18.7.5 Task Work Orders

Work Orders are provided to the Consultant on a continuing contract, to identify what work and services are required for specific projects. The accumulated total of issued task work orders may not exceed the \$1.5 million limit for federally funded continuing contracts. The project services to be rendered by the Consultant for each task work order will be completed within the time period specified in each task assignment, noting that all services performed under the contract must begin within five years from the execution date of the continuing contract. Approval is not required to extend continuing contracts beyond five years to complete task orders previously authorized before the end of the five year limit. The Local Agency shall seek approval from the District LAP Administrator for the continuing contract prior to execution. The District LAP Administrator shall request Authorization prior to execution of each federally funded task work order.

Federally funded task work orders require fixed fee operating margin. Fixed fee operating margin is not required for state funded task work orders, although it is recommended to reduce contract complexity, and to ensure that no federally funded tasks are inadvertently established without fixed fee operating margin.

18.7.6 Local Agency Responsibilities

All state and federal requirements identified in **Chapter 18** are applicable to the procurement of continuing contracts. The Local Agency should refer to the [Professional Services Checklist Form 525-010-49](#) during the development, advertisement, negotiation, and award of the continuing contract. Each item identified on the Checklist will be submitted to the District LAP Administrator following the same process as a LAP project specific professional services advertisement and contract award. A Professional Services Checklist will not be applicable to project specific task work orders issued under an awarded continuing contract.

Disadvantaged Business Enterprise utilization data and payment reporting will be required of the consultant on each LAP project utilizing the established methods identified in **Chapter 14**.

18.7.7 Federalized Consultant Contracts

Local Agencies may choose to use a continuing contract with the federal terms on non-

federally funded projects.

18.8 REQUIRED CONTRACT PROVISIONS

Per **23 CFR 172** and **287.055, F.S.**, all required contract terms or provisions shall be incorporated into the professional services contract document for Federal-Aid reimbursement eligibility. **Chapter 18** and the **LAP Professional Services Checklist** identify the most common federal and state contract requirements for professional services procurement and contract award; but they are **not** inclusive of all state and local laws, requirements, or policies.

Contracts and subcontracts must contain the following federal provisions. The provisions indicated in BOLD are included in the Department's **LAP Terms for Federal Aid Contracts, Form No. (Form 375-040-84)** and may be incorporated into the contract document by incorporating the Form in full into the contract.

- Administrative, contractual, or legal remedies for breach of contract terms and provide for sanctions and penalties.
- Termination clauses for cause, convenience, and default (all contracts in excess of \$10,000)
- Notice of contracting agency requirements and regulations pertaining to reporting, copy rights, and rights in data.
- **Access by grantee, the sub-grantee, the FHWA, the USDOT Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant...**
- Retention of all records for not less than 5 years (per LAP Agreement)
- Lobbying certification and disclosure (all contracts in excess of \$100,000)
- **Standard DOT Title VI Assurances and EEO provisions**
- **Disadvantaged Business Enterprise (DBE) assurance**
- **Provision for notification of change in status to Certification of Debarment, Suspension, Ineligibility and Voluntary Exclusion, as set forth in 29 CFR, Section 29.510.**
- **F.A.R. 52.203-5** Covenant Against Contingent Fees: Contract warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee...
- Prompt pay requirements
- Determination of allowable costs in accordance with the Federal cost principles
- Contracting agency requirements pertaining to consultant errors and omissions

- Contracting agency requirements pertaining to conflicts of interest
- Performance Evaluation of the consultant

The boilerplate contract must also contain the following state provisions: a) public access to public records; b) E-Verify; c) Drug Free Workplace, d) Professional Liability Insurance, e) public entity crimes statement, and f) tangible assets (as applicable).

18.9 MANAGING, MONITORING, AND EVALUATING THE AGREEMENT

All Local Agencies shall assign one of their personnel as Project Manager to monitor the consultant's performance and ensure that quality products are received. This person must be a public employee that is in responsible charge. The Local Agency's Project Manager shall:

- A. Negotiate supplemental amendments to existing agreements and provide the Local Agency's independent estimate of the costs for the work involved.
Supplemental agreements may only be made for the type of services and work included within the original scope of services. Services outside the scope of work established in the original contract are not eligible for federal reimbursement unless they are solicited under a separate agreement.
- B. Ensure no work is done or costs incurred until the agreement(s) and supplement(s) are approved by the Department.
- C. Act as the contact between the Local Agency and the consultant to ensure compliance with the terms of the agreement.
- D. Monitor the consultant's progress reports to ensure that progress follows the schedule and the consultant reports problem areas and takes corrective action.
- E. Establish controls to monitor the time for completion of each agreement to ensure the consultant does not exceed specified time limitations.
- F. Validate the accuracy and approve invoices to ensure they match up to the work performed. The Local Agency should keep cumulative cost records for each agreement to ensure costs are allowable, allocable, and reasonable.
- G. Establish controls to prevent payment greater than the agreement amount.
- H. Monitor the consultant to ensure compliance with the Equal Employment Opportunity (EEO) provisions of the agreement.
- I. Monitor and validate any DBE/Minority Business Enterprise participation and compliance.
- J. Perform the final performance evaluation of the consultant, provide a copy of the evaluation to the consultant, and upload the evaluation to LAPIT for the project record.

18.9.1 DBE Data Reporting

Once the Local Agency issues its notice to proceed, the Local Agency will record the contract data in LAPIT. This data includes the name of the consultant firm, the contract award amount and execution date. This information is vital to the monitoring and proper recording of Disadvantaged Business Enterprise (DBE) activities and sub recipient auditing per **Chapter 15**. Instructions for recording the contract data are available in LAPIT and in **Chapter 15**.

18.9.2 Invoicing and Progress Reports

The Local Agency will submit quarterly reimbursement requests to the District LAP Administrator, per **Section 2.01** of the **LAP Agreement**. The reimbursement requests shall contain sufficient detail to determine the status of the project and all charges incurred by the Local Agency and the consultant where federal participation is requested.

The Local Agency shall ensure the consultant has met all terms and conditions of the agreement and has completed all services under the agreement before the final payment to and release of the consultant.

18.9.3 Department Monitoring Responsibilities

The Department will decide on the degree of monitoring, which will depend on the nature and character of each project. Project records shall be maintained in accordance with the provisions of **2 CFR 200.333**. Upon completion of the project, the District LAP Administrator will provide the Local Agency with a copy of the LAP Performance Evaluation as described in **Chapter 2**.

18.10 FORMS AND OTHER REQUIRED TERMS

A list of the applicable forms is provided below. The following forms are available in the [Department's Forms Library](#) and on the [LAP Website](#):

375-030-30	<i>Truth-In-Negotiation Certification</i> (for contracts valued greater than \$195,000)
375-030-32	<i>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts</i>
375-030-33	<i>Certification for Disclosure of Lobbying Activities on Federal Aid Contracts</i>
375-030-34	<i>Disclosure of Lobbying Activities</i> (as applicable)
375-040-84	<i>Local Agency Program Terms for Federal-Aid Contracts</i> (includes required DBE, EEO and Title VI Appendix A/E provisions)

- 375-030-50** ***Conflict of Interest Certification*** (required for all Local Agency staff and Consultant staff involved in the selection process)
- 525-010-49** ***LAP Checklist for Federally Funded Professional Services Contracts***
- 375-030-18** ***Consultant Affirmation*** (For Consultants Utilized for Preparation of Environmental Management (PD&E) Documents)