

## **ODOT Certification Program Consultant Selection Procurement Frequently Asked Questions**

### **1. Question: What are A&E and Related Services?**

**Answer:** A&E “Architecture & Engineering” commonly refers to professional services required to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor. These services must be obtained through a Qualifications Based Selection (QBS) process; cost or price cannot be a factor in selection for award of a contract. Costs are negotiated after selection.

Related services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances, hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner’s representation services or land-use planning services. Requirements for these services fall under ORS 279C.

### **2. Question: How long does the application process take?**

**Answer:** If the LPA meets the minimum requirements and uses ODOT’s templates and written procedures the initial acceptance should be within two weeks. The certification program office will assess the IGA requirements and start the process for certification. If the LPA chooses to use their written procedures the process is more complex, difficult to sustain and takes more time to evaluate the procedures to ensure compliance with federal and state regulations.

### **3. Question: What are the minimum requirements the LPA must meet in order to begin the Consultant Selection portion of the Certification Program?**

**Answer:** The LPA must have three or more projects in the current STIP, Qualified staff and be in compliance with federal and state regulations governing federal aid projects.

### **4. Question: How will we know if our application to begin the certification process has been accepted?**

**Answer:** An acceptance letter or a denial letter will be sent within two weeks. When the applicant agrees to adopt ODOT’s written procedures, has qualified staff and at least three projects in the current STIP average approval time is less than a week.

5. **Question:** *If we have three projects and want to hire the same consultant for all three, can we utilize the same Direct Appointment process for all three projects since we are hiring the same consultant?*

**Answer:** No, you must complete one direct appointment contract for each project.

6. **Question:** *If we need to hire three different consultants for the same project, can this be done with the Direct Appointment process?*

**Answer:** Yes, as long as the total contract award does not exceed \$100,000, or the direct appointment limit applicable to the LPA, whichever is less. For example:

| Contract Type            | Award Amount    |
|--------------------------|-----------------|
| Environmental Consultant | \$35,000        |
| QCCS Consultant          | \$25,000        |
| Material Testing         | \$25,000        |
| <b>Total Contract:</b>   | <b>\$85,000</b> |

7. **Question:** *What is considered fragmentation for A&E?*

**Answer:** Generally any time procurement is artificially divided to avoid requirements that apply to procurements above certain dollar thresholds specified in law, it should be considered fragmentation. If there is federal funding involved, 23CFR 172.7(a)(2)(i) applies and states the following: "The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures." However, separate direct appointment contracts for unrelated elements of the project (i.e. survey work and construction inspection services) would not be considered fragmentation because the separate contracts would not be awarded "merely to permit use of small purchase procedures".

**Note:** Fragmenting does not occur when you use different consultants for the same project.

8. **Question:** *Do we have to select A&E consultants from ODOT's Current A&E full service Price Agreement List including all subs approved under price agreements?*

**Answer:** It is preferred the LPA use ODOT's current full service A&E price agreement list. However, the LPA may request an exception to use a consultant not on the list. All exceptions must be reviewed by the CPM with input from the LAL. Normally, except for the specialty disciplines listed below and approved exception requests, the LPA's will select consultants from the list of [approved primes and subcontractors](#) under the current ODOT full-service price agreements.

In addition, tasks for the following disciplines require specific pre-qualifications. Lists of certified firms for each discipline are linked below.

- [Biology](#)
- [Archeology/Cultural](#)
- [Qualified Construction Inspectors](#)

**\*\* Right of Way Services – contact Region Right of Way Manager\*\***

**9. Question: How does ODOT determine which consultants are on the Price Agreement List? What is the vetting process?**

**Answer:** The qualifications of each of the primes and their teams of sub consultants are evaluated by full-service RFP evaluation committee consisting of ODOT staff with appropriate technical and project management backgrounds. A new full service RFP is typically issued every 4 years to establish the list of primes and subs available under Price Agreements.

**10. Question: What are the training requirements?**

**Answer:**

a) The **Direct Appointment selection** and contract award must be prepared and processed by an individual employed by the LPA that meets the following minimum qualifications:

- Attend ODOT/DAS Statement of Work for Personal Services class (or equivalent) in last 3 years
- Attend Negotiation training (or equivalent) in last 3 years
- Attend Contract Administration of Personal Services class (or equivalent) in last 3 years
- Current certification in public procurement (i.e., CPPB, CPPO, OPBC from [NIGP](#), [NASPO](#), or [DAS](#) will substitute for items a thru c.*

b) The **Informal/Formal solicitation** and contract award must be prepared and processed by an individual employed by the LPA that meets the following minimum qualifications:

- Minimum of 3 years in public procurement that includes experience processing Informal and Formal RFPs and personal service contracts.
- Attend ODOT /DAS Statement of Work for Personal Services class (or equivalent) in last 3 years
- Attend ODOT Negotiation training (or equivalent) in last 3 years
- Attend DAS/ODOT Contract Administration of Personal Services class (or equivalent) in last 3 years
- Current certification in public procurement (i.e., CPPB, CPPO, OPBC from [NIGP](#), [NASPO](#), or [DAS](#) will substitute for items b thru d*



c) Prepare an **organizational chart** demonstrating the roles and responsibilities of the individuals that will be involved in the procurement solicitation and award process and **attach** it to your completed application.

As it relates to the organizational chart you will need to identify the names, current certifications and training completed within the last three years, of the procurement staff member and any other in-house staff qualified to:

S/SOW - Prepare and review scope/statement of work

COSTS - Prepare internal estimates, conduct cost analysis and negotiate contract/amendment costs

ADMIN - Perform contract administration duties to ensure all obligations between LPA and Contractor are fulfilled

RFP- Prepare and process Formal RFPs

Qualified staff must watch the following videos on the FHWA website [Federal Aid Essentials for Local Public Agencies](#),

- [Consultant Services Overview](#)
- Hiring a Consultant Using Competitive Negotiation Procedures
- [Organizational and Consultant Conflicts of Interest](#)

If staff needs to attend ODOT classes to meet the minimum requirements, please see the guidelines for additional information.

**11. Question: Where do we find the training?**

**Answer:** ODOT's Procurement classes and DAS procurement classes available can be found at [iLearn.Oregon.gov](#).

**12. Question: What is equivalent training?**

**Answer:** An example of equivalent training would be contract administration classes at a community college or [FHWA's Contract Administration Core Curriculum](#). Please contact the Certification Program office with questions about equivalency training.

**13. Question: Are we able to use on the job training or experience to substitute for formal training?**

**Answer:** No

**14. Question: Do we have to complete the required training prior to moving forward with the application process?**

**Answer:** The LPA can begin the certification process without the required training as long as they enroll in classes and can finish by the time the project is completed. The LPA will not be able to go further in the certification process without qualified staff.

**15. Question: How can we find out more about the federal requirements?**

**Answer:** FHWA also has a site for Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers at this link which we reference in our guide: <http://www.fhwa.dot.gov/programadmin/172qa.cfm>

**16. Question: If we are certified in the Consultant Selection – Formal Process, do we still need to seek certification for Consultant Selection- Direct Appointment process?**

**Answer:** Yes, Direct Appointment has specific criteria the LPA must demonstrate competency in.

**17. Question: Do we have to adopt the Attorney General’s Model Rules?**

**Answer:** No, but you must conduct FHWA funded A&E procurement in conformance with [OAR 137-048](#) and [LPA A&E Requirements Guide \(and any additional local agency requirements that are not in conflict with the foregoing referenced requirements\)](#).

**18. Question: Can we use additional criteria for MWESB goals and preferences for FHWA-funded A&E procurements?**

**Answer:** No, Applicable Federal laws and regulations do not permit any State or local requirements that limit competition except those related directly to the qualifications of consulting firms to perform the work in a competent and responsible manner. Direction from FHWA to ODOT has consistently been that only DBE goals may be assigned, and no MWESB goals or other preferences can be included in A&E procurements that include FHWA funding.

**19. Question: Are we required to use ODOT’s RFP and contract template?**

**Answer:** Yes. As stated on the application for A&E certification: “LPA understands the use of [ODOT's most current templates for FHWA funded A&E procurements](#) is a requirement of Consultant Selection Certification.”

**20. Question: What happens if a contract modification causes a direct appointment contract to exceed the established threshold?**

**Answer:** The full amount of any contract modification or amendment that would cause the total contract amount to exceed the State or Agency threshold would be ineligible for FAHP funding. The



FHWA reserves the right to withdraw all FAHP funding from a contract if it is modified or amended above the applicable establish threshold.

**21. Question: Is a local agency able to access ODOT’s Billing Rates?**

Answer: Yes, Send a request to [ODOTBillingRateUpdates@odot.state.or.us](mailto:ODOTBillingRateUpdates@odot.state.or.us).

**Procurement Matrix**

| <b>Direct Appointment Requirements</b>  |  |
|---|--|
| <p><b>Dollar Threshold-</b> Contracts for A&amp;E and Design Related Services that do not exceed the federal amount of \$100,000.00 (including as amended) or the dollar amount of the local agency’s administrative rules do not require public advertising, however LPA will select consultants from the ODOT’s Consultant lists for LPAs.</p>  |  |
| <b>Formal Selection Requirements</b>  | <b>Informal Selection Requirements</b>   |
| <p><b>Dollar Threshold</b> - Contracts for A&amp;E and Design Related Services that will exceed \$150,000.00 (including as amended) must be publicly advertised and awarded using Formal Qualifications Based Selection Procedures.</p> <p>Selection Procedures may also be used for contracts under \$150,000.00 at LPA’s discretion, especially if the anticipated contract amount is close to the above dollar threshold or may exceed if amendments become necessary.</p>   | <p><b>Dollar Threshold</b> - Contracts for A&amp;E and Design Related Services that do not exceed \$150,000.00 (including as amended) do not require public advertising, however LPA should distribute the RFP and sample contract to no less than 3 qualified firms to preform services.</p> <p>Selection Procedures may also be used for contracts under \$100,000.00 at LPA’s discretion, especially if the anticipated contract amount is close to the above dollar threshold or may exceed if amendments become necessary</p> |
| <p><b>Qualifications Based Selection (QBS)</b> – All solicitations for A&amp;E and Design Related Services that are directly related to a construction project or that require performance or oversight by an engineer or architect must use QBS procedures and as per the Brooks Act and may not consider costs until after selection of the most qualified firm.</p>  |  |
| <p><b>Conformance with Statement of Work (SOW) Writing Guide</b> - The SOW in the final executed Contract and any amendments must meet the requirements set forth in the ODOT A&amp;E SOW Writing Guide (or LPA’s SOW procedures that are approved by ODOT).</p>  |  |
| <p><b>Negotiations and independent cost estimate</b> - Prior to receipt or review of the selected consultant’s cost proposal for the contract or amendment to the contract, a detailed independent estimate must be prepared with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant’s fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost. Negotiations must</p> |  |

| Formal Selection Requirements  | Informal Selection Requirements  |
|--|--|
| <p>be in conformance with A&amp;E Requirements Guide for LPAs, section 3.6 (or LPA’s negotiation procedures that are approved by ODOT).</p>  |  |
| <p><b>Allowable costs-</b> Costs or prices based on estimated costs for contracts are eligible for Federal-aid reimbursement only to the extent that costs incurred or cost estimates included in negotiated prices are allowable in accordance with the Federal cost principles (ref 48CFR Part 31). LPAs may obtain approved billing rate data for consultants if available from ODOT; see A&amp;E Requirements Guide for LPAs, section 3.5 Billing Rate and Overhead Cost Data.</p>   |  |
| <p><b>Approved RFP and Contract templates-</b> LPA must use the most current approved ODOT RFP and contract templates, which include all Federal, State and ODOT required provisions. Both documents include areas that LPAs may insert provisions specific to the LPA, provided they are not in conflict with federal requirements. The current DOJ-approved <a href="#">contract template</a> is available.</p>  |  |
| <p><b>Legal Review</b> – Contracts or contract amendments that will exceed \$150,000.00 (or lower threshold required by the LPA) must be reviewed for legal sufficiency by the LPA’s legal counsel.</p>  | <p><b>Legal Review</b> –Legal review is not required for contracts or amendments if under \$150,000.00, unless LPA has a lower threshold for legal sufficiency by legal counsel.</p> |
| <p><b>Procurement Files-</b> Documentation for the procurement, negotiation and contract administration must be in conformance with section 4 of the A&amp;E Requirements Guide for LPAs or LPA procedure approved by ODOT.</p>  |  |
| <p><b>LPA Staff Knowledge, Skills and Experience –</b><br/>           The Direct Appointment solicitation and contract award must be reviewed by an individual employed by the LPA that meets the following requirements:</p> <ul style="list-style-type: none"> <li>a) Attend ODOT/DAS Statement of Work for Personal Services class (or equivalent) in last 3 years.</li> <li>b) Attend ODOT Negotiation training (equivalent) in last 3 years.</li> <li>c) Attend ODOT/DAS Contract Administration of Personal Services class (or equivalent) in last three years.</li> </ul> <p>The Formal and Informal solicitation and contract award must be prepared and processed by an individual employed by the LPA that meets the following:</p> <ul style="list-style-type: none"> <li>d) Minimum of 3 years in public procurement that includes experience processing formal or informal RFP’s and personal service contracts.</li> <li>e) Attend ODOT/DAS Statement of Work for Personal Services class (or equivalent in last 3 years.</li> <li>f) Attend ODOT Negotiation training (equivalent) in last 3 years.</li> <li>g) Attend ODOT/DAS Contract Administration of Personal Services class (or equivalent) in last three years.</li> </ul> <p><i>Current certification in public procurement (i.e., CPPB, CPPO, and OPBC from NIGP, NASPO or (DAS) Oregon Department of Administrative Services) will substitute for items <b>b thru d</b> above.</i></p> |  |

| Formal Selection Requirements   | Informal Selection Requirements   |
|---|---|
| Evaluation process with a minimum of 3 member evaluation team   | Review and Rank proposals according to criteria set forth in the RFP and select the three highest ranked Proposers  |
| Must provide public notice/advertisement using a forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. The RFP must provide two protest periods: solicitation period and award period   | Must request proposals from not fewer than 5 qualified firms and have a protest period. The RFP must provide two protest periods: solicitation period and award period. |
| <b>DBE Requirements-</b> must request DBE goal assignment (from ODOT's Office of Civil Rights) prior to RFP release if contract will be over \$100,000.00   |   |
| <b>Scope &amp; Fee and Pre-negotiation-</b> The effort that goes into preparing the internal cost estimate, cost analysis, pre-negotiation plan, record of negotiations and negotiating costs should be directly related to the dollar value, importance, and complexity of the contract, work order contract (WOC) or amendment. |   |
| <b>Demonstration Project-</b> One project for Direct Appointment, Informal, & Formal Consultant Selection   |   |