

# LPA A&E Requirements Guide

## Overview of Federal, State and ODOT Requirements for Federally Funded A&E Procurements by Local Public Agencies

This guide provides an overview of requirements for state and federally funded A&E contracting, primarily from provisions in 23CFR Part 172, 2 CFR part 200 (including exemptions in part 1201), 48CFR Part 31, 49CFR Part 26, ORS 279C and the DOJ Model Rules. The [Stewardship Agreement with FHWA](#) outlines the mechanisms that ODOT will use to establish roles, responsibilities, and processes to ensure that all project and program actions will be carried out according to the appropriate laws, regulations, and policies. These responsibilities also apply to federal aid projects administered by local public agencies (LPA). Regardless of the rules adopted by an LPA, for federal aid A&E contracts, ODOT requires the LPA to meet, at minimum, the solicitation document, contract document and procedural requirements stated or referenced herein.

[**Note:** This guide is updated from time to time. Rather than printing or saving the document to hard drive, use version posted on line at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>.]

### REVISION SUMMARY

- 12/28/20 - Update section 2 to add link to guidance: [How to Automate SOW Reviews to Find Problem Areas](#).
- 7/28/20 – Clarify Award Protest guidance in section 3.2.1; Fix broken hyperlinks in several sections.
- 4/15/20 – Add new section 3.2.3 for Multiple-Project RFPs.
- 3/13/20 – Increase maximum threshold to \$250,000 for informal solicitations per change in federal simplified acquisition threshold.
- 1/15/20: Update section 3.5 Billing Rate and Overhead Data – add information about ODC Certification Form; Update section 3.2.1 to add definition of "needs analysis".
- 11/8/19: Update hyperlinks to BOC and BOC-CPFF templates.

### TABLE OF CONTENTS

<b>1. APPLICABLE LAW; FEDERAL LAW PREVAILS; CONFLICTS.....</b>	<b>2</b>
<b>2. REQUIRED PROCUREMENT TEMPLATES &amp; SOW RESOURCES.....</b>	<b>2</b>
<b>3. WRITTEN PROCEDURES.....</b>	<b>3</b>
3.1 DIRECT APPOINTMENT/SMALL PURCHASE .....	3
3.1.1 <i>Direct Appoint/Small Purchase Dollar Thresholds, Limitations, and Emergencies:</i> .....	3
3.1.2 <i>Direct Appoint/Small Purchase Procedures</i> .....	4
3.2 INFORMAL & FORMAL SELECTION FOR A&E SERVICES.....	5
3.2.1 <i>Informal Solicitations (up to \$250,000 including potential amendments)</i> .....	5
3.2.2 <i>Formal Solicitations (over \$250,000 including potential amendments)</i> .....	6
3.2.3 <i>Formal Solicitations for More Than One Project</i> .....	8
3.3 STATEMENT OF WORK PREPARATION.....	9
3.4 DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS.....	9
3.4.1 <i>Standard Goals</i> .....	9
3.4.2 <i>DBE Related Forms and Procedures</i> .....	9
3.5 BILLING RATE AND OVERHEAD COST DATA.....	10
3.6 ESTIMATES, COST ANALYSIS, NEGOTIATIONS, PROFIT AND METHOD OF COMPENSATION .....	10
3.6.1 <i>Internal Cost Estimate</i> .....	11
3.6.2 <i>Consultant’s Cost Estimate</i> .....	11
3.6.3 <i>Cost Analysis</i> .....	11
3.6.4 <i>Negotiations (billing rates, hours, and direct expenses)</i> .....	12
3.6.5 <i>Profit Negotiation</i> .....	12
3.6.6 <i>Determining Appropriate Compensation Method</i> .....	12
3.6.7 <i>Record of Negotiations</i> .....	13
3.7.1 <i>Overview of Contract Administration Responsibilities</i> .....	13
3.7.2 <i>Invoice Review Requirements</i> .....	14
3.7.3 <i>Contract Amendments</i> .....	15
3.7.4 <i>Consultant Performance Evaluation</i> .....	15
3.7.5 <i>Errors and Omissions Procedure</i> .....	16
3.7.6 <i>Contract Closeout</i> .....	16
<b>4. DOCUMENTATION REQUIREMENTS .....</b>	<b>16</b>

5.	CONFLICT OF INTEREST (COI) DISCLOSURE REQUIREMENTS .....	17
6.	VARIOUS FEDERAL REGULATIONS & FHWA POLICIES .....	17
6.1	AWARD TO RESPONSIBLE CONTRACTORS .....	17
6.2	PROTEST PROCEDURES .....	17
6.3	AWARDING AGENCY REVIEW .....	18
6.4	FHWA POLICIES AND GUIDANCE .....	18

## 1. APPLICABLE LAW; FEDERAL LAW PREVAILS; CONFLICTS

The Oregon Revised Statutes applicable to A&E contracting are ORS 279A (except for provisions applicable to “State Procurement”), ORS 279C.005 through 279C.125, and ORS 279C.307. Oregon Administrative Rules 137-046 and 137-048 are applicable to A&E procurements conducted by agencies that have adopted DOJ’s Model Rules, and set forth solicitation, contract and procedural requirements. The rules and procedures adopted by the LPA may not be in conflict with Federal and State statutes or rules (see “Notes regarding conflicts” below).

Per ORS 279A.030 “....applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS 279C.005 to 279C.670 or this chapter or ORS chapter 279B, **or require additional conditions in public contracts** not authorized by ORS 279C.005 to 279C.670 or this chapter or ORS chapter 279B.” If applicable state statutes, OARs or other local rules are in conflict or silent regarding federal requirements, then they are not in conformance and the federal requirements apply.

All A&E procurements with FHWA funding must comply with requirements of [23 U.S.C. 112\(b\)\(2\)](#), [31 U.S.C. 1352](#), [23CFR Part 172](#), [2CFR Part 200](#) (including exemptions in [part 1201](#)), [48CFR Part 31](#) and any [FHWA directives and policies](#) applicable to A&E contracting.

**Notes regarding conflicts:** Procurements with federal-aid and/or state funding may not include provisions or rule/statute citations that are in conflict with federal or state requirements. For example –

- **ORS 279A.100 Limited Competition and 279A.120 Oregon Preference** are both in conflict with federal requirements [see [FHWA Guidance](#)] and may not be applied if any federal funding is involved.
- **ORS 279B and OAR 137-047 do not apply to A&E contracting.** Citations and references to requirements of ORS 279B and OAR 137-047 must not be in A&E procurement documents. [See ORS 279A.020 Organization of Public Contracting Code and ORS 279C.010 Applicability.]
- **Overtime for professional services.** References to ORS 279C.540 and 545 are related to requirements to pay overtime on construction contracts and do not apply to A&E contracting. Consultants typically have more than one client, and normally it is not reasonable to charge overtime hours to a particular client. Firms should generally charge overtime/premium time to overhead on personal services contracts. 279C.520 excludes personal services as follows: “279C.520 Condition concerning hours of labor. (1) Every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, **except in cases of contracts for personal services as defined in ORS 279C.100**, the employee shall be paid at least time and a half pay”. Also see ORS 279C.540(6).

## 2. REQUIRED PROCUREMENT TEMPLATES & SOW RESOURCES

LPAs in ODOT’s certification program for consultant selection shall use the following standard procurement templates for all federal aid A&E procurements:

**A&E RFP Template** – Required use for formal and informal solicitations.

**A&E Contract Template** – Required use for A&E Direct Appointments/Small Purchases and all A&E contracts awarded by formal or informal solicitation.

All required templates, forms and guidance related to A&E procurements by LPAs in ODOT's certification program are maintained at the following locations:

- **Certified LPA Resources:** <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>.
- **SOW Writing Guide and optional SOW templates:**  
<https://www.oregon.gov/ODOT/Business/Procurement/Pages/SOW.aspx>
- **How to Automate SOW Reviews to Find Problem Areas:**  
[https://www.oregon.gov/odot/Business/Procurement/DocsSOW/SOW\\_AutomatedReview.docx](https://www.oregon.gov/odot/Business/Procurement/DocsSOW/SOW_AutomatedReview.docx)

### 3. WRITTEN PROCEDURES

**Basic Expectation Regarding Consultant Selections:** Regardless of the selection method used, LPA staff will not engage in favoritism or diminish the integrity of the public contracting process by repeatedly selecting the same consulting firm for contract award when there are multiple firms qualified to provide the needed services.

#### **3.1 Direct Appointment/Small Purchase**

"Direct Appointment" is a procurement method set forth in OAR 137-048-0200 for A&E purchases up to \$100,000. "Small Purchases" is the term used in 23CFR 172(7)(a)(2) for A&E purchases up to \$150,000. That CFR includes a requirement to follow any lower dollar thresholds in State and local laws and comply with any additional requirements set forth in the federal laws. This LPA A&E Requirements Guide outlines procedures that meet applicable state and federal requirements.

##### ***3.1.1 Direct Appoint/Small Purchase Dollar Thresholds, Limitations, and Emergencies:***

**23 CFR 172(7)(a)(2) Small Purchases.** "The contracting agency may use the State's small purchase procedures that reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as defined in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds. The following additional requirements shall apply to the small purchase procurement method:

- (i) 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.
- (ii) A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed. In instances where only two qualified consultants respond to the solicitation, the contracting agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements which arbitrarily limited competition. Alternatively, a contracting agency may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re compete under a new solicitation as specified in Sec. 172.7(a)(3)(iii)(C).
- (iii) Contract costs may be negotiated in accordance with State small purchase procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.
- (iv) The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold."

**OAR 137-048-0130(1)** – The "restriction on a Contracting Agency's solicitation or use of pricing policies, pricing Proposals or other pricing information does not apply to selection procedures used by the Contracting Agency to select a Consultant when the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services for the Project do not exceed \$100,000..." "In following the Direct Appointment Procedure under OAR 137-048-0200, a Contracting Agency may base its selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved."

##### **a) Direct Appointments up to \$100,000**

The dollar amount of the contract is limited by the maximum allowed for direct appointments by the **LPA's procurement rules or \$100,000, whichever is less**. Direct appointment contracts cannot be used to fragment larger procurements and circumvent required procedures for formal

solicitations. The dollar amount of the procurement is based on the amount of the initial contract and any potential amendments.

**b) Direct Appointments over \$100,000**

**Continuation of a Project up to \$150,000** may be procured as a Direct Appointment in conformance with requirements of OAR 137-048-0200(1)(c) if the LPA has adopted this rule.

**Continuation of a Project with a fee that will exceed \$150,000** may be procured as a Direct Appointment in conformance with requirements of OAR 137-048-0200(1)(d) if the LPA has adopted this rule. Direct appointments over \$150,000 **require FHWA approval** per 23 CFR 172(5)(a)(3) – Noncompetitive Negotiation.

**c) Emergency Direct Appointments**

Agencies are allowed to obtain “emergency” A&E services under a non-competitive negotiation (i.e., direct appointment). As per 23 CFR 668.107(a)(1) and(2):

a) The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

FHWA will reimburse the expenses if the event is found to be Emergency Relief (ER) eligible. Additional information regarding ER is available in the following resources:

- o FHWA Emergency Relief (ER) program overview Q&A link:  
<https://www.fhwa.dot.gov/map21/qandas/qaer.cfm>
- o Guide to the Federal-aid Highway ER manual is available online at:  
<https://www.fhwa.dot.gov/reports/erm/er.pdf>

### **3.1.2 Direct Appoint/Small Purchase Procedures**

1. Follow applicable local rules and these procedures, provided the selection is in conformance with applicable state and federal laws/regs. If LPA's administrative rules are silent or not in conformance with state and federal rules for A&E direct appointments/small purchases, the applicable state and federal requirements take precedence.
2. Prepare project scope and statement of work or description of the services needed in conformance with ODOT's A&E Statement of Work Writing Guide, and prepare at least a rough estimate to determine if the needed services should be under the applicable dollar threshold (\$100,000 or LPA's dollar limit, whichever is less).
3. Identify a minimum of three qualified consultants to consider/review for the needed services from the “ODOT's Approved Consultant Lists for Local Agencies” on the [Certified LPA Resources for Consultant Selection page](#) (or from LPA's list of qualified consultants, if approved by ODOT). LPA may email or contact by phone the consultants identified for consideration/review to discuss draft scope and solicit interest, availability and any other information LPA may need to determine best fit for the project. Any such contact must be documented in the procurement file.
4. Use of consultants not on ODOT's or LPA's pre-approved list must be approved by ODOT prior to direct appointment/small purchase by submitting a **Consultant List Exception Request** form. If approved, each off-list consultant considered/reviewed must submit to LPA a completed **Direct Appointment/Small Purchase Certifications** form which must include a brief description of consultant's qualifications and experience related to the needed services.
5. Rank the firms in order of best fit for meeting the needs of LPA for a given project, including consideration of consultant's availability for the current project and documented performance under contracts for similar services in the prior three years, if any.
6. Contact the first choice among qualified firms to discuss the potential direct appointment/small purchase project. Expectations regarding range of costs and cost limitations of applicable direct appointment/small purchase rules should also be discussed. If they have resources available to complete the project in the timeline needed, send draft scope to consultant for review.
7. Discuss and develop/refine statement of work in conformance with ODOT's A&E Statement of

Work Writing Guide.

8. If not completed prior to contacting firms, prepare detailed internal estimate, and request detailed estimate and billing rates from consultant (rates are available from ODOT if on file - see [section 3.5](#)). If consultant's estimate is above allowable threshold for direct appointment/small purchase, inform or remind consultant of the limitation before expending time and resources on negotiations.
9. Conduct cost analysis and negotiate costs (in conformance with [section 3.6](#)) with consultant as necessary to establish reasonable cost as determined by agency. If successful negotiation, document file with record of negotiations and cost analysis (show how reasonableness was determined). If negotiations are unsuccessful, terminate negotiations with first firm, document file with negotiation record and commence negotiations with the second ranked firm, and so on until a contract is successfully negotiated (or until the agency terminates the process).
10. Use approved **Contract Template** required for FHWA funded A&E contracts. Contracts under \$100K will receive a "no-goal" assignment by OCR for DBE participation Goal; however, the Race and Gender Neutral DBE provisions for no-goal contracts must be included in the contract. Follow procedures in [section 3.4](#) regarding DBE Goals.
11. Document procurement file with **Direct Appointment/Small Purchase Certifications** form (completed by Consultant), **Direct Appoint/Small Purchase Selection** form (completed by LPA), and other applicable documentation as listed in [section 4](#) for the direct appointment/small purchase process, contract, contract amendments (if any), and contract administration actions through contract closeout.

## **3.2 Informal & Formal Selection for A&E Services**

**ORS 279C.110(2)** - A contracting agency shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required. A contracting agency may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the contracting agency has selected the highest ranked proposer for negotiations.

### ***3.2.1 Informal Solicitations (up to \$250,000 including potential amendments)***

Informal solicitations do not require public advertising and may be used for small procurements up to \$250,000 (federal limit) or such lower amount as provided in LPA's administrative rules. Formal selection procedures may be used for contracts under \$250,000, at LPA's discretion, especially if the anticipated contract amount is close to the applicable dollar threshold for Informal procurement or may exceed it if amendments become necessary.

LPA shall follow these procedures and OAR 137-048-0210 as well as any additional requirements of LPA's rules/policies (to the extent LPA's requirements do not conflict with State or Federal requirements). Procedure minimum requirements include:

1. **Complete needs analysis and prepare project scope/statement of work** in conformance with ODOT's [A&E Statement of Work Writing Guide](#) or a description of the services needed.

"Needs analysis" is step 1 of the procurement process. For A&E procurement, this generally means:

- conducting analysis of the LPA's planned/budgeted public improvement projects,
- determining and documenting which elements of the needed A&E and Related Services the LPA has capacity and expertise to perform in-house within the needed delivery schedule,
- determining which design projects, or elements thereof, will need to be outsourced for each project, and
- developing a procurement plan/schedule with sufficient lead time to allow for conducting needed procurements in conformance with applicable local, state and federal requirements.

2. **Prepare RFP** using the approved A&E RFP Template.



- 2.1 Include background and project description information, project schedule, schedule for completion of the needed A&E services, and scope of work for services needed. Select applicable options in template and fill in fields with procurement-specific information as necessary.
  - 2.2 Follow instructions in RFP template to develop appropriate evaluation criteria and points available for each criterion.
  - 2.3 **Request DBE Goal Assignment**, before release of RFP, following process in [section 3.4](#).
  - 2.4 **Enter due date that allows a reasonable time** for Proposal preparation and submission, taking into consideration size and complexity of the project as well as the amount of information required for proposals.
3. **Distribute the RFP** and sample contract to a minimum of 3 prospective consultants identified from the “ODOT’s Approved Consultant Lists for Local Agencies” on the [Certified LPA Resources for Consultant Selection page](#). Use of consultants not on ODOT’s consultant lists or on a list maintained by the LPA must be approved by ODOT prior to distribution of the RFP (submit **Consultant List Exception Request**).
  4. **Proposer questions, requests for change, and solicitation protests must be in writing.**
    - LPA responses shall only be supplied in writing.
    - Answers to substantive questions (those that may materially impact the Statement of Proposal) must be advertised as an addendum to the solicitation/RFP.
    - The period for questions/protests ends 7 calendar days before the proposal due date (unless otherwise stated in informal RFPs).
  5. **Evaluator(s) review and rank all proposals** received according to the criteria set forth in the RFP. If LPA’s rules/policies require 2 or more evaluators for informal A&E RFPs, then the LPA’s requirement must be followed. Each evaluator must sign a **COI Disclosure for Proposal Evaluators Form** prior to completing evaluations. Review references as necessary, including consideration of consultant’s documented performance under contracts for similar services in the prior 3 years, if any. If the RFP included potential for interviews, determine if interviews are necessary and conduct them if needed.
  6. **Award Protest Period.**
    - 6.1 Unless required by administrative rules and procedures adopted by the LPA, the informal solicitations for A&E and Related Services are not required to provide for award protests.
  7. **Negotiations.** If the RFP is not cancelled, contact the highest ranked proposer to:
    - 7.1 Request submittal of Award Submittal Requirements listed in section 4 of the RFP template,
    - 7.2 Discuss project and begin negotiations of scope, schedule and costs per procedures in [section 3.6](#) - Estimates, Cost Analysis, Negotiations, Profit, and Method of Compensation.
  8. **Use approved Contract Template** required for FHWA funded A&E contracts. Include final negotiated statement of work in conformance with the [A&E Statement of Work Writing Guide](#) and follow instruction in template to identify appropriate insurance, method of compensation and applicable DBE provisions, and DBE goal (if any).
  9. **Document procurement file** with applicable evaluation, selection, and negotiation documentation as listed in [section 4](#). Continue appropriate documentation throughout contract administration actions and final contract closeout.

### **3.2.2 Formal Solicitations (over \$250,000 including potential amendments)**

All formal solicitations will be conducted in a manner providing full and open competition.

Formal solicitation and award process must be conducted by an employee of the LPA that meets the minimum requirements set forth in [the Certification Guidance](#) document for Formal and Informal Selection of A&E and Related Services.

LPA shall follow these procedures and OAR 137-048-0220 as well as any additional requirements of LPA’s rules/policies (to the extent LPA’s requirements do not conflict with State or Federal requirements). Procedure minimum requirements include:

1. **Complete needs analysis and prepare project scope/statement of work** in conformance with

ODOT's [A&E Statement of Work Writing Guide](#) or a description of the services needed.

2. **Prepare RFP** using the approved **A&E RFP Template**. Select applicable options in template and fill in fields with procurement-specific information as necessary.
  - 2.1 Include background, objectives, project description information, overall project schedule, schedule for completion of the needed A&E services, scope of work for services needed, and detailed statement of work if available (if a detailed SOW is not available for the RFP include, at minimum, a list of the tasks/disciplines and deliverables needed).
  - 2.2 Follow instructions in template to develop appropriate evaluation criteria and points available for each criterion.
  - 2.3 **Request DBE Goal Assignment**, before release of RFP, following process in [section 3.4](#).
  - 2.4 Enter due date that allows a reasonable time for Proposal preparation and submission, taking into consideration size and complexity of the project as well as the amount of information required for proposals.
  - 2.5 **RFP review**. LPA's procurement coordinator obtains reviews by appropriate stakeholders, legal review by LPA's attorney if over \$150,000 (or any lower threshold required by LPA), and any other reviews required by LPA.
3. **LPA's procurement coordinator Publicly advertise the RFP** and sample contract in newspaper and trade journals per OAR 137-048-0220(2)(a) or publish electronically on the Internet per OAR 137-048-0220(2)(b) for a reasonable time before the deadline for proposal submittal (not less than 14 calendar days). Whichever format is used, LPA must provide notice/advertisement using a 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 the contract.
4. **Proposer questions, requests for change, and solicitation protests must be in writing**.
  - 4.1 LPA responses shall only be supplied in writing.
  - 4.2 Answers to substantive questions (those that may materially impact the Statement of Proposal) must be advertised as an addendum to the solicitation/RFP.
  - 4.3 The period for questions/protests ends 7 calendar days before the proposal due date (unless otherwise stated in informal RFPs)
5. **Administrative Reviews**. LPA's procurement coordinator completes responsiveness and pass/fail reviews of proposals that were received before the RFP closing time.
6. **A minimum of 3 evaluators complete an independent review and scoring of all responsive proposals received**. LPA may appoint to the evaluation committee LPA employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be an employee of the LPA. If the LPA's procedure permits, the LPA may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. Evaluators must be knowledgeable about the project and informed about the scoring process. Any scorer who has a conflict of interest with any of the submitting firms, or who believes that he is otherwise unqualified, must excuse themselves from any of the scoring.
  - 6.1 Conduct pre-evaluation meeting, as needed, to provide instructions to eval committee;
  - 6.2 Designate one of LPA's employees who also is a member of the evaluation committee as the evaluation committee chairperson;
  - 6.3 Each evaluator must sign a **COI Disclosure for Proposal Evaluators** form prior to completing evaluations;
  - 6.4 Scoring must be based only on the criteria set forth in the RFP. Each evaluator must score all proposals that met pass/fail review and document comments to support scores given for each proposal. Any changes made to any of the data entered on the evaluation score form must be initialed by the person who signed the evaluation form.
  - 6.5 Following independent scoring of proposals, conduct selection meeting to compile evaluator scores, discuss any significant scoring discrepancies, and determine ranking of proposers. Changes to scores should only be made (and initialed) if it is determined that information in the proposal was clearly missed by the evaluator.
  - 6.6 Review references as necessary, including consideration of consultant's documented performance

under contracts for similar services in the prior three years, if any.

- 6.7 If the RFP included potential for interviews, determine if interviews are necessary and conduct them if needed in accordance with criteria and scoring set forth in the RFP.
- 6.8 Compile evaluator scores in a tabulation sheet to document ranking of proposers.
- 6.9 Prior to issuance of intent to award notice, double-check math to ensure evaluator scoresheets and the tabulation sheet are calculated correctly to support final ranking of proposers.
7. **Issue notice of intent to award** to highest ranked firm and not selected notice to all other proposers. Request submittal of Award Submittal Requirements listed in section 4 of the RFP template, including billing rates (if approved rates are not on file), insurance certs, Certification Regarding Debarment & Other Responsibility Matters (if contract is over \$150,000 including as may be amended), Committed DBE Breakdown & Certification Forms if applicable, W-9 Form, and Business Registry Number/Registered Agent. An initial Breakdown of Costs may be requested with intent to award notice if RFP included a detailed scope and statement of work. Otherwise, the Breakdown of Costs should be requested after discussing the project and clarifying the SOW (see Negotiations in item 10 below).
8. **Provide debriefings** to not-selected proposers as requested, and respond to protests if any.
9. **Award Protest Period.**
  - 9.1 Award protests and the LPA responses must both be submitted in writing. LPA shall disclose information regarding the award protest to ODOT.
10. **Negotiations.** If the RFP is not cancelled, contact the highest ranked proposer to:
  - 10.1 Request submittal of Award Submittal Requirements listed in section 4 of the RFP template,
  - 10.2 Discuss project and begin negotiations of scope, schedule and costs per procedures in section 3.6 - Estimates, Cost Analysis, Negotiations, Profit, and Method of Compensation.
11. **Use approved Contract Template** required for FHWA funded A&E contracts. Include final negotiated statement of work in conformance with the [A&E Statement of Work Writing Guide](#) and follow instruction in template to identify appropriate insurance, method of compensation and applicable DBE provisions, and DBE goal (if any).
12. **Contract Reviews.** Obtain review by LPA's Procurement Coordinator, legal review by LPA's attorney if over \$150,000 (or any lower threshold required by LPA), and any other reviews required by LPA.
13. **Document procurement file** with applicable evaluation, selection, and negotiation documentation as listed in [section 4](#). Continue appropriate documentation throughout contract administration actions and final contract closeout.

### 3.2.3 **Formal Solicitations for More Than One Project**

Solicitations may be structured to include project description, proposal evaluation, and award of more than one project where feasible. Including more than one project in a single solicitation adds complexity to the RFP document and evaluation/selection process. A multi-project RFP approach should be used only if the need for the anticipated time savings outweighs the added complexity. The timeline may be longer but it is much simpler to prepare and process six separate single-project RFPs than it is to prepare and process two RFPs with three projects advertised in each RFP.

**Requirements for RFPs that include more than one project.** The following are in addition to the requirements set forth in the posted LPA RFP template and in section 3.2.2 and elsewhere in this LPA A&E Requirements Guide:

1. Use currently posted RFP template for LPA A&E services.
2. Follow all instructions throughout the RFP, including instructions specific to multi-project solicitations.
3. Do not include more than 3 separate projects in a single RFP.
4. Include project description/scope, estimated construction cost and construction schedule separately for each project in the subsections provided in the RFP section 1.2.
5. Include the DBE Goal determined for each project in RFP section 1.8.
6. If different requirements apply to any of the projects, enter separate minimum qualifications in RFP section 2.3.
7. If different evaluation criteria is needed for each project, then add separate eval criteria tables in RFP



section 3.2 and label each as “Criteria for Project A”, “Criteria for Project B”, etc. Otherwise, the same criteria can be used for each project if appropriate.

8. Proposers may propose for one or more projects advertised in the RFP. Proposers must submit a separate proposal for each project they wish to propose on. Each proposal must include a separate, signed proposal cover sheet and must meet all submittal requirements listed in RFP section 2.4.
9. Scoring and ranking of proposals will be completed separately for each project.
10. Awards will be based on the results of the evaluation and scoring of proposals for each individual project. Award of more than one project may go to the same proposer, or award may go to a different proposer for each Project
11. If a proposer is awarded more than one project from the RFP, a separate detailed cost estimate breakdown must be submitted for each project.
12. Cost analysis, profit and negotiations (per section 3.6 below) are completed and documented separately for each project.
13. A separate contract will be executed for each awarded project, even if more than one project is awarded to the same proposer.

### **3.3 Statement of Work Preparation**

Statements of work must be prepared in conformance with the [A&E Statement of Work Writing Guide](#).

Standardized SOWs for a few A&E Related disciplines are available as samples at the above hyperlink. These may be used, at LPAs discretion, and revised as necessary for the project. These are in active voice and reviewed by ODOT procurement office.

### **3.4 Disadvantaged Business Enterprise (DBE) Goals**

ODOT Office of Civil Rights (OCR) is required to establish DBE Goals and administer the DBE Program for projects with federal aid funding, including projects let and administered by LPAs.

#### **3.4.1 Standard Goals**

The following standard goals apply to any contract that includes \$1 or more of FHWA funding:

- **No goal** - if any of the following applies:
  - Under \$100,000 (including any anticipated amendments)
  - Single discipline contracts, regardless of dollar amount
  - Emergency Repair (ER) contracts that are necessary to immediately restore essential travel, minimize the extent of damage, or protect the remaining facilities
- **3% goal** - \$100,000 or more AND includes 2-4 disciplines
- **8.5% goal** - \$100,000 or more AND includes 5 or more disciplines
- **Goal exception request** - For phased projects, contact [OCR Personal Services Contracts](#). To request a different goal, complete and attach the [DBE Goal Calculation Worksheet](#).

#### **3.4.2 DBE Related Forms and Procedures**

[The forms referenced below are available at the following OCR Forms page (under DBE Forms, and Other Forms): <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>.]

- Include the DBE goal or “No-Goal” in the solicitation (if applicable) and contract.
- Ensure contract and solicitation documents include the applicable “Goal” or “No-Goal” DBE provisions that are included in the RFP and Contract templates.
- The LPA shall ensure the consultant submits all DBE related forms and reports required by the solicitation and contract provisions including:
  - **Committed DBE Breakdown and Certification Form(s)-AE (form 734-5235)** - For Contracts with an assigned goal greater than zero, Consultant must complete a

Committed DBE Breakdown and Certification Form (**prior to Contract execution**) for each DBE subcontractor (at any tier) whose work is committed toward meeting the assigned contract goal. LPA reviews and emails the form(s) to [ocr.psk@odot.state.or.us](mailto:ocr.psk@odot.state.or.us) (with cc to ODOT Local Agency Liaison) for approval prior to Contract execution. See additional instructions on “Instructions” tab of the form. This form is also required for any proposed substitution of DBE subcontractors.

- **Paid Summary Report (form 734-2882)** – Consultant shall complete and submit initial, intermediate and final Paid Summary Report(s) per the instructions on the form. Consultant must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of whether or not a DBE goal is assigned.** LPA shall follow instructions on the Paid Summary Report and submit the completed form to OCR (with cc to ODOT Local Agency Liaison)
- Once the project has been awarded, email the **Notice of Award (form 734-2849)** to the OCR PSK mailbox( [ocr.psk@odot.state.or.us](mailto:ocr.psk@odot.state.or.us) ) within 3 days of contract award.
- Email copy of all executed A&E contracts and amendments that include FHWA funding (this includes “Goal” and “No-Goal” contracts) to [ocr.psk@odot.state.or.us](mailto:ocr.psk@odot.state.or.us).

### **3.5 Billing Rate and Overhead Cost Data**

Direct and indirect costs as applied to cost estimates and invoices for work performed under Agency contracts must be in conformance with Federal Cost Principles (48CFR Part 31).

**ODOT Approved Rates.** LPAs may request billing rate, overhead information, and ODC Certification Form (if available) for firms that ODOT has approved rates for on file.

- **An ODC Certification Form** (if on file at ODOT) documents a firms certifications regarding invoicing and ODC billing practices and whether or not the firm charges these items to overhead or tracks hours/costs for direct charge on projects. Firms that include invoicing in overhead may not include hours for preparing invoices under contracts (this does not apply to monthly status reports required with invoice submittals).
- ODOT does not provide audit services to LPAs for cost data not on file. **Email requests with names of firms to:** [ODOTBillingRateUpdates@odot.state.or.us](mailto:ODOTBillingRateUpdates@odot.state.or.us)

**FHWA Policy.** Consultant certification of compliance with Federal Cost Principles is required. “It is FHWA's policy that an indirect cost rate proposal should not be accepted and no agreement should be made by a contracting agency to establish final indirect cost rates, unless the costs have been certified by an official of the contractor as being allowable in accordance with the applicable FAR cost principles of 48 CFR, part 31.” Related provisions and certification form are included in the RFP and Contract templates.

**Approved Indirect Rate.** If the indirect cost rate of the consulting engineering firm has been approved by a cognizant agency, the LPA must use this approved rate for contract estimation, negotiation, administration, reporting, and payment. Administrative or de-facto ceilings on indirect cost rates are not allowed (23 U.S.C. 112(b)(2)(C) and (D) and 23 CFR 172.7)

### **3.6 Estimates, Cost Analysis, Negotiations, Profit and Method of Compensation**

The effort that goes into preparing the internal 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 or amendment.

A cost analysis is required when adequate price competition is lacking, such as A&E contracting. LPAs must perform a cost analysis in connection with every A&E procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving contractor's cost estimate (breakdown of costs).

### 3.6.1 *Internal Cost Estimate*

Following consultant selection, the LPA and consulting firm will enter discussions to establish a detailed understanding of the scope, services to be provided, and responsibilities for project development, deliverables, schedules, and other important facets of a project. Once a detailed, mutual understanding of the scope has been made, the consulting firm will prepare a complete cost proposal to perform the services and the contracting agency will prepare/refine an independent estimate. The LPA's independent estimate becomes the basis for ensuring the consultant services are obtained at a fair and reasonable cost and will be used as the basis for negotiations. A detailed breakdown of estimated costs for the elements of the work must be prepared prior to receiving the consultant's breakdown of estimated costs. A budget line-item amount or simple range based on a percentage of the dollar amount programmed for the construction project is sufficient for determining solicitation method (i.e., formal versus informal), but is not sufficient for purposes of the cost analysis and negotiation required for A&E and other no-bid pricing actions. For additional guidance, see [FHWA requirements for negotiation of a contract](#).

#### **Best practices for internal estimate include:**

- Similar level of detail as the consultant estimate for ease of comparison and valid cost analysis
- Breakdown of hours by task (and subtask, if applicable)
- LPA's assessment of appropriate classifications needed for particular tasks
- Apply billing rates or classification averages (including overhead rate) as provided by the prime and subs prior to negotiation (rate information is submitted as part of the award submittal requirements after selection)
- Estimated travel, flagging, rental or other direct non-labor expenses
- Estimated amounts for any proposed contingency tasks
- Obtain input (regarding level of effort and appropriate classifications) from individuals with applicable technical expertise for the type(s) of services sought.

### 3.6.2 *Consultant's Cost Estimate*

Consultant costs (or prices used for estimates) will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with the applicable Federal cost principles. The Contractor's estimate for each contract or contract amendment (regardless of method of compensation used) must include:

- the assigned staff classifications and names of Key Personnel (and other staff if requested), labor rates, and the number of hours per task and sub-task;
- an itemization of rental equipment, flaggers, travel and other direct non-labor expenses (estimates with documentation from vendors shall be provided upon request);
- the estimate for services as provided by each subcontractor that shows the assigned staff (classifications and names) and hours per task and sub-task and itemized direct non-labor costs;
- **Contingency Tasks.** These are tasks that may or may not be required based on circumstances that are determined after the work has begun. These must be negotiated with Agency and identified in the WOC as Contingency Tasks. Amounts for any Contingency Tasks must be shown on the estimate as a separate line-item for each task. The amount for a Contingency Task must include all labor, overhead, profit, FCCM and direct non-labor expenses for the task. Direct non-labor expenses for Contingency Tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks.
- **Overhead and FCCM rates.** For firms with an approved overhead rate and FCCM calculation, ensure profit is not applied to FCCM costs.
- **Breakdown of Costs (BOC) Templates.** Require consultant to use [BOC](#) (used for T&M and Fixed Price estimates), [BOC-CPFF](#) (used for cost-plus-fixed-fee) or [BOC-NBR](#) (BOC that may be used if prime and all subs use fully-loaded negotiated billing rates), as applicable, or a similar Excel spreadsheet that properly calculates costs, profit with FCCM excluded, and fixed-fee for cost-plus-fixed-fee contracts.

### 3.6.3 *Cost Analysis*

Perform cost analysis as appropriate for the dollar value and complexity of the procurement. Cost Analysis is the analysis of the separate cost elements of a service or good and the application of

judgment to determine what it should cost to complete or produce (rather than comparing to previous prices, i.e., Price Analysis), assuming reasonable economy and efficiency. Cost Analysis is used in developing Agency's estimate, and in the review of costs and profit in a Contractor's estimate to determine reasonableness. A detailed internal estimate for comparison purposes is required. Price Analysis (comparisons with previous prices) may be included, provided Cost Analysis was performed on the previous prices, reasonableness was determined and the previous contracted work is substantially the same. **Cost analysis, at the most basic level, is comparing the consultant's cost breakdown to the agency's internal breakdown. Significant discrepancies are documented as points for: a) further analysis of what something should cost, and b) discussion/negotiation with consultant.**

### **3.6.4 Negotiations (billing rates, hours, and direct expenses)**

After preparing the internal estimate, receiving contractor's estimate and completing cost analysis, enter negotiations with the selected proposer with the objective of agreeing on a contract at a compensation level that is reasonable and fair to the Agency. If the Agency and the selected candidate are unable for any reason to reach agreement within a reasonable time, the Agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The Agency may then negotiate with the next highest ranked candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the Agency terminates the consultant contracting process.

### **3.6.5 Profit Negotiation**

Profit will be negotiated as a separate element of the price for each contract in which there is no price competition except for firms using fully-loaded billing rates (i.e., do not have an approved overhead rate). Profit is already included in fully-loaded billing rates, so profit would not be negotiated or added as a separate negotiation item. To establish a fair and reasonable profit for firms with an approved overhead rate, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

[Sample Profit-fee worksheet](#)

### **3.6.6 Determining Appropriate Compensation Method**

The appropriate method of compensation for the contract is determined on a case by case basis. Per FTA's Best Practices Procurement Manual:

*"The selection of contract type is probably the single most important decision that the procurement specialist will make in the acquisition process."* The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used - **see 23CFR 172.5(c)**.

**Acceptable methods of compensation include:**

- **Cost-Plus-Fixed-Fee (CPFF)** is a cost reimbursement method commonly used for preliminary engineering phase. A CPFF contract is preferable to T&M since it fixes the amount of fee dollars for performance of the contract and cost overruns do not result in more profit for the consultant. **CPFF is not applicable for Consultants that have Negotiated Billing Rates (NBRs)** because profit is already built into the billing rates. Subs may use NBRs, but their costs must be excluded from the cost basis for determining fixed fee. For contracts where the prime is using NBRs, use T&M or Fixed Price method. The cost basis for calculating the Fixed Fee must not include:
  - direct non-labor expenses,
  - labor costs for subs using NBRs (these rates already include profit),
  - FCCM
  - costs for contingency tasks, if any. Profit for contingency tasks will be included in the amount negotiated for each contingency task and will not be included in the Fixed-Fee.

To determine Actual Cost amount and Fixed Fee amount for the contract:

- Use [BOC-CPFF template](#) for cost estimate.
- Enter O/H, FCCM and "Negotiated Profit For CPFF" multipliers for prime and any subs that do not use NBRs.
- See the LPA Contract template, Exhibit B, section A.1 for more information on how the Fixed-Fee is calculated.

[Note: Contingency tasks may be T&M, Fixed Price or CPFF per task in a contract using CPFF for non-contingency tasks.]

- **Time and Materials with not-to-exceed (T&M)** T&M (or “Specific Rates of Compensation”) is the industry standard for construction engineering and inspection phase. Per FHWA guidance – “The Specific Rates of Compensation payment method should only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. Use of this payment method requires close monitoring by the contracting agency to ensure efficient methods and cost controls are employed by the consultant.” T&M may be used for contracts using NBRs when fixed price is not appropriate per the guidance below. For firms using NBRs, ensure profit and overhead is not added. NBRs are fully-loaded billing rates that include all labor, overhead and profit. The contract must include a ceiling price that the consultant exceeds at its own risk.
- **Fixed Price** can be used for final design phase when determined appropriate for the specific project. Fixed Price should be considered for use when:
  - Complexity of the project is moderate to low,
  - The scope of work is clearly defined and level of effort required to complete the work can be determined with a fair amount of confidence, and
  - For no-bid contracts (such as A&E), the agency has developed a solid internal estimate and completed cost analysis to establish that the contract amount is reasonable.
- **Mixed Methods.** Contracts may use more than one method of compensation provided it’s clear which method applies to which tasks. For a few examples: design services may be CPFF, and an amendment to add construction monitoring and inspection tasks may be T&M; or a CPFF or T&M contract may include some fixed price tasks.

### **3.6.7 Record of Negotiations**

A record of the negotiations (RON) must be prepared for the procurement file. Best practice is to begin preparing the RON from the beginning and throughout the negotiation process rather than waiting until end of process and trying to recall what happened. The RON must identify how reasonableness of cost was determined. This includes documentation such as:

- Minutes/summary of SOW discussion meeting(s)
- LPA’s detailed estimate (prepared prior to receiving the consultant’s estimate)
- Consultant’s initial and revised final estimate
- Cost analysis and any pre-negotiation plan prepared by LPA, LPA’s negotiation position on profit and final agreed to profit (based on criteria in previous paragraph)
- Minutes/summary of negotiation meeting(s)
- Copies of relevant correspondence.

[Sample RoN form](#)

## **3.7 Contract Administration Procedures**

LPAs will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts.

### **3.7.1 Overview of Contract Administration Responsibilities**

The term “Contract” means Work Order Contract issued under a Price Agreement or Project Specific Contract.

Following execution of the Contract, the Contract Administrator is responsible for “hands on” Contract Administration duties. These duties include, but are not limited to the following:

- Act as LPA’s key point of contact with consultant, other LPA staff, and other agencies as applicable for the Contract/project.
- Review Contract to become familiar with its terms, conditions, tasks, deliverables, schedule requirements and all consultant and LPA obligations of the Contract.



- Ensure consultant fulfills all requirements, terms and conditions of the Contract and that all Tasks and Deliverables are complete and submitted within schedule requirements.
- Review and approve all deliverables for compliance with requirements in the Contract and standards for completion that are incorporated by reference into the Contract. This includes requiring consultant to correct non-conformance with Contract requirements, at no additional cost, prior to final acceptance and approval. Provide written notice to consultant of deliverable acceptance status, including timely written notice of deficiencies,
- Review and recommend approval of consultant's monthly invoices and supporting documentation.
- Verify utilization of subcontractors included on the invoice and forward the **Paid Summary Report** (completed by prime consultant) by email to Office of Civil Rights at [ocr.psk@odot.state.or.us](mailto:ocr.psk@odot.state.or.us)
- Track invoices received and payments made to ensure total amount paid against Contract does not exceed the total not-to-exceed amount of the Contract.
- Draft and negotiate any necessary, allowable Contract Amendments within the scope identified in the solicitation/Contract up to the total contract dollar amount allowed under the procurement method used.
- Monitor consultant's performance and timeliness throughout the project. Are they meeting schedule and performance requirements for deliverables?
- Prepare Consultant Performance Evaluation(s) to document evaluation of all performance under the Contract (prime and subcontracts) and provide copy to the prime consultant.
- Complete Contract closeout review and documentation.
- Ensure all Contract Administration-related documentation is prepared and maintained on file for each Contract.

### **3.7.2 Invoice Review Requirements**

State DOTs and LPAs are required to comply with the Federal cost principles (48 CFR 31) to determine costs for personal services contracts with commercial, for-profit entities such as consulting engineering firms. Costs determined to be unallowable under these cost principles are not eligible for Federal-aid reimbursement. Agency controls must ensure that invoiced costs are allowable (allocable to the project, necessary, and reasonable; that the State has authority to participate in the cost; are consistent with the terms of the contract; and are adequately supported by source documentation and verification of the completed work.

LPAs must review invoiced consultant costs for consistency with Federal cost principles, terms of the contract, and status/progress of the work completed. A copy of a status/progress report of work completed by the consultant for the applicable invoiced period should be maintain in the agency's files with each paid invoice. At a minimum, LPA's Contract Administrator must verify the following when reviewing and approving consultant invoices:

- The invoice includes all required information and backup documentation. (Refer to ODOT's [Invoice Requirements Guide](#) for additional information).
- Consultant submitted a monthly progress report that meets the requirements of the Contract.
- Deliverables that were due during the billing period have been received, reviewed and accepted. This includes required civil rights program forms and any other forms required under the Contract.
- All work performed/invoiced was within the scope of work as specified in the Contract.
- The percentage of Contract NTE invoiced to date reasonably reflects the actual percentage of tasks and deliverables completed to date.
- For cost reimbursement {Time & Materials (T&M) and Cost-Plus-Fixed-Fee (CPFF)} Contracts, confirm that job classifications, salary rates and overhead rates invoiced do not exceed the currently accepted overhead rates and accepted salary rates for each classification for that consultant. Confirm that NBR rates do not include additional profit or overhead (NBRs are fully-loaded rates inclusive of profit and overhead).
- For cost reimbursement (T&M and CPFF) Contracts, confirm that labor hours invoiced are appropriate for the work performed during the billing period.

- For cost reimbursement (T&M and CPFF) Contracts, confirm that other direct costs (ODC) invoiced are appropriate for the services performed during the billing period and that all appropriate backup documentation has been received.
- For Fixed Price (aka lump sum) Contracts, confirm that amounts do not exceed the fixed price amounts in the Contract.
- For Cost-Plus-Fixed-Fee (CPFF) Contracts, confirm that invoice does not include profit (applied to billing rates) for prime or subconsultants, in addition to the fixed fee.
- Ensure payments are made to consultant (or notices of invoice/deliverable deficiencies) within the time required by the Contract and State and Federal laws. If needed, complete follow-up with consultant for required corrections on invoice.

### **3.7.3 Contract Amendments**

Any necessary, allowable Contract Amendments must meet the following requirements:

- Must be in writing and will not take effect until executed by LPA and Consultant representatives authorized to sign A&E and Related Services Contracts.
- Must be within the scope identified in the solicitation/Contract.
- Must not increase the Contract not-to-exceed or fixed-price amount to an amount that exceeds the dollar threshold applicable to the procurement method used for award of the Contract.
- Amendments that delete tasks or otherwise reduce the scope of services required under the contracts must result in reduction in compensation commensurate with reduced services.
- An internal estimate and Record of Negotiations must be prepared and documented in the procurement file for any amendments that increase costs under the contract.

### **3.7.4 Consultant Performance Evaluation**

Per CFR 23.172.9 – Recipients and subrecipients of FHWA funds shall have written procedures regarding “monitoring the consultant’s work and in preparing a consultant’s performance evaluation when completed”.

A sample **Consultant Performance Evaluation Form** for LPA use is available on the LPA Resources for Consultant Selection webpage. LPAs may use this sample form provided by ODOT, or they may use their own form if, at minimum, it includes the following evaluations factors:

- an evaluation of the timely completion of work,
- adherence to contract scope and budget, and
- quality of the work.

Contracting agencies should prepare consultant performance evaluation(s) annually but, at minimum, must complete evaluation at the time the work under a contract is completed. The evaluation should include clear relevant information that accurately depicts the consultant’s performance, and should be based on objective facts.

Evaluations of contractor performance, including both negative and positive evaluations, shall be provided to the consultant as soon as practicable after completion of the evaluation. Consultants shall be given a minimum of 30 days to submit comments, rebutting statements, or provide additional information. Agencies shall provide for review at a level above the agency contact to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the LPA. Copies of the evaluation, Consultant response, and review comments, if any, shall be retained in LPA’s files as part of the evaluation.

When making future selections for A&E consultant contracts, LPA shall consider past performance information that is within 3 years of the completion of performance of an evaluated contract.

### 3.7.5 **Errors and Omissions Procedure**

ODOT's procedure for Errors and Omissions is required and is included as Exhibit I within the approved **Contract Template** for LPAs. For purposes of the approved Contract Template used for LPA procurements, the term "Agency", as used in the E&O Claims Process, means "local public agency". Exhibit I is available for download from the Internet at the following address:  
<https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/xbti.pdf>

### 3.7.6 **Contract Closeout**

LPAs shall, at minimum, comply with the contract closeout procedures set forth in this subsection along with any additional requirements in the policies and procedures adopted by the LPA. Following completion of the contract, LPA's shall complete contract closeout documentation to certify: acceptance of all required tasks and deliverables, all invoices have been received and paid, prime has paid all subs, an accounting of expenditures under the contract has been completed, consultant performance evaluation has been completed, and all required procurement and contract administration documentation has been completed and placed in the applicable files.

ODOT has developed a Certified LPA Contract Closeout Form for use on federal-aid projects where ODOT has oversight of Local Public Agency (LPA) administered contracts [ref 23CFR 172.5(c)(14)]. This is a required form unless LPA has an equivalent form with the certifications from the above linked form included.

The [Contract Closeout Form](https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx) is available at:  
<https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx> (under Required Templates & Forms for LPA Use).

## 4. DOCUMENTATION REQUIREMENTS

Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement (per Oregon law, the retention schedule for most procurement files is 6 years; however, per OAR 731-146-0030 ODOT requires retention of A&E related procurement files for 10 years beyond each contract's expiration ).

The basic expectation is that the effort and documentation applicable to internal estimates, cost analysis, negotiation, SOW detail, documentation detail, etc., for A&E contracting and contract administration should be directly related to the dollar value, importance, and complexity of the contract or amendment.

These records must include, but are not necessarily limited to the following:

#### **(Procurement File for Direct Appointments and all other A&E contracts)**

- Direct Appointment/Small Purchase Selection form** (for direct appointments/small purchases only, completed by LPA) and documentation of any correspondence or discussions with the consultant(s) considered/reviewed.
- Direct Appointment/Small Purchases Certifications form** (for direct appointments/small purchases only, completed by Consultant)
- Rationale for the compensation method selected
- The basis for determining reasonableness of the contract price (and any amendment that adds cost). Per FARs, FHWA and section 3.6 above, this includes:
  - **Agency's breakdown of estimated costs**
  - **Consultant's breakdown of estimated costs**
  - **Documentation of cost analysis**
  - **Record of negotiations of the statement of work, costs and profit-fee**
  - **Any independent audits or copy of cognizant audits related to indirect rates; approvals of direct rates or fully loaded negotiated billing rates. (Documentation of use of ODOT approved rates is sufficient to meet this requirement)**
- The record of the actions used to develop the Contract
- A copy of the executed contract and any amendments

#### **(Procurement File, Additional Requirements for Informal and Formal Solicitations)**

- Rationale for the method of procurement used
- A copy of the solicitation document(s)

- Documentation of public notice/advertisement, (Formal RFPs only)
- A list of prospective Contractors notified of any Solicitation
- Any material communications from interested consultants, solicitation protests or requests for change and responses or addenda issued
- Copies of proposals received, and notices of any proposal rejections
- Evaluation scoring documents with comments to support scores
- Intent to award and not selected notices
- Any award protests, responses and related correspondence (involve ODOT)

**(Contract Administration File)**

- Documentation/correspondence related to contract administration
- Invoices and approvals
- Consultant progress/status report (maintain copy with each invoice paid that shows work completed)
- Consultant performance evaluation
- Documentation/correspondence related to any contract amendments, including independent cost estimates and negotiations of SOW/costs
- Contract closeout

## 5. CONFLICT OF INTEREST (COI) DISCLOSURE REQUIREMENTS

No employee, officer or agent of the LPA or ODOT 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. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The LPA's and ODOT's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

LPAs shall be in conformance with federal, state and local laws regarding conflicts of interest and shall require appropriate disclosures from consultants. For state and federal laws and policies regarding conflicts of interest, see **ODOT COI Guidelines**: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/coiguideines.pdf>.

LPAs shall, to the greatest extent practicable, prevent, identify, and mitigate conflicts of interest for employees of both the contracting agency and consultants **and promptly disclose in writing any potential conflict to ODOT and FHWA**, as specified in 2 CFR 200.112 and 23 CFR 1.33, and the requirements of 23 CFR Part 172.5.

## 6. VARIOUS FEDERAL REGULATIONS & FHWA POLICIES

### **6.1 Award to Responsible Contractors**

Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

### **6.2 Protest Procedures**

Grantee (ODOT) and subgrantees (LPAs) will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

- (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

### **6.3 Awarding Agency Review**

(1) Grantees and subgrantees must make available, upon request of the awarding agency (ODOT/FHWA), technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified Acquisition threshold (\$250,000 - see FAR 2.101 and [FHWA Notice](#)) and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

### **6.4 FHWA Policies and Guidance**

[Q&A: Administration of Engineering and Design Related Services Contracts:](#)

- Are Planning Studies A&E or Non-A&E services? (See Q&A item I.4)
- Local Presence (and any other criteria not related to qualifications to perform A&E services) is limited by FHWA to a combined total of 10% of the overall scored criteria weighting. (See Q&A item I.9).

[FHWA Memo: Implementation of Section 321 of the National Highway System Designation Act \(NHS Act\) of 1995](#) pertaining to the utilization of the private sector for surveying and mapping services.

FHWA Policy on Permissible Project Related Activities During the NEPA Process:  
<https://www.fhwa.dot.gov/legsregs/directives/orders/66401a.htm>

[FHWA Design Build Web Site](#)

Other [FHWA directives and policies](#)

FHWA Video: [Consultant Services Overview](#)

FHWA Video: [Overview of Qualifications Based Selection for A&E Services](#)

[Report on LPA Stewardship Issues](#) per Office of Inspector General review. Ensure that the established procurement policies and procedures specify that:

1. LPAs are estimating the value of the proposed services as the basis for negotiation of fair and reasonable compensation with the selected consultant.
2. Adequate documentation is maintained to demonstrate compliance with procurement requirements.
3. Invoiced consultant costs are reviewed for consistency with Federal cost principles, terms of the contract, and status/progress of the work completed.