

# **CERTIFICATION ACCEPTANCE AGENCY CONTRACT ADMINISTRATION GUIDELINES FOR FEDERAL-AID PROJECTS**

**ARIZONA DEPARTMENT OF TRANSPORTATION**

**Infrastructure Delivery and Operations Division**



**Engineering Consultants Section**

**Local Public Agency Section**

**Effective: March 2015**

**Revised April, 2017**

## Table of Contents

SECTION I – GENERAL INFORMATION .....	1
1.01 Key Acronyms (Federal Requirement) .....	1
1.02 Background (Federal Requirement) .....	1
1.03 Application (Federal and State Requirement).....	2
1.04 Program Oversight (Federal and State Requirement).....	3
1.05 Qualifications-Based Selection (QBS) - Brooks Act (Federal Requirement) .....	3
1.06 Federal-Aid Funds Authorization (Federal Requirement) .....	4
1.07 Contract Compensation Types (Federal Requirement).....	4
1.08 Non-Competitive Negotiations (Federal Requirement) .....	5
1.09 Emergency Procurement (Federal and State Requirement) .....	6
1.10 Impracticable to Advertise (Low Value) Procurements (Federal Requirement) .....	6
1.11 On-Call Procurements (Federal Requirement).....	7
1.12 Standard of Conduct and Conflict of Interest (Federal and State Requirements) .....	7
1.13 Anti-Collusion (Federal Requirement).....	8
1.14 Debarment and Suspension (Federal Requirement).....	8
1.15 Examination of Records (Freedom of Information Act (ARS § 28-7707)) (Federal and State Requirement) .	9
1.16 Protest and Dispute Resolution (Federal Requirement) .....	9
1.17 Disadvantaged Business Enterprise Program (Federal Requirement) .....	9
1.18 AZ UTRACS Online Vendor Registration (Federal and State Requirement) .....	10
1.19 Small Business Concerns (Federal Requirement).....	10
1.20 Anti-Lobbying/Disclosure (Federal Requirement).....	10
SECTION II – ADVERTISEMENT THROUGH SELECTION NOTIFICATION .....	12
2.01 Prequalification of Consultants (Federal Requirement).....	12
2.02 DBE Goal Setting (Federal Requirement) .....	12
2.03 Pre-Advertisement Requirements (Federal and State Requirement).....	12
2.04 Standard Content Requirements for RFQ (Federal and State Requirement).....	13
2.05 Request for Qualifications (RFQ) Format and Evaluation Criteria (Federal and State Requirement) .....	13
2.06 Advertisement Process (Federal and State Requirement) .....	14
2.07 Request for Qualifications (RFQ) Availability (Federal and State Requirement).....	14
2.08 Amendments to Request for Qualification (RFQ) Package (Federal and State Requirement).....	14
2.09 Contact with Agency Staff during Solicitation Period (Federal and State Requirement).....	14
2.10 Pre-Submittal Meeting (Federal and State Requirement) .....	15
2.11 Pre-SOQ Submittal/Selection Panel Requirements (Federal and State Requirement) .....	15
2.12 Statement of Qualifications (SOQ) Submittals (Federal and State Requirement) .....	15
2.13 Non-Responsive Statement of Qualifications (SOQ) Submittal (Federal and State Requirement) .....	16
2.14 Evaluation of Statements of Qualifications (SOQ) (Federal and State Requirement).....	16
2.15 Selection Process (Federal and State Requirement).....	17

2.16	Selection Notification (Federal and State Requirement) .....	18
2.17	Debriefing Sessions (Federal Requirement) .....	18
2.18	Agency's Rights (Federal and State Requirement) .....	18
SECTION III - NEGOTIATION THROUGH NOTICE TO PROCEED .....		20
3.01	Pre-Negotiations (Agency Practice).....	20
3.02	Fixed Fee (Federal Requirement) .....	20
3.03	Agency Project Manager's Cost Estimate (Federal Requirement) .....	20
3.04	Contract Compliance Requirements (Federal Requirement) .....	20
3.05	Cost Proposal Negotiations (Federal Requirement).....	22
3.06	Final Contract Approval (Federal Requirement) .....	24
3.07	Notice to Proceed (Federal Requirement) .....	24
3.08	Contract Advance Notice to Proceed (ANTP) (Federal and State Requirement) .....	25
SECTION IV - CONTRACT ADMINISTRATION .....		26
4.01	Post Award Information (Federal Requirement).....	26
4.02	Agency Vendor Registration (Agency Practice).....	26
4.03	Monthly Progress and Work Hour Reports (Federal Requirement).....	26
4.04	Progress Payment Reports (Federal and State Requirement) .....	26
4.05	Prompt Pay Legislation (A.R.S. § 28-411) (Federal and State Requirement) .....	26
4.06	Contract Modifications (Federal and State Requirement) .....	27
4.07	Post Design Services (Agency Practice) .....	28
4.08	Name Change, Merger, Acquisition, Consolidation or Transfer of Ownership (Federal Requirement).....	28
4.09	Change in Key Personnel (Federal Requirement).....	29
4.10	Control, Utilization and Disposition of Property or Equipment (Federal Requirement) .....	30
4.11	On-Call Contract Task Order Assignment (Federal Requirement) .....	30
4.12	Contract Time Extension (Federal Requirement).....	31
4.13	Contract Suspension (Federal Requirement) .....	31
4.14	Consultant Performance Evaluations (Federal Requirement).....	31
4.15	Errors and Omissions (Federal Requirement) .....	32
4.16	Breach of Contract (Federal Requirement) .....	32
4.17	Contract Completion (Federal Requirement).....	32
4.18	Final Incurred Cost Audit (Federal Requirement) .....	33
4.19	Termination for Convenience (Federal Requirement) .....	33
4.20	Ownership of Data (Federal Requirement) .....	33
4.21	Records Retention/Destruction (Federal and State Requirement) .....	34

ARIZONA DEPARTMENT OF TRANSPORTATION

CERTIFICATION ACCEPTANCE AGENCY  
CONTRACT ADMINISTRATION GUIDELINES  
FOR FEDERAL-AID PROJECTS

**SECTION I – GENERAL INFORMATION**

**1.01 Key Acronyms (Federal Requirement)**

ADOT	Arizona Department of Transportation
ADOT LPA	Local Public Agency Section (ADOT)
AGENCY	Certification Acceptance Agency (City, County or Town)
A/E	Architectural and Engineering
ARS	Arizona Revised Statutes
AZ UTRACS	Arizona Unified Transportation Registration and Certification System
A&A	ADOT Audit & Analysis
BECO	Business Engagement and Compliance Office (ADOT)
CA	Certification Acceptance
CAP	Certification Acceptance Program
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprises
ECS	Engineering Consultants Section (ADOT)
FHWA	Federal Highway Administration
LPA	Local Public Agency [City, County or Town]
SA	Self-Administration
SBC	Small Business Concerns
SOQ	Statement of Qualifications – [response to an RFQ]
ROW	Right-of-Way
RFP	Request for Proposal
RFQ	Request for Qualifications
QBS	Qualifications Based Selection
USC	United States Code
USDOT	United States Department of Transportation

**1.02 Background (Federal Requirement)**

*These guidelines have been prepared to document and provide Local Public Agencies with a tool to assist them in preparing their own written guidelines and procedures for the administration of architectural and engineering related services for the Agency related projects using federal funding. The ADOT ECS Consultant Contract Manual (June 2016), LPA Guidelines, CFR, FAR and U.S.C are the basis for the development of these guidelines and govern the implementation of the CA Contract Administration Guidelines (CA Guidelines). References made to applicable regulations are provided for reference only. Subrecipient agencies shall be responsible for verifying their guidelines are being followed and are in conformance with federal and state regulations. Any changes to the Manual shall apply to these Guidelines and shall be communicated to, and implemented by the subrecipient agencies. The LPA Guidelines will be amended to reflect these changes.*

When procurement and administrative activities of Federal-Aid Highway Program funded engineering consultant contracts are performed by Local Governments, their own procedures must be followed, provided they are in compliance with the Federal regulations and their processes are reviewed and approved by ADOT. In accordance with 23 CFR 172.9, ADOT shall concur with the written procedures and revisions to the local's process based on ADOT's Guidelines for procuring consultant services.

This document was developed to document and provide consistent procedures for the Certification Acceptance Agencies responsible for the advertisement, selection, negotiation, execution and administration of architectural and engineering (A/E) contracts using FHWA federal funds.

Some of the requirements described herein may vary from contract to contract depending upon its size, complexity and type.

Consultants, Agency and ADOT personnel shall adhere to all applicable ADOT LPA guidelines, State Statutes, Federal laws/regulations and contract standard terms and conditions pertaining to engineering consultant service contracts.

### **1.03 Application (Federal and State Requirement)**

These procedures apply to contracts for (A/E) consultant services that are Federal-Aid Highway Program funded which are solicited and administered by Certification Acceptance (CA) or Self-Administrated (SA) Agency in accordance with ADOT's Local Public Agency Section (ADOT LPA) approved procedures.

Architectural and Engineering consultant services are exempt from the Arizona State Procurement Code under A.R.S. § 41-2501(K) which states:

“The state transportation board and the Director of the Department of Transportation are exempt from this chapter other than section 41-2586 for the procurement of construction or reconstruction, including engineering services, of transportation facilities or highway facilities and any other services that are directly related to land titles, appraisals, real property acquisition, relocation, property management or building facility design and construction for highway development and that are required pursuant to title 28, chapter 20.”

The Arizona State Procurement Code exemption (see ECS website for most current version) encompasses the full spectrum of engineering and other consultative disciplines required to fully design and construct transportation facilities or highway facilities and programs to control and oversee the study, location, design and construction administration of the facilities. In addition to engineering disciplines, services may include but are not limited to: architects, landscape architects, geologists, geotechnical investigators, and environmentalists. For example, artists may be exempted where artwork or other artistic treatment is included as an integral part of the design scope of work of the transportation or highway facility. If it is noted that an action requires FHWA approval/signature, this would only apply when the contract is federal-aid funded.

All projects administered under Certification Acceptance Program shall be designed in accordance with established engineering and design principles, including all Federal and State statutes, regulations, guidelines and procedures applicable to environmental protection.

Resource Design:

23 CFR 625	Design Standards for Highways
23 CFR 630 (B)	Preconstruction Procedures (Part B, Plans, Specifications and Estimates)

When FHWA Federal funds are used to fund project design, Agency shall adhere to all applicable Federal and State statutes and regulations during the selection, negotiation and management of the design contract. When State and Local procurement laws, regulations, policies or procedures are in conflict with applicable Federal laws and regulations, the contracting agency shall comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of services incurred following FHWA authorization.

Resource Design:

Public Law 92-582	Brooks Act
23 USC 112 (b) (2)	Letting of Contracts for Engineering and Design Services – Negotiations
Public Law 112-141	MAP 21 – Moving Ahead for Progress in the 21 <sup>st</sup> Century Act
23 CFR Part 172	Administration of Engineering and Design Related Service Contracts
48 CFR Chapter 12	Federal Acquisition Regulations (Department of Transportation)
2 CFR 200	Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
49 CFR Part 26	Disadvantaged Business Enterprises
ARS 41-2501(K)	Arizona Procurement Code Applicability (Exemption)

**1.04 Program Oversight (Federal and State Requirement)**

For Federal compliance each Certification Acceptance Agency will re-certify for Federal-Aid Funded Procurement Program every three (3) years. As part of the Certification Review, ADOT and/or FHWA will review and provide guidance for the following:

- LPA Guidelines
- Agency Consultant Prequalification Process (if applicable)
- Internal/External Audit Reports and Report Findings
- Final/Incurred Cost Audit Reports and Findings of Federal Funded Consultant Contracts
- DBE Compliance on quarterly basis
- Sampling of Agency Contracts

A Certification Review Checklist will be provided to the Agency that will outline any needed commendations, recommendations and corrective actions. ADOT LPA Section then will issue a letter to Agency to re-certify the Agency Contract Administration Program.

**1.05 Qualifications-Based Selection (QBS) - Brooks Act (Federal Requirement)**

For Federally funded projects, A/E consultant contracts must be awarded using a QBS process and an approved prequalification process, as required by the Brooks Act.

QBS is a competitive contract procurement process whereby consulting firms submit qualifications for a specific project to the procuring entity. Under the QBS process, the cost of the work (price) shall not be considered as a factor when making an initial selection of the best or most qualified provider of the

professional engineering services required. The procuring entity then evaluates, selects, and negotiates the project scope of work, schedule, consultant fee, etc. with the most qualified firm.

Negotiations with the selected consultant to determine a fair and reasonable consultant fee shall begin after the most qualified firm has been selected. The cost for services is negotiated, following the selection of the most qualified firm and before the contract is signed by both parties and awarded to the most qualified firm. The Agency negotiates with the second or third most qualified firm only if failed negotiations occur with the most qualified firm.

#### **1.06 Federal-Aid Funds Authorization (Federal Requirement)**

Work on projects funded with Federal-Aid Highway Program funds must be authorized by the Federal Highway Administration (FHWA) prior to execution of a contract or contract modification.

Prior to advertisement of the contract or execution of the contract modification/task order for new projects, a copy of the FHWA funding authorization must be in place and maintained in the contract file.

No NTP or ANTP/Advanced Authorization shall be given until FHWA funding authorization is received. Consultant and/or Agency costs are not reimbursable if there is no written FHWA authorization or if costs are incurred prior to the FHWA authorization date.

#### **1.07 Contract Compensation Types (Federal Requirement)**

Pursuant to 23 CFR 172.9, the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize.

The basic types of contract compensation for which proposals are solicited are listed below. The contract compensation method is determined by the Agency in advance of the solicitation of the contract and shall be documented as part of the contract solicitation documents. The contract compensation method is based on the size and complexity of the project.

1. **Lump Sum (LS)** – A negotiated payment method used when the Scope of Work is well-defined and the total engineering effort (extent, scope, complexity, character, and duration of the work) required to complete the work, can be estimated accurately. The consultant is obligated to perform work for the agreed upon price regardless of the duration or the actual cost to the Consultant.
2. **Cost Plus Fixed Fee (CPFF)** – A cost reimbursement payment method used when the Scope of Work is fairly well-defined but the total engineering effort required to complete the work cannot be estimated precisely. The compensation is based on actual costs plus a fixed fee (profit). Payment method is based on actual costs with receipts. This type of contract requires an annual overhead adjustment and a Final Incurred Cost Audit prior to contract closeout.

The CPFF contract type is allowable provided the Agency is able to meet the audit requirements.

3. **Cost Per Unit of Work (CPUW)** – A cost reimbursement payment method used when the effort per unit of work is well-defined but the number of units is uncertain. Where the specific cost per

unit (e.g., cost per test or per hour) is negotiated and can be determined in advance with reasonable accuracy, but the duration and extent of the work may be adjusted or is indefinite. A unit of work may be defined as a measurement of work, such as linear feet of borings, number of ROW plots, tons of structural steel or pounds of reinforcing steel.

4. **Specific Rates (SR)** – A cost reimbursement payment method used when the Scope of Work and the required work effort cannot be determined at the time the Consultant contract is signed/executed (i.e., it is difficult to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of accuracy at the time of contracting). The Consultant is paid at an agreed specific fixed hourly or daily rate for actual hours engaged in the work as required. Specific rates are based on direct labor hours at specified fixed hourly rates. Materials are paid at cost.

Local agency must obtain FHWA's and ADOT LPA Section's approval in accordance to 23 CFR 172.9 (d), prior to proceeding.

5. **Lump Sum by Task Order (LSTO)** – A cost reimbursement payment method utilized for On-Call type contracts for which the extent, scope, complexity, character, and duration of services for a given task order can be defined, and the Agency determines, in writing, after negotiation, the lump sum amount for each task order. The Consultant is paid the agreed negotiated lump sum price regardless of the actual costs or duration to perform the work.
6. **Cost Plus Fixed Fee by Task Order (CPFF by TO)** – A cost reimbursement payment method used when the extent, scope, complexity, character or contract duration may be adjustable, and Agency determines, in writing, after negotiation, the billable limitations for each cost category or cost subcategory by task order.

The compensation for task assignments is based on actual costs plus a fixed fee (profit). This type of contract requires annual overhead adjustments and a Final Incurred Cost Audit prior to contract closeout. The CPFF by TO contract type is allowable, provided the Agency is able to meet audit requirements for this type contract.

#### **1.08 Non-Competitive Negotiations (Federal Requirement)**

Standard Agency practice is applicable if it meets the requirements listed below. When Federal-Aid funds are used, applicable Agency Non-Competitive Procurement policies must be followed but must include FHWA and ADOT LPA Section approval before proceeding. Non-Competitive negotiations as defined in FAR 15.306 (d) are exchanges between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal.

In some instances, because of the unique characteristics of the project or in the best interest of the Agency, the Agency may exercise the option of using "Non-Competitive Negotiation" procurement to waive the advertisement of a project.

Pursuant to 23 CFR Title 172.7 (a) (3) (iii)-Methods of Procurement, circumstances under which a contract may be awarded by non-competitive negotiations are limited to the following:

- (i) The service is available only from a single source;



- (ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
- (iii) After solicitation of a number of sources, competition is determined to be inadequate.

Written justification for using "Non-Competitive Negotiation" including documentation of the consultant selection process, and of how fair, reasonable, and allowable costs were negotiated in accordance with Federal Cost Principles and 23 CFR 172.7 (a)(3)(iv) for the project shall be maintained in the contract file.

### **1.09 Emergency Procurement (Federal and State Requirement)**

There may be some instances where Agency may exercise the option of using "Emergency" procurement and waive the advertisement of a project. Standard Agency practice is applicable if it meets the requirements. "Emergency" means (as defined in ARS Section 28-7361) "an immediate threat to public health, welfare or safety caused by flood, earthquake, hurricane, tornado, explosion, fire or other catastrophe such that compliance with normal bidding procedures for repair or reconstruction of transportation facilities would be impracticable or contrary to the public interest".

"Emergency" procurement may be utilized when an urgent condition exists that creates an immediate threat or serious need for materials or services that cannot be met through normal procurement methods. The "Emergency" may include but are not limited to conditions that pose a real or immediate threat to the operation of Agency, the preservation or protection of property, lives or the public health, welfare, or safety, or other urgent matters, as determined by the Agency, ADOT LPA Section.

When Federal-Aid funds are used, the applicable Agency shall document and obtain approval from FHWA and ADOT of their Emergency Procurement procedures to be followed prior to proceeding with the procurement process.

Written justification for using "Emergency" including documentation of the consultant selection approval process, and of how fair, reasonable, and allowable costs were negotiated in accordance with Federal Cost Principles and 23 CFR 172.7 (a)(3)(iv) for the project shall be maintained in the contract file.

### **1.10 Impracticable to Advertise (Low Value) Procurements (Federal Requirement)**

Standard Agency practice is applicable, if it meets the requirements.

If the use of consultant services is expected to be less than \$100,000.00 and the services are not covered by an existing contract, the applicable Agency policies for Small Purchases Procurement must be followed. The total contract amount including any approved adjustments shall not exceed \$100,000.00. If any contract modification or amendment causes the contract amount to exceed the established contract value threshold (\$100,000.00), the full amount of that contract modification or amendment is ineligible for Federal-Aid funding (23 CFR 172.7 (a)(2)(iv)). The FHWA may withdraw all Federal-Aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

Written justification for using "Impracticable to Advertise" including documentation of the consultant selection approval process, and of how fair and reasonable costs were negotiated for the project shall be maintained in the contract file. The applicable Agency's "Impracticable to Advertise (Low Value) procurement process must be approved by ADOT, but must include a request for three (3) short written proposals from firms that outline why they are most qualified to provide the service. The Agency

Management shall select the most qualified firm based on the qualification requirements and criteria for the project. After the selection is made, the Agency shall negotiate a reasonable price for the service, not to exceed \$100,000.00. Agency Low Value Procurement Process must be approved by ADOT LPA Section and ECS prior to proceeding.

ADOT negotiates with the second or third most qualified firm, if failed negotiations occur with the most qualified firm.

#### **1.11 On-Call Procurements (Federal Requirement)**

When it is determined to be in the best interest of the Agency to obtain the services of a group of consultants to perform On-Call services in a specific discipline (i.e., subsurface investigation, project management, right-of-way plans, traffic engineering, roadway design, etc.), the Agency may advertise for On-Call services, provided the Agency is pre-approved for On-Call procurements by ADOT ECS, ADOT LPA Section and FHWA.

On-Call contracts in which Federal funds are used shall follow the guidance provided by ADOT ECS. Any deviation from the guidance must be forwarded to ADOT LPA Section with a formal justification request for use, prior to soliciting for On-Call services.

The initial solicitation for On-Call consultants shall identify the optimum number of consultant teams which shall be procured through a Competitive Negotiation process, any established dollar limitations, include a copy of the general scope of work, contract duration, and document the method for awarding individual task orders. The method of assigning task order assignments must be in compliance with 23 CFR 172.9 (a)(3)(iv)(B).

On a bi-annual basis the Agency shall report On-Call Program Oversight activities to ADOT for inclusion in the FHWA distribution report.

(See Section 4.11 for further information on the On-Call Program and Program Oversight.)

#### **1.12 Standard of Conduct and Conflict of Interest (Federal and State Requirements)**

The Agency may use their own standard language, as long as if it is documented and meets the State statutes and Federal rules and regulations (2 CFR 1.33).

Agency staff, including selection panel members, and consultant project staff are required to adhere to Standard of Conduct and Conflict of Interest laws and guidelines contained in the Arizona Revised Statutes (A.R.S.) § 38-501 through 38-511, and applicable State and Agency Policies and Procedures which establish minimum standards for the conduct of public officers, employees and former employees who are, or may become, involved with a contract or decision, in their official capacity, which might affect their personal pecuniary interest or those of their relatives, i.e., spouse, children, grandchildren, parent, grandparent, brother, sister and their spouses, or the parent, brother or sister or child of one's spouse, A.R.S. § 38-502 (9). Furthermore, applicable Agency's Conflict of Interest Policy relating to the acceptance of gifts or gratuities is fully applicable to the contract process.

Pursuant to A.R.S. §41-753(D), the Agency must issue a significant procurement role period, during which period agency employees who have significant procurement roles as defined by A.R.S. §41-2503, are

prohibited from accepting, soliciting, or having discussions regarding employment with a person or firm lobbying or potentially responding to the procurement.

Some specific issues related to these Conflict of Interest statutes, policies and standards are listed below.

A.R.S. § 38-504(A) states that:

“A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly involved

and

in which the officer or employee personally participated during the officer’s or employee’s employment or service by a substantial and material exercise of administrative discretion.”

Agency may consider positions that the former employee held, and determine decision making opportunities that the person had had in that position concerning the particular project.

Consultants/proposers or potential consultants/proposers shall be required to disclose and identify former Agency employee(s) listed in proposals that have left the Agency in the preceding twelve months and certify that he/she/they have not made any material decisions about the proposed project while employed by the Agency.

*(See ECS Manual Section 1.08 for Standards of Conduct and Conflict of Interest for further information regarding conflicts of interest.)*

### **1.13 Anti-Collusion (Federal Requirement)**

Applicable Agency Policies must be applied when collusion is suspected or identified.

Consultants and subconsultants are prohibited from engaging in collusion, which is interaction with other consultants/proposers/subconsultants or potential consultants/proposers/subconsultants or other entities that would limit the scope and/or extent of competition and/or otherwise discourage or suppress competition among consultants for Agency engineering consultant contracts. In every Statement of Qualification (SOQ) proposal or other request to contract with the Agency, the proposer shall certify that it has not engaged in collusion with respect to the contract under consideration. Failure to provide the certification shall result in the rejection of the SOQ.

### **1.14 Debarment and Suspension (Federal Requirement)**

The consultant signature on any SOQ proposal or contract constitutes an authorization to Agency to determine the eligibility of the Consultant to enter into contract with the Agency and with any other governmental agency. In addition, the Consultant and Subconsultant(s) will be required to certify as to their own current eligibility status, as well as that of their principals.

Failure to provide the certification shall result in the rejection/disqualification of the Consultant's and Subconsultant's SOQ.

According to 2 CFR Part 1200 and 2 CFR Part 180, prior to entering into a contract, the Agency shall verify Debarment and Suspension status at the System for Award Management website an official US Government website:

<https://www.sam.gov/portal/public/SAM/#1>

### **1.15 Examination of Records (Freedom of Information Act (ARS § 28-7707)) (Federal and State Requirement)**

Requests for copies or viewing of contract documents other than the consultants' own contract files shall be considered in accordance with applicable Public Records request statutes and the applicable Agency's policy.

### **1.16 Protest and Dispute Resolution (Federal Requirement)**

The Agency shall follow their documented dispute resolution process with the intent to resolve disputes at the lowest level possible. If agreement cannot be reached at that level, then the matter is escalated to the next higher level of management.

Any Consultant submitting a proposal on a solicitation issued by Agency or has an existing Agency contract may file a protest depending on the following grounds:

1. RFQ Solicitation
2. SOQ Disqualification
3. Selection

*(See ECS Manual Section 1.13 for Protest and Dispute Resolution for further information regarding protest.)*

### **1.17 Disadvantaged Business Enterprise Program (Federal Requirement)**

*For more details on the DBE program and process requirements reference the ADOT Business Engagement and Compliance Office (BECO) guidelines for DBEs.*

ADOT encourages the formation and growth of new and existing Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, by providing an opportunity to compete for and participate in ADOT's and Agency's engineering consultant programs when Federal funds are involved.

ADOT actively assists DBE firms in their efforts to participate in the architectural/engineering (A/E) services consultant program through the following office:

Arizona Department of Transportation  
Business Engagement and Compliance Office (BECO)  
1801 W. Jefferson Street, Suite 101  
Phoenix, Arizona 85007  
Phone (602) 712-7761

Fax (602) 712-8429

Consultants are required to utilize DBEs for race conscious (with specific DBE goals) and encouraged to utilize DBEs for race neutral contracts and to enlist the aid of ADOT's BECO to obtain assistance in partnering with DBE firms in responding to RFQs. The RFQ will set forth the DBE requirements and DBE goals for the contract, if any.

Consultants must also maximize DBE participation in ADOT and Agency Federal-Aid Highway funded contracts, make good faith efforts to meet any DBE goals stated in contract solicitations and must adhere to commitments made to utilize DBEs as indicated in the firm's SOQ proposal. ADOT will monitor the use of DBEs on contracts to ensure that they are performing commercially useful functions as outlined in the SOQ proposal and the contract, as well as subcontract agreements between Prime Consultants and DBE firms.

### **1.18 AZ UTRACS Online Vendor Registration (Federal and State Requirement)**

Pursuant to 49 CFR 26.11 (c) (2), the US DOT requires ADOT to collect demographic information on all firms who seek to work on federally-assisted contracts, including prime Consultants, Subconsultants, Disadvantage Business Enterprises (DBEs), and Small Business Concern firms (SBCs).

All Prime Consultants and Subconsultants submitting or being included in a Statement of Qualifications (SOQ) to ADOT or the Agency shall be registered in AZ UTRACS at <http://adot.dbesystem.com>.

Noncompliance or failure of Prime Consultants and Subconsultants to maintain an active (non-expired) AZ UTRACS registration and submit a Bidder's/Proposer's Solicitation List with the initial cost proposal, may result in failed negotiations.

### **1.19 Small Business Concerns (Federal Requirement)**

If applicable, the Agency's applicable Small Business Concerns (SBC) policies should be followed. To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally-assisted contracts. SBCs are for-profit businesses, registered to do business in Arizona and meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE Program does not require utilization goals on projects, ADOT strongly encourages Consultants to take reasonable steps to eliminate obstacles to SBCs participation and to utilize small businesses that are registered in Arizona Unified Transportation Registration and Certification Systems (AZ UTRACS) on their contracts, in addition to certified DBE's. SBC component of the DBE Program is managed by BECO and Consultants and subconsultants can either apply for or renew current SBC application at <https://adot.dbesystem.com>.

*For more details on the SBC program and process requirements reference the ADOT Business Engagement and Compliance Office (BECO) guidelines for SBCs.*

### **1.20 Anti-Lobbying/Disclosure (Federal Requirement)**

Federal Acquisition Regulation (FAR) prohibits the expenditure of Federal-Aid Highway Program funds to pay any person for influencing or attempting to influence a federal, state, or local agency or Congress in connection with the award of any Federal-Aid Highway Program funded contract, grant, loan or cooperative agreement. In adherence to 2 CFR 220.450, the Consultant is required to sign a statement certifying that to the best of its knowledge and belief that no Federal-Aid Highway Program funds have been paid or will be paid, by or on behalf of its firm for the purpose of lobbying.

If the Consultant should report lobbying activities, the applicable Agency process must be followed. Consultant is required to submit Anti-Lobbying/Disclosure [Forms](#). These forms are supplied to the Consultant by the Agency Procurement Office and must be completed and received by the Agency prior to execution of the contract. The above regulations also apply to Subconsultants and their subconsultants (lower tier) whose contracts exceed \$100,000.00.

## SECTION II – ADVERTISEMENT THROUGH SELECTION NOTIFICATION

### 2.01 Prequalification of Consultants (Federal Requirement)

When a QBS selection is followed, as required by the Brooks Act, an approved written prequalification process must be used. To insure a uniform prequalification process is followed, ADOT's LPA Section has decided, that recipient agencies must either use ECS' prequalification list for Federal Aid Projects or have their own documented prequalification process, which must be approved by ADOT.

In order to submit an SOQ and be qualified for selection, the prime Consultant must have on file with ADOT (ECS) a current Prequalification Application/Statement. Subconsultants are not required by ADOT to be prequalified, but are encouraged to do so. ECS currently prequalifies firms on a biennial basis. For further information regarding prequalification process, reference the [ECS website](#).

Firms that have not already prequalified with ECS and who intend to submit an SOQ for the proposed contract shall successfully submit the Prequalification application to ECS no later than 10 business days before the SOQ due date at 2:00 P.M. Arizona time. Any submissions for Prequalification with ECS received after 10 business days before the SOQ due date at 2:00 P.M. Arizona time are not guaranteed to be reviewed or approved by the SOQ due date.

Getting prequalified does not mean the firm is under the contract or entitled to receive one. Getting prequalified simply means the Consultant has met minimum requirements to submit qualifications to be considered/evaluated for potential projects.

### 2.02 DBE Goal Setting (Federal Requirement)

In adherence to 49 CFR Part 26, and 21, all recipients and subrecipients of Federal-aid funds, must have their contracts/projects assessed for a DBE goal prior to advertising a contract by submitting an online DBE goal assessment worksheet via Goal Setting Module at <http://www.azdot.gov/business/business-engagement-and-compliance/lpa-subrecipients/goal-requests>.

The Agency must submit an online DBE Goal Setting Worksheet along with the Final Scope of Work to BECO prior to the advertisement of the contract, so that the goal can be narrowly tailored. BECO evaluates and determines if the contract is race neutral (no goal) or race-conscious (with specific DBE goal).

The DBE Goal Setting Worksheet and applicable BECO determination must be maintained and available for review and inspection as required by FHWA or ADOT.

### 2.03 Pre-Advertisement Requirements (Federal and State Requirement)

Prior to the advertisement of a contract/project, the Agency must have the following approvals in place prior to preparing the Request for Qualifications (RFQ) package:

- a. Funding Authorization (Federal Authorization e-mail will suffice or AZPR2X form)
- b. Method of Procurement (Standard, Sole Source, Emergency, etc.)
- c. Number of Awards (If on-call or multiple selection)
- d. Advertisement and Estimated Schedule of Events

- e. DBE Goal Assessment
- f. RFQ Package with a Sample Contract, established DBE Goal and Final Project Scope of Work

#### **2.04 Standard Content Requirements for RFQ (Federal and State Requirement)**

The applicable Agency's proposal preparation process should be followed. The RFQ document must contain or address the following information:

- a. Contract Number, Name of Project and applicable Project Number (TRACS No.)
- b. Public Advertisement Notice (Dates advertised and SOQ Submittal Deadline)
- c. Instructions on where to obtain a copy of the RFQ
- d. SOQ Submittal Delivery Location (Submitted electronically or hard copy)
- e. Proposal preparation instructions/format (No. of pages, copies, format, etc.)
- f. No Cost/Price Information or Work-Hour Estimates Notice
- g. Right to Reject any and all Submittals Notice
- h. Required proper Arizona licenses, Registrations (BTR, AZ UTRACS, etc.)
- i. Current Prequalification application required
- j. Bidder's/Proposer's List Requirement
- k. Staff Contact Restriction Notice & Requirements
- l. Questions Deadline
- m. Pre-Submittal or Oral Interview Information (if applicable)
- n. Number of Awards (if applicable, on-call or multiple selection)
- o. Professional Liability Insurance Requirements (if applicable)
- p. Generally Accepted Accounting Principles (GAAP) Notice
- q. All SOQ submittals become property of the Agency
- r. Review of Selected SOQ Proposals after Award (Debrief)
- s. Proposal Content and Format Instructions
- t. Evaluation Criteria and Possible Award Points
- u. SOQ Certification Requirements
- v. DBE Goal and Compliance Information
- w. Final Project Scope of Work
- x. Sample Contract with applicable contract type and compensation method payment, DBE Goal Assessed Percentage (if applicable) and all Federal Uniform Terms and Conditions
- y. Contract Procurement and Project Schedule
- z. Non-Discrimination/Title VI Assurances

#### **2.05 Request for Qualifications (RFQ) Format and Evaluation Criteria (Federal and State Requirement)**

Applicable Agency proposal format and evaluation criteria for Federal funded contracts shall be followed as long as costs and/or location are not requested to be included in the submittal. A standard SOQ proposal format is as follows:

- a) Signed Introductory Letter by Principal or Officer of the Firm
- b) SOQ Proposal Certification Form (Lists all Consultant certifications and acknowledgements)
- c) Evaluation Criteria and Weight Factors (Costs and local preference cannot be a factor if Federally funded project; however local presence and DBE usage are allowed as nominal



evaluation criteria (if < 10% of total evaluation criteria). See 23 CFR 172.7 (a)(1)(iii)(D) for further information.

- d) Bidder's/Proposer's List
- e) Resumes and Other Requested Information
- f) Amendments

If the Agency has a documented process to effectively evaluate consultants' proposals other considerations may include, but are not limited to: the Consultant's availability, current workload status, and/or past performance on other Agency contracts.

## **2.06 Advertisement Process (Federal and State Requirement)**

Adhering to a process which provides for maximum free and open competition, two (2) official notices requesting submittal of qualifications are published in a single newspaper or in multiple newspapers of general circulation with an accumulated general circulation of not less than 50,000 subscribers. The notices shall also be published on Agency's website, in addition to local newspaper(s), as long as it meets the above requirement first.

The proposal solicitation (project, task, or service) process shall be by public announcement, advertisement, or any other 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 official notices are placed no less than six (6) but no more than 10 calendar days apart in accordance with A.R.S. 34-201 (A).

The Agency will determine the deadline for receipt of proposals which can be no less than two (2) weeks following the first publication of the notice, or as otherwise stated in the RFQ Package or any subsequent amendments.

## **2.07 Request for Qualifications (RFQ) Availability (Federal and State Requirement)**

Beginning with the first advertisement date, until the SOQ due date, , the Request for Qualifications (RFQ) Package containing the solicitation shall be made available for download from the Agency's website or provided by hard copy, whichever applicable.

## **2.08 Amendments to Request for Qualification (RFQ) Package (Federal and State Requirement)**

Applicable Agency policy regarding RFQ amendments should be followed.

When necessary, the Agency may prepare amendments to the original solicitation. Amendments are to be posted on the Agency's website along with the original RFQ package or provided by fax or email (if applicable).

Firms submitting SOQ proposals must acknowledge receipt of all amendments or their SOQ proposal will be rejected.

## **2.09 Contact with Agency Staff during Solicitation Period (Federal and State Requirement)**

During the solicitation period, Consultants are not permitted to communicate with any Agency staff, including management, project staff and/or selection panel members about an advertised project. Such

communication shall result in action, including, but not limited to, disqualification from proposing/submitting or rejection of the proposal/submittal and replacement of the selection panel member (if applicable). Restrictions on discussions regarding selection panel members' scores, comments, and deliberations shall remain in effect for perpetuity.

Consultant contact restriction shall begin on the first day of advertisement and shall remain in effect until the selection/award announcement. All questions regarding the RFQ shall be submitted in writing to the designated Agency representative.

#### **2.10 Pre-Submittal Meeting (Federal and State Requirement)**

The applicable Agency's policy regarding Pre-Submittal meetings and amendment notification must be followed and then documented in the RFQ package.

A formal amendment to the RFQ may be issued as needed to answer questions not clarified at the meeting or to further clarify or revise information previously provided.

Firms submitting SOQ proposals must acknowledge receipt of all amendments or their SOQ proposal will be rejected.

#### **2.11 Pre-SOQ Submittal/Selection Panel Requirements (Federal and State Requirement)**

Prior to SOQ submittal, the Agency should have the following documents in place:

- a. Evaluation Panel Tentative Schedule of Events
- b. Approved List of Qualified Selection Panel Members
- c. Panel Member Confidentiality and Participation Forms
- d. Selection Panel Instruction Package
- e. Evaluation Criteria Score Sheet and Panel Comment Forms

#### **2.12 Statement of Qualifications (SOQ) Submittals (Federal and State Requirement)**

The applicable Agency's documented SOQ Submittal Process will be followed. SOQ's may be submitted electronically or by hard copy.

A Statement of Qualifications (SOQ) proposal is submitted in response to a Request for Qualification solicitation and outlines the Consultant's capability and experience to provide services requested in the solicitation as described in the RFQ Package. The SOQ submittal must comply with the format and requirements identified in the RFQ package or it will be rejected.

At the time the SOQ is submitted, the Consultant and all proposed subconsultants shall have a valid AZ UTRACS registration, be prequalified or have a prequalification process documented and approved by ADOT, and have all proper Arizona licenses and/or registrations.

Prior to providing the SOQ submittals to selection panel for evaluation, SOQ submittal must be initially evaluated for responsiveness to project, license and registration requirements, and format compliance, which should be documented in the RFQ. The Subconsultant must be registered as a DBE for the work type specified in order for the DBE work to count toward a DBE goal.

After the SOQ deadline, a list of firms submitting proposals shall be made available on the Agency's website, as soon as the Agency has completed their initial proposal review and the SOQs are found to be in an acceptable format and eligible for evaluation.

### **2.13 Non-Responsive Statement of Qualifications (SOQ) Submittal (Federal and State Requirement)**

Consultants responding to advertisements shall strictly adhere to the format and instructions outlined in each RFQ Package, as they may vary. The applicable Agency's SOQ rejection process must be followed when applicable.

Issues that shall result in the rejection of an SOQ, include, but are not limited to, if the Consultant:

- Failed to completely and correctly fill out all sections of the CIP page
- Submitted an SOQ proposal with more pages than specified in the RFQ
- Submitted a document is a larger size than the specified file size indicated in the RFQ
- Failed to provide a required Proposer's Solicitation List with valid AZ UTRACS registration numbers
- Failed to sign and acknowledge every amendment included with the solicitation
- Failed to include all Subconsultants listed in the SOQ proposal document on the CIP page
- Failed to have a valid AZ UTRACS registration at the time of the submittal
- Failed to ensure that a proposed Subconsultant has a valid AZ UTRACS registration at the time of the submittal
- Failed to be in "Good Standing" with the Arizona Corporation Commission at the time of the submittal
- Failed to have required licensing for Consultants, Subconsultants, vendors, and any of their employees or agents
- Failed to ensure the proposed Key Personnel meet the requirements for the defined Labor Classifications specified in the SOQ
- Failed to be prequalified at the time of the SOQ submittal
- Failed to submit/attach the SOQ via eCMS by the deadline indicated in the RFQ package
- Failed to follow the specific format requirements as identified in the RFQ package.

### **2.14 Evaluation of Statements of Qualifications (SOQ) (Federal and State Requirement)**

The SOQs shall be independently evaluated by qualified selection panel members who are familiar with the contract and related project requirements. It is essential that the integrity and transparency of the selection process be maintained to:

- Ensure that the Agency is selecting the most qualified Consultants;
- Avoid public perception of favoritism or partiality in contract awards;
- Ensure that each consulting firm is given fair and equal consideration.

The applicable Agency's selection panel approval process shall be followed. The Agency's process must include the following in the selection panel procedures:

1. Panel should consist of no less than three selection panel members.

2. Panel instructions should address and require each panel member to sign a Confidentiality Statement and a Panel Participation Commitment Form. (Anyone attending any part of the selection process must sign the Confidentiality Statement form.) If the panel member believes there is an actual or perceived conflict of interest they shall immediately notify the Agency procurement representative for determination of required action.
3. All selection panel members are required to attend the panel meetings and participate in all aspects of the selection process, including interviews, as necessary. Failure to attend any part of the selection process meeting can result in the removal of the panel member and elimination of their scores.
4. There shall be no communication made between Consultants and selection panel members or other Agency staff, during the solicitation period and the selection process.
5. Each selection panel member shall conduct an independent evaluation of each firm and shall not discuss his/her evaluation with other selection panel members or other non-selection panel members during the initial phase of the process.
6. Proposals are to be evaluated based on the evaluation factors included in the SOQ Package. Selection panel members shall not consider outside information or factors not included in the SOQ Package.
7. Selection panel members shall meet to discuss the rationale for their scores once independent scores are submitted and calculated.
8. Rationale for scores shall be documented on the comment forms.
9. All selection panel members' scores are equally weighted and will be used unless they have been disqualified.

Panel member scores or panel members may be removed if any of the following conditions exist:

- Failed to Sign the Panel Member Confidentiality and/or Panel Participation Statement
- Failed to report a potential perceived conflict of interest
- Failed to maintain the integrity of the selection panel process (confidentiality)
- Failed to attend all required panel meetings
- Failed to support excessive high or low scores (possible skewing)
- Failed to provide comments to support scores

The Agency must maintain a record of the selection panel approval, instructions, and any signed panel forms or actions for review and inspection as required by FHWA or ADOT.

## **2.15 Selection Process (Federal and State Requirement)**

After the scores for SOQs (and interview, if applicable) are compiled, an average score for each proposer is determined. The selection panel shall meet to discuss the scores; any selection panel member may elect to

amend his or her score based on the discussion. After the panel has completed their discussion of the SOQs, scores are finalized.

The listing, in ranked order, of the most qualified firms who are recommended for selection shall be signed by all selection panel members and forwarded for Agency approval.

The applicable Agency's selection approval and notification process shall be followed. The most qualified firm(s) is selected and negotiations can begin.

The following QBS selection process shall be used when selecting the most qualified firm(s).

- SOQ evaluation only
- SOQ evaluation, short-list, followed by oral interviews
- SOQ evaluation, short-list, followed by technical proposal and oral interviews

The Agency will retain and maintain supporting documentation of the solicitation, proposal, evaluation, and the selection of the Consultant for review and inspection by the state and FHWA.

#### **2.16 Selection Notification (Federal and State Requirement)**

The applicable Agency's selection notification process shall be followed.

After the Agency's review and approval of the panel recommendation, notification will be provided to the firms which submitted SOQs of the final ranking of the three most highly qualified consultants, including which firm was ranked highest and with which the Agency will enter into negotiations with for the contract.

When applicable, the Agency's protest policy shall be followed if a protest is received from a non-selected proposer.

#### **2.17 Debriefing Sessions (Federal Requirement)**

Debriefing of non-selected firm(s) is not required. If the applicable Agency has a documented debriefing process in place, that process shall be followed.

Winning SOQ submittal(s) can be available for review if it is Agency's practice. Copies of non-selected firms SOQ(s) will not be available for review.

Any unauthorized use, disclosure, or distribution of these documents, files, or information contained in it, is strictly prohibited, without prior written consent from the Agency.

#### **2.18 Agency's Rights (Federal and State Requirement)**

Until the contract is signed by the Agency, the Agency reserves the right to:

- a. Cancel the solicitation;

- b. Reject any or all SOQs or proposals;
- c. Following a QBS selection, select the Consultant's SOQ that, in its judgment, will best meet the Department's needs according to the criteria outlined in the RFQ Package;
- d. Investigate, confirm, or verify, as deemed appropriate, information contained in proposals;
- e. Retain any and all documents submitted by the Consultant as part of the selection process.

## SECTION III - NEGOTIATION THROUGH NOTICE TO PROCEED

### 3.01 Pre-Negotiations (Agency Practice)

The applicable Agency's standard practice of providing cost proposal instructions and establishing an agreed upon initial and final cost proposal should be followed.

Failure to submit a cost proposal within agreed upon parameters and time may result in Agency declaring a failed cost negotiation and proceeding to negotiate with the next highest qualified firm.

### 3.02 Fixed Fee (Federal Requirement)

The applicable Agency's standard practice of establishing appropriate fixed fee (profit) to be applied to the contract must be followed.

The fixed fee dollar value of the Consultant's compensation for rendering professional engineering services is a percentage of Direct Labor and Overhead only, based on the scope, amount of subcontracting, contract schedule, size, duration and complexity of the project and is non-negotiable by the Consultant. The overall final cost of a project reflects the complexity of the work, the degree of risk and fixed fee (profit).

### 3.03 Agency Project Manager's Cost Estimate (Federal Requirement)

In determining fairness and reasonableness, the Agency shall consider scope, complexity, professional nature and estimated value of the services to be rendered as specified in 40 USC 1104(b).

Prior to receipt of the selected firm's initial cost proposal and request for FHWA Federal-Aid authorization, the ADOT PM and the Agency PM will prepare/refine an independent estimate of the work to be performed on the contract. This independent estimate should consider the person-hours and classifications to complete project tasks (which collectively result in total direct labor costs), other direct expense contract costs, and fixed fee. This estimate is only available for review by ADOT and the Agency, is confidential and as such shall not be released to the public at any time. The estimate will be used as a basis in the negotiation of the project's costs with the qualified firms per 23 CFR 172.7 (a)(1)(v)(B).

### 3.04 Contract Compliance Requirements (Federal Requirement)

#### a) Cost Accounting

Pursuant to 23 USC Section 112(b)(2)(C) requires contracts for engineering services to be performed and audited in compliance with cost principles contained in Part 31 of the Federal Acquisition Regulation (FAR).

According to 23 CFR 172.11(c), the contracting Agency shall provide reasonable assurance that consultant costs on contracts reimbursed in whole or in part with FAHP funding are fair, reasonable, allocable, and allowable in accordance with the Federal cost principles and consistent with the contract terms considering the contract type and payment method. Contracting Agency written policies, procedures, contract documents, and other controls, as specified in 23 CFR 172.5(c) and 23 CFR 172.9 shall address the establishment, acceptance, and administration of contract costs to assure compliance with the Federal cost principles and requirements of that section. According to 23 CFR 172.11 (b)(4), the contracting Agency shall use the Federal cost principles in determining the reasonableness, allowability, and allocability of other direct contract costs.

Pursuant to 23 CFR 172.11(d), allows the FHWA, recipients, and subrecipients of Federal-Aid highway funds are allowed to share the audit information in complying with the State or subrecipients acceptance of Consultant's overhead rates pursuant to 23 USC 112 and this part provided that the Consultant is given notice of each use and transfer.

In cases where ADOT Audit & Analysis does not have a current overhead rate or audit in place, the Agency should request from the selected firm a copy of a current overhead rate generated by a CPA firm.

The criteria used to determine allowability of contract costs are governed by 48 CFR Part 31. In seeking to interpret the FAR, ADOT utilizes AASHTO Uniform Audit and Accounting Guide and ADOT Consultant Audit Guidelines, 23 USC 112(b)(2)(B-C), 23 CFR 172.11, 2 CFR 200, which contain information on pre-award audit requirements, when Federal-Aid funds are involved.

Consultants requiring additional information on the application of Consultant Audit Guidelines may contact the Agency's Audit and Analysis office or ADOT Office of Audit and Analysis by calling (602) 712-7734.

b) Anti-Lobbying/Disclosure

Federal Acquisition Regulation (FAR) prohibits the expenditure of Federal-Aid Highway Program funds to pay any person for influencing or attempting to influence a federal, state, or local agency or Congress in connection with the award of any Federal-Aid Highway Program funded contract, grant, loan or cooperative agreement. The Consultant is required to sign a statement certifying that to the best of its knowledge and belief that no Federal-Aid Highway Program funds have been paid or will be paid, by or on behalf of its Consultant for the purpose of lobbying.

If the Consultant should report lobbying activities, the applicable Agency process must be followed. Consultant is required to submit Anti-Lobbying/Disclosure [Forms](#). These forms are supplied to the Consultant by the Agency Procurement Office and must be completed and received by the Agency prior to execution of the contract. The above regulations also apply to Subconsultants and their subconsultants (lower tier) whose contracts exceed \$100,000.00.

c) Insurance and Indemnification Requirements



In order for the Agency to enter into a contract with a Consultant for services, the Consultant shall have the capability and experience to perform and be responsible for negligent acts which may occur in the course and scope of the Consultant's performance under the contract. The Consultant is responsible for certifying that any Subconsultant, included as part of their contracts, meet the insurance requirements outlined in the contract.

All contracts contain an insurance requirement and indemnification provision. The Consultant shall furnish required Certificate(s) of Insurance to the Agency for approval prior to the execution of the contract.

Certificates of Insurance are designed to certify that: (1) a person or company (Consultant) has the type of insurance needed to protect both itself and the State of Arizona and ADOT against loss resulting from the particular work or service being performed; (2) the policy limits meet the limits of liability required in the contract; (3) the policy is currently in effect and has not expired; (4) the insurance company is a recognized and approved insurer; and (5) special conditions required by the contract are endorsed onto the policy.

For projects on or adjacent to ADOT's ROW, the Agency is required to adhere to ADOT's Insurance Guidelines, while for projects that do not meet that criteria, the Agency can utilize their own insurance guidelines. Contracts shall require the insurance to name the State of Arizona, The Arizona Department of Transportation (ADOT), and FHWA as additional insureds in accordance with the [Insurance Guidelines](#) (see ECS website for the current version) and contract.

d) Immigration Requirements

All prime Consultants and Subconsultants are required to certify their compliance with all Federal, State and local immigration laws prior to the execution of a contract. All Agency contracts shall include contract language requiring Consultants and Subconsultants to comply with Federal, State and local immigration law and regulations, allowing the right to inspect records and the right to take necessary action if violations occur to ADOT or the Agency.

Failure of the Consultants or Subconsultants to comply with the immigration laws with respect to any activity under the contract or any personnel performing or managing work under the contract shall be regarded as a material breach of the contract as outlined in Section 4.17 of these Guidelines.

e) Federal-Aid Funded Contracts

Work on projects funded with Federal-Aid Highway Program funds must be authorized by the Federal Highway Administration (FHWA) prior to advertisement or execution of a contract or contract modification. No NTP, LNTP or ANTP will be given until FHWA authorization is received. FHWA will not participate in project costs prior to FHWA authorization.

**3.05 Cost Proposal Negotiations (Federal Requirement)**

The cost proposals should be evaluated by Agency staff familiar with the contract and project requirements. The applicable Agency's cost negotiation and approval process shall be followed, if applicable.

The Agency's process must include the following:

1. Costs are reviewed to ensure that person-hour estimates and costs submitted by the Consultant are fair, reasonable and within Agency Project Manager's estimate and Agency's Cost guidelines and compliant with FAR 48 CFR 31, 2 CFR 200, and 23 CFR 172 cost principles, if Federal-Aid funded. The independent estimate is confidential and only available for review by ADOT and FHWA and shall not be released to the public at any time, and will be used as a basis in the negotiation of the project's costs with the qualified firm per 23 CFR 172 (a)(1)(v)(B).
2. Indirect cost rate (overhead rate) or established unit rates or commercial item prices established through Agency or current ADOT's audit review or by a cognizant audit that has been reviewed for reasonableness in accordance with the FAR cost principles contained in 48 CFR 31 for contract negotiation, administration, and payment as specified in 23 USC 112(b)(2)(B-D) and 23 CFR 172.11. Indirect cost rates, unit rates or commercial item prices shall not be negotiated.
3. Selected Consultant(s) shall have a compliant accounting system and submit specified financial information to Agency as required.
4. For Federally funded, Race-Conscious project specific contract with DBE Goals, the notice to proceed cannot be issued until the applicable DBE affidavits are submitted, reviewed and approved by BECO. For On-Call contracts with DBE Goals, the Consultant is only required to submit an On-Call DBE Commitment Form during contract negotiations.

**Agency will maintain a Record of Negotiations (RON), documenting their cost negotiation efforts in their project file, including dates of any negotiation meetings, comparison of total hours, costs and overhead included in the Consultant and Agency estimates.**

The Consultant's failure to provide the information within the prescribed time may lead to the Agency declaring a failed negotiation at which time the Agency reserves the right to reject the Cost Proposal of the selected firm and proceeding to negotiate with the next highest ranked firm in accordance with 40 USC §1104.

The applicable Agency's protest procedures shall be followed if failed negotiations occur. Unsuccessful or failed cost negotiation may occur for a number of reasons including, but not limited to:

- 1) Failure to submit cost proposal and required documentation (i.e. DBE affidavits, GFES and other documents, insurance certificates, direct expense back-up, etc.) in the required format
- 2) Failure to submit cost proposal and required documentation within the prescribed timeframe
- 3) If irreconcilable differences occur between Agency and Consultant in agreeing on a cost or scope for the project over an agreed upon period of time. After the second revision or more than the agreed upon number of calendar days after the initial submittal of the cost proposal), Agency may declare that there is an impasse.

- 4) Failure to come to an agreement on person-hours for the tasks to be performed, the level/classification of the staff required to complete the tasks, other miscellaneous direct costs, or the final cost of the project.
- 5) Failure to submit or respond timely and appropriately to requests for information from any related Agency offices (Procurement, Audit & Analysis, or Agency Project Manager)
- 6) Failure to have Prime Consultant's and Subconsultants' Schedule of Indirect Costs and Financial Statements available for review by A&A. Information submitted must be within six (6) months of the completion of the Consultant's or Subconsultant's preceding fiscal year-end (FYI) (e.g. a Consultant with December 31, 2015 FYE shall have the required information available no later than June 30, 2016).
- 7) Failure by the Consultant to make Good Faith Effort to use DBEs on the contract as determined by BECO.

If any of the above cases exist, the Agency reserves the right to reject the Cost Proposal of the selected firm and proceed to negotiate with the next highest ranked firm in accordance with 40 USC 1104.

Justification for negotiating and/or awarding the contract to a firm other than the originally selected Consultant shall be documented in the contract file.

The Agency also reserves the right to terminate cost negotiations for administrative reasons including, but not limited to, lack of funding, termination or invalidation of an Intergovernmental Agreement or other extenuating circumstances.

The Agency must document procedures for determining, documenting, notifying, and managing protests for conditions in which negotiations are not successful and terminated or otherwise failed.

### **3.06 Final Contract Approval (Federal Requirement)**

The applicable Agency's final contract approval process will be followed.

Work on projects funded with Federal-Aid Highway Program funds must be authorized by the FHWA prior to the advertisement and execution of the contract and the Agency shall verify that the Consultant is in good standing and does not have any pending Debarment and/or Suspensions.

### **3.07 Notice to Proceed (Federal Requirement)**

Once signed by the Consultant and Agency, the contract is considered fully executed.

On Federally funded projects/contracts, a notice to proceed shall not be given until FHWA authorization is received.

The applicable Agency's Notice to Proceed process shall be followed.

A copy of the executed contract, along with a Notice to Proceed (NTP) letter, will be distributed to the Consultant, the appropriate Agency, ADOT LPA personnel, and ADOT BECO.

The Agency is not responsible for any cost incurred by the Consultant prior to the effective date of the NTP.

### **3.08 Contract Advance Notice to Proceed (ANTP) (Federal and State Requirement)**

For emergencies, if extenuating circumstances exist, and upon approval by the Agency, if it is determined to be in the public's best interest, the Agency has the discretion to issue an Advance Notice to Proceed (ANTP), prior to execution of the contract or contract modification.

The ANTP shall document a preliminary scope of work, schedule and preliminary budget for costs associated with the requested services. An ANTP is only valid if signed by the ADOT PM, Agency PM, and the Agency's designated procurement personnel and the Agency is under no obligation to pay for work without the proper written authorization or completing the appropriate documentation. The Agency will not be responsible for any cost(s) incurred prior to the ANTP date, and the Consultant cannot exceed the estimated cost agreed to by the Agency in the ANTP authorization letter.

ANTP's issued will be valid for no more than 90 days. The Consultant cannot bill for any work done under the ANTP until a contract or contract modification has been executed. If a contract or contract modification is subsequently signed by both parties, the Consultant will be paid as provided for in the executed contract or contract modification. If both parties fail to successfully negotiate and sign a contract or contract modification within 90 days of the ANTP date, the Consultant must stop all work and can invoice for services performed under the ANTP. The Consultant will not be compensated for any work performed after 90 days from issuance of the ANTP. Within 30 days of receiving the invoice, the Department will pay the Consultant the amount the Department has determined to be reasonable costs for services performed. A copy of the determination will be provided to the Consultant with the payment.

## SECTION IV - CONTRACT ADMINISTRATION

### 4.01 Post Award Information (Federal Requirement)

After the Notice to Proceed (NTP) is issued, the Agency should provide the Prime Consultant with information and forms needed to successfully fulfill the terms of the contract.

The applicable Agency must follow their post award instructions process. The key areas that should be addressed the following:

- Invoicing Requirements and Compliance
- Contract Modification Submittal and Requirements
- DBE Requirements for Contract Modifications using Federal-aid funds
- DBE Program Contract and Subcontract Reporting Compliance
- Annual Indirect Cost (Overhead) rate adjustments, if applicable
- Prompt Pay Requirements
- Key Personnel Changes
- Firm Name Change, Acquisition, Merger, Transfer of Ownership
- Adding/Replacing/Terminating a Subconsultant
- Certification of Payments to DBE firms at contract closeout
- Consultant Performance Evaluations
- Errors and Omissions processing

### 4.02 Agency Vendor Registration (Agency Practice)

The applicable Agency's vendor registration must be followed so that it will not cause a delay when an invoice is received by the Agency.

### 4.03 Monthly Progress and Work Hour Reports (Federal Requirement)

The applicable Agency's monthly progress reporting process should be followed.

### 4.04 Progress Payment Reports (Federal and State Requirement)

The applicable Agency's consultant invoice and payment approval process should be followed. The Agency's policy must be in compliance with the timeframes outlined in the Prompt Pay Law (A.R.S. § 28-411).

Consultant is required to adhere to the DBE Program PPR Reporting requirements.

### 4.05 Prompt Pay Legislation (A.R.S. § 28-411) (Federal and State Requirement)

In accordance with A.R.S. § 28-411 (Prompt Payment to Consultants and Subconsultants), the Agency must issue payments to Prime Consultants within 21 calendar days after receipt of PPR/invoice. The law also requires the Consultants to pay their Subconsultants within seven (7) calendar days after issuance of payment by the Agency, unless exceptions exist within the agreed-upon Consultant/Subconsultant

agreement. Incomplete or incorrect PPRs/invoices will be returned to the submitter within seven (7) calendar days of receipt by the Agency. The 21 calendar day timeframe for Agency payment will begin anew upon receipt of the corrected invoice. If payment reports are not received by the Agency within five (5) business days of the invoice date identified in the contract, the Agency will not “approve and certify” the invoice for payment and it will be returned to the Consultant. Any invoice from a Consultant for progress payments shall be deemed approved and certified by the department unless within seven (7) days from the date the department receives the invoice the department sends the Consultant written notice by first class mail of those items that the department does not approve and certify under the terms of the agreement.

Prime Consultants shall not withhold retainage of a Subconsultants’ payments if the Agency has not withheld retainage of a Prime Consultants’ payments. If the Agency does withhold retainage of a Prime Consultants’ payments, then the prime Consultant pay withhold retainage of a Subconsultants’ payments, but not in excess of the percentage amount the Agency withheld from the Prime Consultant. Failure by the Prime Consultant to invoice the Agency in accordance with the terms of the contract and/or pay Subconsultants in accordance with A.R.S. § 28-411 shall be constituted as a material breach of contract and Prime Consultant shall be subject to disqualification in accordance with Section I of these procedures. The Agency reserves the right to request that Prime Consultants provide proof of payment to Subconsultants at any time.

#### **4.06 Contract Modifications (Federal and State Requirement)**

Changes to the terms of the contract shall be authorized by the issuance of an approved written Contract Modification (CM). The CM may be unilaterally directed by the Agency, or a bilateral supplemental agreement which requires written approval of all parties.

Work on projects funded with Federal-Aid Highway Program funds must be authorized by the Federal Highway Administration (FHWA) prior to execution of a contract modification.

The applicable Agency’s contract modification review and approval process must be followed and should include the following:

1. Funding for the proposed CM must in place prior to the submitting the contract modification for final approval. If Federal funds are used, additional approval may be required by the Agency Project Manager and FHWA.
2. If the contract was assessed a DBE goal, prior to the approval of the contract modification, the consultant must prepare the applicable DBE (affidavit or good faith effort) forms, in accordance with DBE contract provisions and submit to BECO for approval. If any of the changes impact DBE’s work listed on the affidavit, the Prime Consultant shall follow the DBE Termination/Substitution section of the contract’s DBE provisions. The contract modification cannot be approved or executed until BECO’s approval of the DBE forms.
3. The Agency is not responsible for payment of any additional work performed by the Consultant prior to receipt of a fully signed/executed CM and/or an Advanced Authorization (AA). Any extra work performed by the Consultant, without an approved /executed AA and/or CM, is done at the Consultant’s risk.

When Federal-Aid funds are used, FHWA reserves the right to review contract modifications and all other source documents on a case-by-case-basis.

#### **4.07 Post Design Services (Agency Practice)**

The applicable Agency's process for post design services must be followed.

If Post-Design Services (PDS) are required during the construction phase of the project, the services shall be negotiated by the Agency Project Manager. The PDS shall be authorized by means of an executed CM and the Agency's PM needs to negotiate the CM after FHWA authorization is obtained. The CM will be NTPd after the Agency's approval and FHWA's authorization of the construction contract.

Regardless of the contract type, PDS is billed at specific hourly rates as defined in the contract (direct labor, overhead, and fixed fee) and set forth in the initial Post Design CM, plus FAR allowable expenses. Additional classifications and rates for needed services will be negotiated accordingly. The Consultant shall only bill for actual hours worked. All FAR allowable expenses must have supporting documentation to be accepted.

#### **4.08 Name Change, Merger, Acquisition, Consolidation or Transfer of Ownership (Federal Requirement)**

For Federally funded contracts, in cases when either a Consultant or Subconsultant (e.g. corporation, limited liability company, partnership, or joint venture) acquires, merges, or consolidates with another company, or undergoes any form of corporate restructuring or change in ownership, Consultant or Subconsultant under the contract with the Agency shall notify the Agency of legal name or ownership changes prior to the date when the name or ownership change is legally signed/approved and before the new Consultant or Subconsultant is authorized to begin any work on acquired firm's contract(s).

The Consultant or Subconsultant changing its legal name due to merger, acquisition, consolidation and/or transfer of ownership shall take responsibility for fulfilling all obligations, liabilities, and contract terms/conditions for all Agency contracts of the acquired firm.

The applicable Agency's procedures must be followed and should take into consideration the following:

1. A letter, on company letterhead, indicating the new name and reason for the change. The letter shall also include:
  - i. Effective date of the change.
  - ii. Complete list of active, pending closeout, on-hold and in negotiations, Agency contracts affected by the change with contract description. Indicate the contract number(s) and whether the firm served as a Consultant or Subconsultant.
  - iii. A statement certifying that the new/acquiring Consultant and/or Subconsultant shall assume all obligations and liabilities set forth in the respective listed contracts between the new/acquiring Consultant and the Agency.
  - iv. A statement certifying that no changes have been made in the Key Personnel responsible for the affected contracts. Nothing in this section shall affect or limit the agency's authority to refuse changes in Key Personnel. If a Key Personnel change occurs resulting from the merger, acquisition, consolidation and/or transfers of

ownership, the Consultant or Subconsultant shall submit a separate request to obtain Agency's approval for the Key Personnel change in accordance with the contract terms and conditions relating to key personnel changes.

- v. A statement certifying that the new or reformed Consultant or Subconsultant shall prequalify with ECS under the new consultant name before submitting any future SOQ proposals, modifications, and payments reports for all affected contracts and subcontracts.
  - vi. A statement certifying that the new or reformed Consultant or Subconsultant shall provide a Certificate of Insurance under the new Consultant name for all affected contracts and subcontracts after ADOT's approval of the request.
  - vii. A statement certifying that the Consultant or Subconsultant agree that the Department is not obligated to pay or reimburse them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the name change, other than those that the Department in the absence of the organizational change would have been obligated to pay or reimburse under the terms of the contract.
2. A copy of the "in-good standing" documentation from the Arizona Corporation Commission (ACC) of the new/acquiring Consultant or Subconsultant.
  3. Updated professional license(s) of the new/acquiring Consultant or Subconsultant.
  4. Updated W-9 Form of the new/acquiring Consultant or Subconsultant.

The contracts shall be modified to include the acquiring firm's name by a Contract Modification.

The Consultant shall re-qualify under the new entity/firm name.

#### **4.09 Change in Key Personnel (Federal Requirement)**

A Consultant's submittal of an SOQ is a representation and commitment by the firm that it will provide the key personnel identified in the SOQ to perform the services associated with the contract for the duration of the contract.

Professional services consultants are selected based on Qualifications Based Selection (QBS) process. Changes to key personnel during or after the selection has been made, may impact the selection of the existing contract and may result in the consultant being rejected, disqualified or declared failed negotiations.

The applicable documented Agency's key personnel approval process must be followed.

No substitution or transfer of personnel, specifically identified in the Statement of Qualification (SOQ) proposal shall be made without prior written approval by the Agency in accordance with 2 CFR 200.201 (5) 2 CFR 200.308 (c)(2).

Key Personnel are those individuals whose qualifications were highly significant and appropriate in evaluating the overall qualifications of the project team. Key Personnel includes, at the minimum:

1. The Consultant's registered Project Principal/Owner responsible for the overall technical and administration aspects of this Contract;



2. The person in direct charge of the overall project work (Agency Project Manager);
3. The person in charge of each major engineering disciplines/component of the work (e.g., bridge, pavement design, environmental, etc.);
4. Where applicable, the person in charge of overall scheduling of the project work;
5. Any Project Engineer, Subconsultants' Team members and any other Key Personnel deemed vital to the completion of the project, and whose qualifications were evaluated by the Selection Panel and listed on cost proposal documents during contract negotiation.

The process should include the following, but not limited to:

The Consultant must submit a letter requesting the key personnel change, reasons for the change and certify that the overall intent of the contract will not be impaired by the change.

The request shall include the name(s) of the Key Personnel, date of departure, the proposed replacement and his/her credentials/resume. Qualifications of any Key Personnel proposed in a change shall be equal to or greater than the original qualifications of the person being replaced.

The Agency shall have the right to approve or reject the proposed successor. The Agency will consider any change in Key Personnel, and at its discretion may decide to terminate the contract for convenience if, in the Agency's sole discretion, the Agency believes that the project team is materially different as a result of the change.

The Agency must maintain records of any key personnel changes when Federal funded contracts are used. Records must be available for review upon request by ADOT and/or FHWA.

#### **4.10 Control, Utilization and Disposition of Property or Equipment (Federal Requirement)**

The applicable Agency's property or equipment acquisition practice shall be followed.

When Federal funds are used, any lease, rental or purchase of property, equipment or software to perform work related to the project must have the prior written approval of the Agency Project Manager.

The control, utilization and disposition of property or equipment acquired using Federal-Aid Highway Program shall be determined by FHWA and ADOT in accordance with the property management standards set forth in 2 CFR 200.313, ADOT Manual - FIN 11.02 and shall follow Agency's Fixed Assets procedures in both property identification and inventory control processes.

#### **4.11 On-Call Contract Task Order Assignment (Federal Requirement)**

Awarding an On-Call contract does not constitute a representation that any particular amount of work, or any work will ultimately be awarded to or be performed by the Consultant.

If approved by ADOT and FHWA, each solicitation for an On-Call contract will clearly document the method for awarding project Task Orders. Under an On-Call contract, the Agency will award project Task Orders utilizing the Competitive Negotiation procedures. Under Competitive Negotiations Procurement Procedures, the Agency shall award each specific Task Order to the selected qualified consultants through one of the following options:

- a) On a regional basis whereby the Agency jurisdiction is divided into regions and consultants are selected to provide On-Call services for an assigned region identified within the solicitation.
- b) Through an additional qualifications-based selection procedure defined within the solicitation.

The Agency must document its procedures for administering its On-Call contracts, which must be in conformance with 23 CFR 172.9(a)(3) and approved by ADOT prior to solicitation.

Except for Construction Administration services, for agency administered On-Call contracts, each task authorization shall not exceed \$250,000.00 and no contract shall exceed \$1,000,000.00 per year without the waiver signed and approved by ADOT and the FHWA, when applicable. Unless otherwise defined in the contract, standard On-Call contracts are established for three (3) years or 1095 calendar days with an option to renew the contract for an additional two (2) one year renewals at the discretion of the Agency. The total length of the On-Call contract period shall not exceed 5 years without approval by ADOT and the FHWA. After three (3) year contract limit, if it is determined to be in the best interest of the Agency, assignment of new tasks will required the Agency's written approval, before proceeding or the contract will be re-advertised.

#### **4.12 Contract Time Extension (Federal Requirement)**

The applicable Agency's policy relating to allowing contract time extensions must be followed.

Time Extension may be granted to complete unfinished tasks, to allow time for re-advertisement, completing Post-Design Services and other appropriate circumstances, as determined by Agency.

A Time Extension of no more than 365 calendar days may be requested by the Agency PM with adequate justification. All contract Time Extensions will be executed by a Contract Modification. Time extensions for contracts using Federal-Aid Highway funds beyond five (5) years from the original Notice to Proceed date must be approved by ADOT and the FHWA.

**No work** shall be performed or compensated for beyond the expiration date and the contract will be closed unless a time extension is granted.

#### **4.13 Contract Suspension (Federal Requirement)**

The applicable Agency's procedures shall be followed when a contract is placed on "suspension" status.

ADOT recommends that the contracts are placed on suspension and released from "suspended" status upon issuance of a written notice by the Agency to resume work and through processing of a contract modification by the Agency.

The Agency may inform the Consultant verbally of the "suspension" and shall follow up with a written confirmation (Contract Modification) that the project is on "Suspension" and that the firm is not entitled to any compensation once a contract is placed on suspension. The consultant will be notified via executed contract modification when work may or shall resume, and informed of the adjusted contract completion date.

#### **4.14 Consultant Performance Evaluations (Federal Requirement)**

The applicable Agency's documented consultant performance evaluation program shall be followed. Consultant evaluations should be conducted periodically throughout the life of the contract with final evaluation to be completed by the Agency and the Consultant.

The Agency must maintain records of all evaluations when Federal funded contracts are used. Records must be available for review upon request by ADOT and/or FHWA.

#### **4.15 Errors and Omissions (Federal Requirement)**

The applicable Agency's policy relating to errors and omissions must address how the Agency determines the extent to which the Consultant, responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under this contract.

No waiver, release or settlement of claims or potential claims against a Consultant shall be valid without written approval of Agency's Senior Management, when project is funded with Federal funds.

#### **4.16 Breach of Contract (Federal Requirement)**

The applicable Agency's policy must be followed when a Consultant has failed to cure a deficiency and it has been determined to be a contract breach.

#### **4.17 Contract Completion (Federal Requirement)**

The applicable Agency's policy in contract closeout process must be followed, when technical review establishes that all phases of the contract have been completed to the satisfaction of Agency Project Manager and the ADOT PM.

Prior to closing a contract, using Federal funds, the following documents should be part of the closeout process:

1. A Final Consultant Evaluation is initiated, scored and completed by the Agency and Consultant.
2. Agency notifies the Consultant, in writing (Initial Closeout Letter), of the final closeout procedure and requests a written response that includes the following:
  - a. All work is complete
  - b. No further charges are pending
  - c. Percentage of total contract dollar to Disadvantaged Business Enterprises (DBE) with supporting documentation, if applicable.
  - d. Records will be kept in accordance with the Records Retention provision of the contract (Section 4.22).
3. Consultant submits a final payment report/invoice.
4. Completion of a [Certification of Payments to DBE Firms](#) for each DBE involved in the contract is required for contracts that were given Notice to Proceed (NTP) **on or after July 1, 2010**. If

applicable, a copy of this form is located at: [http://www.azdot.gov/business/engineering-consultants/DisadvantagedBusinessEnterprise\(DBE\)Program](http://www.azdot.gov/business/engineering-consultants/DisadvantagedBusinessEnterprise(DBE)Program).

5. Consultant provides a disposition listing of property or equipment purchased under this contract having a useful life of more than one (1) year and an acquisition cost of \$100.00 or more, if applicable.
6. Consultant must return any software covered by Agency Agreement, if applicable.
7. Agency performs a final audit, when applicable, for Cost Plus Fixed Fee and Cost Plus Fixed Fee by Task Order contracts only.

#### **4.18 Final Incurred Cost Audit (Federal Requirement)**

Final/Incurred Cost Audit (ICA) of Consultant's costs should be performed on Cost Plus Fixed Fee (CPFF) and Cost Plus Fixed Fee by Task Order contracts by the Agency's Audit Office to determine contract costs' fairness, allowability, allocability, and reasonableness in accordance with the terms of the contract, before it is closed.

If necessary, a contract modification will be issued to either increase or decrease the contract total based on the ICA determination.

The applicable documented Agency's consultant audit process must be followed, if in place.

#### **4.19 Termination for Convenience (Federal Requirement)**

The applicable documented Agency's policy on Contract Terminations must be followed.

Contracts may be terminated for convenience of the Agency as outlined in the contract. The Consultant shall be compensated only for work satisfactorily completed or allowable costs incurred prior to the termination of the contract. The Consultant is not entitled to compensation for loss of the contract or for lost profit. The amount due to the Consultant is determined by Agency and shall be based on the terms of the contract.

In the event of termination for convenience, the Agency shall be liable to the Consultant only for Consultant's work performed prior to the termination and only to the extent and as provided in Consultant's Compensation provision of the contract.

#### **4.20 Ownership of Data (Federal Requirement)**

On Federally funded projects, all confidential documents, materials and deliverables developed, patented, copyrighted or created by Consultant under contract with Agency are property of the Agency, ADOT and FHWA for perpetuity. These documents and materials which include, but are not limited to, drawings, tracings, specifications, maps, survey notes, reports, photographs and computer programs, shall be delivered to the Agency prior to contract closeout.

The unauthorized release or use of any information is prohibited without written approval of the Agency and must follow the policies in Section 1.15 of this document.

#### **4.21 Records Retention/Destruction (Federal and State Requirement)**

Agency's contract should contain language that instructs the Consultant and its Subconsultants to retain and maintain all books, papers, records, accounting records, files, accounts, expenditure records, reports, cost proposals with backup data and all other such materials related to the contract and other related project(s), and make such materials available at any reasonable time and place during the term of work on the contract related project(s) for five (5) years from the date the Initial Closeout Letter is sent to the Consultant after Agency indicates that work on the contract has been completed to the satisfaction of the Agency.

Upon completion and final closeout of contracts, physical/paper or electronic contract files and any supporting materials shall be maintained in accordance with the Agency, ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.

All documents shall be retained for auditing, inspection and copying at ADOT's or FHWA's request or any other authorized representative of the Federal Government.