



CONSULTANT CONTRACT MANUAL

Engineering Consultants Section

ARIZONA DEPARTMENT OF TRANSPORTATION
Infrastructure Delivery and Operations



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FOREWORD

The *Consultant Contract Manual* (“*ECS Manual*”) was developed by the Arizona Department of Transportation (ADOT) to provide documented procedures and guidelines that govern the administration of engineering and design related consultant contracts by the Arizona Department of Transportation (ADOT) Engineering Consultants Section (ECS), in accordance with A.R.S. §41-1005 (A)(15). Procedures and guidelines documented in the *ECS Manual* apply to the administration of contracts, which:

- Are administered by ADOT ECS.
- Include State Funds as well as Federal-Aid Highway Program funds.
- Are exempt from the State Procurement Code (ARS 41-2501(K)).
- Are administered by Department for Local Public Agency projects, which are sub-recipients for Federal-Aid Highway program funds.
- Are administered by Certification Acceptance (CA) or Self-Administered (SA) LPAs which do not have documented rules and procedures which have been approved by the Department for the procurement and administration of Architectural and Engineering (A&E) contracts.

This *ECS Manual* provides consistent procedures and guidelines for those individuals responsible for the advertisement, selection, negotiation, execution and administration of professional services contracts noted above. Consultants and ADOT personnel shall adhere to all applicable ADOT policies, the *ECS Manual*, State Statutes, federal laws/regulations and contract standard terms and conditions pertaining to engineering consultant services.

This *ECS Manual* was developed in accordance with 23 USC 106, 112, 302 and 306, 40 USC 11, 41 USC 403(11), 23 CFR 1.33 and 172, 48 CFR 31, 2 CFR 200 and 49 CFR 26. This *ECS Manual* contains the procedures and guidelines for engineering design related services contracts as prescribed in 23 CFR 172. The Federal Highway Administration (FHWA) has reviewed and approved ADOT’s Consultant Services Policies and Procedures to ensure ADOT is compliant with referenced Federal laws and regulations in its administration of consultant contracts that include federal funding.

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

Changes, revisions or amendments to procedures and guidelines documented in the *ECS Manual* shall require approval of the ECS Manager, the State Engineer and FHWA. Approved changes or revisions will be published as an amendment to this document and will be incorporated in the next update of this document.

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.

The FHWA Engineering Consultants Section will periodically review and certify ECS’s Consultant Contract Manual to ensure that its procurement, management, and administration procedures for engineering and design related services are in compliance with Federal and State laws and regulations.

SECTION I – GENERAL INFORMATION

1.01 INTRODUCTION

This *ECS Manual* was developed to provide consistent procedures and guidelines for those individuals responsible for the advertisement, selection, negotiation, execution and administration of professional services contracts by the Engineering Consultants Section (ECS) of the Infrastructure Delivery and Operations Division (IDO) of ADOT. ADOT is also referred to, in this document, as the State or the Department. Consultants and ADOT personnel shall adhere to all applicable ADOT policies, the *ECS Manual*, State Statutes, federal laws/regulations and contract standard terms and conditions pertaining to engineering consultant services.

The procedures and guidelines covered herein are applicable to all ADOT projects funded through state, Federal-Aid Highway Program, or other funds administered under Title 23 USC, unless otherwise noted. Unless a sub-recipient agencies, including cities, counties and other sub-agencies that are recipients of USDOT funds through ADOT, have procurement and contract administration procedures previously determined to be compliant with federal regulations which are approved and monitored by ADOT, the same procedures and guidelines outlined in this manual are equally applicable to these sub-recipient agencies. In accordance with 23 CFR 172.9, ADOT shall approve the written procedures and all revisions for LPAs utilizing federal aid funds. ADOT's LPA Section administers, oversees and provides guidance to those entities through the ADOT LPA Manual.

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.

There are several references within this Manual that approval is required from the FHWA for key actions. Approval from the FHWA on these actions is required only if Federal-Aid funds are utilized on the project/contract.

1.02 DEFINITIONS

See [Section V](#) for a listing of all relevant key terms and definitions.

1.03 APPLICATION

These Procedures and Guidelines apply to:

- 1) Consultant services that are exempt from the 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.”

- 2) Contracts for consultant services administered by ECS and exempt from the Procurement Code, as well as Federal-Aid Highway Program funded and state-funded consultant contracts which are solicited and administered by ADOT at the request of Local Governments.

- 3) Contracts administered by Certification Acceptance (CA) or Self-Administered (SA) LPAs which do not have documented rules and procedures which have been approved by the Department for the procurement and administration of Architectural and Engineering (A&E) contracts.

***The Procedures and Guidelines outlined in this ECS Manual do not apply to contracts for construction or state administered Public-Private-Partnership (P3) projects.*

The 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, development, and construction administration of the facilities. In addition to engineering disciplines, other services may include those of architects, landscape architects, geologists, geotechnical investigators, environmentalists and other related services. 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 only applies if the contract is funded with Federal-Aid funds.

1.05 QUALIFICATION–BASED SELECTION

ADOT’s engineering consultant contracts are awarded in accordance with a Qualification-Based Selection (QBS) procurement process similar to the one established by the United States Congress as a part of the Brooks Act-Public Law 92-582 (40 USC 1101 et. seq.). Please see the ECS website (<http://www.azdot.gov/business/engineering-consultants/PoliciesandLinks>) for a copy of the most current version of this law.

QBS is a competitive contract procurement process whereby consulting firms submit qualifications for a specific project to the procuring entity. The procuring entity then evaluates, selects, and then negotiates the project scope of work, schedule, consultant fee, etc. with the most qualified firm. Under the QBS process, the cost of the work (price) shall not be considered as a factor when making the initial selection of the best or most qualified provider of the professional engineering services required. The cost for services is negotiated, following selection of the most qualified firm and before the contract is signed by both parties and awarded to the most qualified firm. ADOT negotiates with the second or third most qualified firm only if failed negotiations occur with the most qualified firm.

1.06 CONTRACT COMPENSATION METHODS

The basic methods of contract compensation for which proposals are solicited are listed below. “Costs” represent the sum of direct and indirect costs in accordance with the definitions found in Section V of this Manual. The contract compensation method is determined by ADOT 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. Using this method, the Consultant undertakes to perform the services stated in the contract for an agreed amount as full compensation. The Consultant is obligated to perform work for the agreed upon price regardless of the duration or the actual cost to the

Consultant. This method of payment is used when ADOT has determined the extent, scope, complexity, character, and contract duration to such a degree that just compensation can be determined, evaluated, negotiated and agreed to by all parties. The final Lump Sum contract amount is based on known rates and hours submitted by the Consultant and negotiated and accepted by ADOT.

2. **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 ADOT determines, in writing, after negotiation, the lump sum amount for each task order. Individual task order amounts cannot exceed \$500,000 for State and for Federal-Aid Highway Program funded contracts and the total contract amount cannot exceed \$2,000,000 per contract per year (calculated from NTP anniversary date). Exceptions to these amounts will require a signed/approved waiver from the ECS Manager and FHWA prior to proceeding with negotiations and work. The Consultant is paid the agreed negotiated lump sum price regardless of the actual costs or duration to perform the work. The final Lump Sum contract amount is based on known rates and hours submitted by the Consultant and negotiated and accepted by ADOT.
3. **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. Although the extent, scope, complexity, character or contract duration may be adjustable, the Department determines, in writing, after negotiation, the billable limitations for each cost category or cost subcategory. The compensation/payment method is based on actual costs plus a fixed fee (profit). ADOT and the Consultant agree on an estimated cost for the Scope of Work. The Consultant’s estimated rate and the Consultant’s overhead rate are used to determine the estimated cost. This amount shall not be exceeded unless adjusted through a contract modification.

Under this method of compensation, the Consultant bills only the actual costs. Consultant contract amounts are established by negotiating the estimated cost for the scope of work, utilizing the Consultant’s estimated hourly rates and the Consultant’s negotiated overhead rates. Consultant employee costs are billed at their actual hourly rates, not at the estimated rates that were used to develop the cost estimate. The Consultant must stay within budget. Additional funds may be added to contracts through a contract modification if there is a change in scope or when project goes into the construction phase and Post-Design Services (PDS) are needed.

Annually, Consultants, and their subconsultants, shall identify and reconcile their actual indirect costs (overhead) with billed overhead rates within six (6) months after Consultant’s fiscal year end. Any variances found as a result of this “truing up” of costs must be repaid to the Department by Consultant or reimbursed to the Consultant by the Department. These contracts are subject to Incurred Cost Audits (ICAs) and Consultants or the State are responsible for reimbursement of any variances identified as a result of the ICA.

4. **Cost Plus Fixed Fee by Task Order (CPFF by TO)** – 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 ADOT determines, in writing, after negotiation, the billable limitations for each cost category or cost subcategory by task order. Individual task order amounts cannot exceed \$500,000 for State and for Federal-Aid Highway Program funded contracts and the total contract amount cannot exceed \$2,000,000 per contract per year (calculated from NTP anniversary date). Exceptions to these amounts will require a signed/approved waiver from the ECS Manager and FHWA prior to proceeding with negotiations and work. Construction Administration task orders can only be assigned for construction projects with a programmed construction value of \$10 million or less and cannot exceed \$2,000,000 in total contract value per year.

Under this method of compensation, the Consultant bills only the actual costs. Consultant contract amounts are established by negotiating the estimated cost for the scope of work, utilizing the Consultant's estimated hourly rates and the Consultant's negotiated overhead rates. Consultant employee costs are billed at their actual hourly rates, not at the estimated rates that were used to develop the cost estimate. The Consultant must stay within budget. Additional funds may be added to contracts through a contract modification if there is a change in scope or when project goes into the construction phase and Post-Design Services (PDS) are needed.

Annually, Consultants shall identify and reconcile their actual indirect costs (overhead) with billed overhead rates within six (6) months after Consultant's fiscal year end. Any variances found as a result of this "truing up" of costs must be repaid to the Department by Consultant or reimbursed to the Consultant by the Department. These contracts are typically project-specific and limited to the advertised project limits. They are subject to Incurred Cost Audits (ICAs) and Consultants or the State are responsible for reimbursement of any variances identified as a result of the ICA.

5. **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 right-of-way plans or plots, tons of structural steel, or pounds of reinforcing steel.
6. **Specific Rates (SR)** – A cost reimbursement payment method used when the Scope of Work, duration, and the extent of 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). Using this method, the Consultant is paid at an agreed specific fixed hourly or daily rate for actual hours engaged in the work. Direct non-salary costs may be either set forth as an element of the specific rate or may be included in the contract as independent cost items. Specific rates are based on direct labor hours at specified fixed hourly rates. Materials will be paid at cost.

1.07 CONTRACT NEGOTIATION

ADOT utilizes three methods for procuring engineering and design related services that are compliant with the requirements of 23 CFR 172:

1. Competitive Negotiations
2. Simplified Acquisition ("Low Value")
3. Non-Competitive Negotiations

ADOT also utilizes "Emergency Procurement" as an alternate procurement methodology when requirements for "Emergency Procurement" conditions exist.

Most contracts for engineering and design related services will be awarded through the Competitive Negotiations process. Both project specific contracts and On-Call (Task Order) contracts are procured under these processes. See Section 2 of the *ECS Manual* for further information on these procurement processes.

1.08 STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

ADOT staff, and persons or entities working on behalf of a Consultant working on an ADOT project 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, ADOT Policies and Procedures PER - 6.02 (see the ADOT and State of Arizona websites for most current versions of these policies), 23 CFR 1.33, 2 CFR 200.112 and 2 CFR 200.318 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, ADOT's Conflict of Interest Policy (PER 6.02) relating to the acceptance of gifts or gratuities is fully applicable to the contract process. In addition, Consultants must further adhere to the ADOT Policy, Consultant Participation in ADOT Contracts Policy (MGT 02-3) (see ECS website for most current version of this policy), which provides guidelines for consultant participation in design and construction contracts. These policies are available to all interested parties through the ADOT website.

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

a.) Application to current and former ADOT employees and Supplemental Services Employees.

1. 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."

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

Consultants shall be required to disclose and identify former ADOT employee(s) listed in proposals that have left ADOT in the preceding twelve months and certify that he/she/they have not made any material decisions about the proposed project they are submitting/proposing for or working on (SOQ's, contracts), while employed by ADOT. Information required to be submitted for consideration include:

- a.) Dates of employment
- b.) Position(s) held while employed at ADOT
 - If a former ADOT employee or contract consultant is employed by a Consultant or Subconsultant who has an active ADOT contract and the former employee or contract consultant was the Project Manager on the project or the contract, or a member of the selection panel for any contract on the project, the employee or contract consultant is prohibited from working on the contracts.
- c.) Project(s) worked on while employed at ADOT

- d.) Certification that the former employee made no material decision or served in any significant procurement role(s) associated with the project the firm is submitting an SOQ for consideration or in which they are or will be working on.
2. Current or former ADOT employees who serve, or have served, in a Significant Procurement roles (as defined in ARS 41-741 and ARS 41-2503) must maintain strict confidentiality and not disclose or distribute any information regarding contract procurement procedures, proposal or contract documentation before, during or after the evaluation process (ARS 41-2578 and ARS 41-2616). Additionally:
- a.) It is unlawful for a person holding a Significant Procurement Role to accept an offer of employment or have employment discussion with any person or entity lobbying for or potentially responding to a solicitation until one year after the award of the contract.
- b.) Persons holding a Significant Procurement Role must complete and sign a statement before starting any participation in the selection/negotiation process disclosing any real or potential conflict of interests required by ARS 38-503, 41-2534, 41-2537, 41-2538, 41-2578, 41-2616C, 41-753, and 41-2517. This includes, but is not limited to, disclosing if the person has any financial or other interest in the consultant selected for award by:
- a. The employee, officer or agent;
- b. Any member of his/her immediate family;
- c. His/her partner, or
- d. An organization that employs or is about to employ any of the above.
3. Consistent with 2 CFR 1.33, no official or employee serving in a Significant Procurement role shall have, directly or indirectly, any financial or other personal interest in any contract or subcontract in a project they are or will be working on.
4. In order to avoid actual or perceived conflicts of interest, current ADOT employees shall not be employed by a Consultant or Subconsultant to work on ADOT contracts. Current ADOT employees, contract or Supplemental Service consultants shall not be included in a Statement of Qualifications proposal for an ADOT consultant contract as an owner, or member of the Consultant's or Subconsultant's team. This rule applies to both full-time and part-time employees and full and part-time Supplemental Service consultants.
5. A current ADOT employee or Supplemental Services consultant (individuals retained via contractual agreement with ADOT) shall not be included in a Statement of Qualifications proposal for an ADOT consultant contract as an owner, individual, or member of the Consultant's or Subconsultant's project team. This rule applies to both full-time and part-time contract employees.

Exceptions shall include:

- a. if the contract consultant or Supplemental Services consultant resigns to comply with this rule, the last day of ADOT contract employment must be prior to the date that the proposals are due; or
- b. if the contract or Supplemental Services consultant is in the final year and within four (4) months of the contract completion date; or
- c. if the Department exercises its option not to extend the existing contract.

6. A current ADOT or Supplemental Services consultant cannot be employed by a Consultant or subconsultant to work on active ECS contracts.
7. If a current or former ADOT employee or Supplemental Services consultant is employed by a Consultant which has an active ADOT contract for which the Consultant was a decision maker, including holding a significant procurement role (for example, a Project Manager involved in the selection process, involved in the final scope preparation, negotiated/approved billings or contract modifications), the ADOT employee or Supplemental Services consultant is prohibited from working on these contracts. This rule applies to both full-time and part-time Supplemental Service consultants. Supplemental Service consultants shall not be in a position of developing contract scope documentation, negotiating contracts or contract modifications with Consultants, or approve payment reports of any kind for any Consultant. If a Supplemental Services consultant assists with the development of a Scope of Work for project, then the firm, by which the Supplemental Services consultant is employed, is prohibited from submitting SOQs in response to the applicable RFQs, as a Consultant or Subconsultant.
8. Part-time Supplement Service consultants can work on projects outside of their contract work for ADOT, but conditions cannot exist in which their work for their firm is in conflict with current work obligations being performed for ADOT as a contracted Supplemental Service consultant. Written assurance that an actual or perceived conflict of interest will not exist must be provided by the Consultant firm in advance of beginning work with ADOT.
9. Only current ADOT employees are permitted to serve on Consultant Selection Panels. If a need is identified for a selection panel to include a member who is not employed by ADOT, the ECS Manager and State Engineers Office must approve this request. For Local Public Agencies (LPA) projects, one employee from the Agency may serve on the Consultant Selection Panel upon approval from the ECS Manager and State Engineers Office.

Failure by an ADOT employee or Supplemental Services Consultant to properly disclose actual or potential conflicts of interest or violate any of these requirements may be suspended, terminated or subject to civil penalty in accordance with State Statutes.

b.) Application to Consultants

*** The term "Consultant" or "Subconsultant" in this section applies to the firm and the employees of the firm.*

1. Subject to A.R.S 38-511, if a Consultant or a Subconsultant prepares the scope of work or any part of the contract, it will not be eligible to submit a bid or proposal on the solicitation for which the scope of work was prepared; neither are the Consultant nor Subconsultant eligible to supply a product or service to a bidder or offeror on the solicitation for which the specification was prepared. The Department may make an exception when it is deemed to be in the public's best interest. The Department shall place in the solicitation file, a written determination, including all relevant facts. This rule and process also applies to all Subconsultants under the contract with the Prime Consultant contracted to provide these services.
2. If a Consultant and/or a Subconsultant, was contracted by ADOT to prepare (or be involved in the preparation) a DCR/EA or equivalent scoping document, they must have completed and ADOT must have published (made public) these documents a minimum of 60 days prior to the advertisement of a

Request for Qualifications for subsequent phases of work, in order for that firm to be eligible to submit to be considered to perform services on these subsequent phases.

3. Consultants and/or Subconsultants who were contracted to design any portion of a project may not propose to be the contractor or a subcontractor for the construction phase of the project. The Department may make an exception when it is deemed to be in the public's best interest.

The prohibition in Items 1-3 above, also applies to any work performed or to be performed by related entities. "Related Entities" mean firms (regardless of ownership structure) with any common ownership, directly or indirectly through parent companies, subsidiaries or otherwise with any common managers, officers, or directors. A publicly traded company is not related to another entity if the common ownership, direct or indirect, does not exceed 1% of the outstanding stock of the publicly traded company and there are no common managers, officers or directors.

To clarify the involvement and participation of Consultant or Subconsultant engineering firms in ADOT contracts, please refer to MGT 02-3 (or as amended). Any request for waiver from the restrictions related to contract/supplemental services consultants must be submitted to ECS describing the nature of their involvement well in advance to the proposal submittal or work assignment for proper review and determination on the matter. Decisions on waivers and resolution of potential conflicts of interest will be determined by the State Engineer, consistent with MGT 02-3. The State Engineer's decision shall be final.

4. Consistent with 23 CFR 1.33:
 - No engineer, attorney, appraiser, inspector, or other person performing services for the Department in connection with a project shall have, directly or indirectly, a financial or other personal interest other than their employment or retention by the State in any contract or subcontract in connection with such project.
 - No officer or employee of such person retained by the Department shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is publically disclosed and such officer or person has not participated in such acquisition for and on behalf of the Department.

If a consultant violates any of these requirements, or those outlined in State Statutes or Federal Rules and Regulations, the contract may be terminated and the firm may not be eligible to submit proposals in the future to perform services for the Department. The consultants are advised that the State will disclose any potential conflict of interest matters to the FHWA.

1.09 APPROVED CONTRACT TYPES

Unless otherwise approved by ADOT and the FHWA, the following approved contract types shall be used when procuring professional design and engineering services:

a.) Project Specific Contract

Project Specific Contracts are contracts between the Department and Consultant for the performance of services and defined scope of work for a specific project. Consultant Services shall be procured through a Competitive Negotiation Process (See Section 2.03) unless previously approved by ADOT. Consultants

will be selected based on the qualifications submitted in response to the Request for Statement of Qualifications (RFQ).

b.) Multi-Phase Contract

Multi-Phase Contracts are contracts where solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses. The initial solicitation must document the type of contract, all required phases of work, and the means for negotiating subsequent phases. Consultant services shall be procured through a Competitive Negotiation Process (See Section 2.03) unless previously approved by ADOT.

c.) On-Call Contract

On-Call Contracts are contracts for the performance of professional engineering and design services for a number of projects which are to be awarded on a task-order basis. When it is determined to be in the public's best interest to obtain the services from a group of consultants to perform on-call services in a specific discipline and for a number of projects (i.e., subsurface investigation, right-of-way plans, traffic engineering, project management, roadway design, etc.), ADOT may advertise for these services through an On-Call Contract. The initial solicitation for on-call consultants shall identify the optimum number of consultant teams which shall be procured through a Competitive Negotiation Process (See Section 2.04), any established dollar limitations, include a copy of the general scope of work, and document the method for awarding individual task-orders. On-Call Contracts shall have a maximum contract period of five years. Individual task order amounts cannot exceed \$500,000 for State and Federal-Aid Highway Program funded contracts and the total contract amount cannot exceed \$2,000,000 per contract per year (calculated from NTP anniversary date). Exceptions to these amounts will require a signed/approved waiver from the ECS Manager and FHWA prior to proceeding with negotiations and work. ADOT will compete and award task orders among the selected, qualified on-call consultants through an additional qualifications-based selection procedure or on a regional basis as outlined in Section 4.12 of this Manual.

1.10 ANTI-COLLUSION

Consultants and subconsultants are prohibited from engaging in collusion, which is action 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 ADOT engineering consultant contracts. In every Statement of Qualification (SOQ) proposal or other request to contract with ADOT, the proposer shall certify that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competition in connection with the project. Failure to provide the certification shall result in the rejection of the SOQ.

1.11 DEBARMENT AND SUSPENSION

The Department shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or Contract in accordance with 2 CFR Part 1200 and 2 CFR Part 180. The Consultant's signature on any SOQ proposal or contract constitutes an authorization to ADOT to ascertain the eligibility of the Consultant to enter into contract with ADOT 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 of the firm's SOQ. If a firm or its Principal is debarred, suspended or otherwise ineligible to submit a proposal for services, the firm must submit a written explanation to the Department. The written explanation and the identified circumstances will be considered by ADOT in connection with ADOT's determination of eligibility.

1.12 EXAMINATION OF ECS RECORDS

Requests for copies or to view contract documents other than the Consultants' own contract files shall be considered in accordance with applicable Public Records request statutes and subject to Section 2.09 of this Manual as it relates to SOQs and Debrief process. Requests must be submitted in writing to ADOT Risk Management Office, Custodian of Records, with a copy forwarded to ECS. Response to requests and all documents provided in response to requests shall be made available by the ADOT Risk Management Office. Access to Consultant documents will be restricted based on confidentiality, such as financial information, trade secrets, and privacy of information. A fee for reproduction of the documents may be assessed at cost. ADOT may also withhold the disclosure where such disclosure would be contrary to the public's best interest.

1.13 PROTEST AND DISPUTE RESOLUTION

A) Protest Process

Any Consultant submitting a proposal on a solicitation issued by ECS, may file a protest depending on the following grounds:

1. RFQ Solicitation
2. SOQ Disqualification
3. Selection

All protests shall be addressed in writing to ECS Manager unless noted otherwise. Unwritten protests will not be considered. The times prescribed in this section may be varied as documented in the RFQ.

1. Protest of RFQ Solicitation

A protest may be made before a Consultant responds to the RFQ solicitation document, if the Consultant believes that the document unduly constrains competition or contains inadequate or improper criteria. The written protest must be made to the ECS Manager before the due date of the solicitation response. Upon receipt of the written protest, copies of the protest shall be sent by ECS to every firm that registered for the RFQ package. The ECS Manager will consider the protest, reply to the Consultant with a decision (as applicable), and make any resulting official changes to the solicitation document and process, following the solicitation amendment procedures in Section 2.04 of this Manual. The decision of the ECS Manager is administratively final. The solicitation process will continue while the protest is being considered.

2. Protest of SOQ Disqualification

This policy applies to any Consultant submitting a SOQ proposal which is refused or rejected by ADOT without consideration of the merits of the SOQ. The protest resolution timeframe for this action is as follows:

- a) The protester, within three (3) business days after the receipt of the notification of the SOQ rejection, must file a written protest which shall include the following information:
 - Firm, name, address and telephone number of the protester;
 - Signature of the protester or their authorized representative;
 - Identification of the agency and the solicitation or contract number;

- A detailed statement of the legal and factual grounds of the protest, including copies of the relevant documents;
 - The form of relief requested;
 - Supporting exhibits, evidence, or documents to substantiate the reasons for the protest unless not available within the filing time, in which case the expected availability date shall be indicated; and
 - Declaration by the protester that all facts alleged in the protest are true and correct to the best of protester's knowledge.
- b) The ECS Manager will issue a written decision within five (5) business days after the protest is received. The ECS Manager's decision is administratively final.

3. Protest of the Selection

Any consultant who submitted an SOQ in response to a specific solicitation may protest the selection of the consultant ADOT determined to be the most highly qualified consultant as a result of the selection process outlined in Section 2.04 of this Manual.

- a) The protest shall be filed within five (5) business days from the date that written notification of the selection was made by ECS. Requests for extensions will not be considered.
- b) The Department will not consider any protests received after the specified time period.
- c) The protest shall be addressed and emailed to the ECS Manager (ECSManager@azdot.gov) with a copy provided to all proposers (proposers and contract information is available on the ECS website), and shall include all of the following information:
- Firm, name, address and telephone number of the protester;
 - Signature of the protester or their authorized representative;
 - Identification of the agency and the solicitation or contract number;
 - A detailed statement of the legal and factual grounds of the protest, including copies of the relevant documents;
 - The form of relief requested;
 - Supporting exhibits, evidence, or documents to substantiate the reasons for the protest unless not available within the filing time, in which case the expected availability date shall be indicated; and
 - Declaration by the protester that all facts, alleged in the protest, are true and correct to the best of protester's knowledge.
- d) The ECS Manager shall immediately notify the ADOT Project Manager, and the State Engineer's Office, of all protests covered by this policy.
- e) The ECS Manager shall have the authority to resolve protests received under this policy. The ECS Manager shall issue a written decision within 15 business days after the protest has been filed unless noted below for a specific action. The written decision must contain the following:
- A statement of the action to be taken or resolution to the protest;
 - A detailed statement of the reason for the resolution;
 - A statement of the protester's right to request reconsideration; and

- A statement that the decision is final and conclusive, unless a timely request for reconsideration is made.
- f) The protest is deemed denied if the ECS Manager fails to issue a decision within 20 business days after the protest was filed. The effective date of the protest denial is the 21st business day, after the protest is filed.
 - g) The protester may appeal the decision of the ECS Manager. The appeal must be made to the State Engineer within five (5) business days from the date the written decision was issued by the ECS Manager or from the date the protest was deemed denied under paragraph f above. Requests for extensions will not be considered.
 - h) The protester’s appeal shall be in writing, addressed to the State Engineer with a copy to all proposers, and contain the precise factual or legal error and detailed statement of the protest grounds cited in the decision of the ECS Manager from which an appeal is taken.
 - i) The State Engineer shall issue a decision within 15 business days after the date the appeal has been filed.
 - j) The protest is deemed denied if the State Engineer fails to issue a decision within 15 business days after the protest was filed. The effective date of the protest denial is the 16th business day after the protest is filed.
 - k) The decision of the State Engineer is administratively final.

B) Contract Dispute Resolution Process

Any Consultant currently negotiating or performing services on an existing contract through ECS, may file a dispute or appeal regarding an action or decision taken by ADOT.

It is ADOT’s 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. The dispute escalation procedure will be utilized in the event that the ADOT Project Manager, the Consultant Project Manager, and/or the ECS Contract Specialist are unable to agree on any contract activity outside of the formal protest procedure. Agreements/disagreements during the dispute resolution process must be documented prior to the escalation to the next level and included as part of the contract dispute resolution process.

<u>Level</u>	<u>ADOT</u>	<u>CONSULTANT</u>	<u>ECS (at Department’s discretion)</u>
1	Project Manager/Resident Engineer	Project Manager	Contract Manager
2	Group/Section Manager/District Engineer	Principal	ECS Assistant Manager
3	State Engineer’s Office	Principal	ECS Manager

1.14 ALTERNATIVE DELIVERY PROCUREMENT

1. Public-Private Partnerships (P3)

The ECS Consultant Contract Manual does not apply to P3 agreements and projects unless stated in the contract documents.

2. Design Build

Contract documents for Design-Build projects will identify which sections of the ECS Consultant Contract Manual apply.

3. Construction Manager At Risk

ADOT's alternative procurement process used to select both a Contractor and a Designer where separate contracts are executed. For Preconstruction services contracts, the contract documents will identify which sections of the ECS Consultant Contract Manual apply. CMAR procedure governs all ADOT personnel associated with the design and construction of bridges, highways or other transportation-related projects using the CMAR (the Construction Manager at Risk) procurement method.

1.15 LOCAL PUBLIC AGENCY CONSULTANT PROCUREMENT AND PROGRAM OVERSIGHT

In accordance with the FHWA-ADOT Stewardship and Oversight Agreement for Arizona, dated March 2015, referred to as the Stewardship Agreement, the Arizona Department of Transportation (ADOT) may delegate to the local public agencies (LPAs) the authority to self-administer (SA) projects or administer a project using Certification Acceptance (CA) program. The Code of Federal Regulations (CFR) 23 CFR 1.11 and 635.105 authorize ADOT through the ADOT Local Public Agency Section, to delegate certain activities, under its supervision, to the LPAs for FAHP projects that meet the criteria for Federal-Aid Under 23 U.S.C. 117.

Where procurement and administrative activities of Federal-Aid Highway Program funded engineering consultant contracts are performed by Local Governments, their own procedures may be followed, provided they are in compliance with the federal regulations and their processes are reviewed and approved by ADOT ECS. In accordance with 23 CFR 172.9 (a), ADOT shall approve the written procedures and all revisions for LPAs.

Three acceptable A/E procurement administration options exist in which the LPA's A/E projects may qualify for federal funding if the LPA is requesting the use of federal funding for the design phase. The decision of which administration option will be utilized is at the discretion of ADOT. The ADOT LPA Projects Manual provides more information on the process and procedures required for Local Public Agencies. CA Agreements for agencies certified by ADOT govern and define the roles and responsibilities for those agencies.

1.16 DISADVANTAGED BUSINESS ENTERPRISES

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 engineering consultant contracts. All solicitations and contracts shall document whether there is a DBE Goal associated with it and if so, what the associated DBE Goal is for the contract.

ADOT actively assists DBE firms in their efforts to participate in the highway engineering services consultant program through the following office:

Arizona Department of Transportation
Business Engagement and Compliance Office (BECO)
1135 N. 22nd Avenue, 2nd Floor Mail Drop 154A
Phoenix, Arizona 85009
Phone (602) 712-7761

Consultants are encouraged to utilize DBE firms on contracts with no DBE goals and enlist the aid of the ADOT BECO to obtain assistance in utilizing DBE firms in responding to RFQs even if there is no DBE goal on the contract.

If a contract has a DBE goal, the consultant must meet or exceed the goal or substantiate that it made a Good Faith Effort to do so consistent with the DBE contract specifications and ADOT BECO's DBE Program Plan. Consultants 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.

1.17 SMALL BUSINESS CONCERNS

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) on Federal-Aid 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>.

1.18 AZ UTRACS ONLINE VENDOR REGISTRATION

Pursuant to 49 CFR 26.11 (c) (2), ADOT is obligated to collect demographic information on all firms who seek to work on federally-funded contracts, including Prime Consultants, Subconsultants, Disadvantaged Business Enterprises (DBEs), and Small Business Concerns (SBCs). All Prime Consultants submitting Statement of Qualifications (SOQs) to ECS must register in AZ UTRACS at <https://adot.dbesystem.com>. The AZ UTRACS number is good for three (3) years, at which time, firms must re-register. Noncompliance or failure of Prime Consultants maintaining an active (non-expired) AZ UTRACS registration and submit a Bidder/Proposer's Solicitation List with the cost proposal, may result in failed negotiations. All subconsultants that work on federally-funded contracts must also register in AZ UTRACS.

SECTION II – ADVERTISEMENT THROUGH SELECTION NOTIFICATION

ADOT’s engineering consultant contracts are awarded in accordance with a Qualification-Based Selection (QBS) procurement process similar to the one established by the United States Congress as a part of the Brooks Act- Public Law 92-582 (40 USC 1101 et. seq.).

ADOT utilizes three methods for procuring engineering and design related services that are compliant with the requirements of 23 CFR 172:

1. Competitive Negotiations
2. Non-Competitive Negotiations
3. Simplified Acquisition (“Low Value” or “Small Purchase Procurement”)

ADOT also utilizes “Emergency Procurement” as an alternate procurement methodology when requirements for “Emergency Procurement” conditions exist, and upon approval by the State and FHWA.

ADOT shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant in accordance with 23 CFR Part 172 and 2 CFR 200.333. The release of this information is subject to limitation outlined in Section 2.09 of this Manual.

2.01 PREQUALIFICATION OF CONSULTANTS

Consultants interested in providing design services for ADOT as a Prime Consultant are required to be prequalified with ECS.

Prequalification is done on a bi-annual basis with each prequalification period beginning January 1st of an even year and ending on December 31st of the following year. Prequalification applications are submitted electronically via the electronic Contract Management System (eCMS) and may not be submitted in paper format under any circumstances.

There is no specific deadline for submitting a prequalification application; however, Consultants must be prequalified in order to submit a Statement of Qualifications (SOQ) and to provide design/professional services for ADOT as a Prime Consultant. ECS will accept prequalification applications submitted via eCMS at any time during the prequalification period, except for the last two weeks of a year when there is no longer adequate time to process the application before the prequalification period ends. As a rule, ECS refrains from having SOQs due during these last two weeks of a prequalification period.

Consultants are encouraged to apply for prequalification early and should allow two to three (2-3) business days to receive access to eCMS and up to 10 business days for ECS to review the prequalification application. If ECS cannot approve the prequalification application as it was submitted, the Consultant will be notified and may resubmit after rectifying any issues with the application. Consultants should allow up to 10 business days for ECS to respond to a resubmitted prequalification application. Specific requirements and instructions for completing a prequalification application via eCMS are documented in eCMS and on the [ECS Prequalification Website](#).

Subconsultants are not required by ADOT to be prequalified, but are encouraged to do so. Prequalifying may benefit Subconsultants because 1) the firm receives courtesy notifications of Information Bulletins, rule changes, advertisements and other ECS notifications which are posted on the [ECS Website](#) and 2) the firm name and applicable work types appear on a “Prequalification List by Specific Discipline” report posted monthly on the [ECS Prequalification](#) website, allowing other firms to become familiar with the firm’s capabilities.

The information required as part of the prequalification application includes, but is not limited to:

1. A current Arizona Unified Transportation Registration and Certification System (AZ UTRACS) registration, which is a requirement for all firms seeking to do business with ADOT. Consultants will be required to re-register for AZ UTRACS every three (3) years.
2. A transmittal letter signed by the owner or corporate officer attesting that all information contained in the application for Consultant prequalification is true and accurate.
3. Non-Discrimination Statement as outlined in the Prequalification Package.
4. A disclosure of the firm's owners and officers current status regarding any Suspension/Debarment actions by any governmental agencies, ineligibility, voluntary exclusion and convictions and/or civil judgments against the individual and/or firm.
5. A copy of the firm's policy and/or a statement regarding Affirmative Action and use of Disadvantaged Business Enterprises (DBE).

Firms wishing to be considered as DBEs must be certified by the Arizona Department of Transportation, Business Engagement and Compliance Office, the City of Phoenix, or the City of Tucson, depending on the primary location of their business. DBE certification by any of these agencies is good throughout the state of Arizona. Visit <https://adot.dbesystem.com> for DBE certification application information.

6. The firm's corporate organizational structure showing parent company, subsidiaries or related entities, specifically architectural, professional engineering and construction firms. If a corporate organizational structure is not applicable, a statement to that effect must be made, e.g., "ABC Consulting is a sole proprietorship and not related to any other firms in any manner."
7. Financial information that demonstrates the firm's financial viability and understanding of the components of a compliant accounting system that meets Federal Acquisition Regulations. Consultants and Subconsultants must acknowledge a familiarity with FAR Part 31. Consultants must provide the most recent audited, reviewed or compiled financial statement prepared by a certified public accountant, including the audit opinion (if applicable), Balance Sheet, Income Statement, Statement of Cash Flows, Statement of Retained earnings/Equity, and notes to the financial statements, as well as other supplemental information, if any, related to the financial statement. If audited, reviewed or compiled financial statements are not available, the firm shall submit unaudited financial statement and a final Trial Balance, signed by an officer of the firm and stating that the firm's financial statements present fairly, in all material respects and in accordance with GAAP (Generally Accepted Accounting Principles), the financial condition of the firm. **The financial statement shall be dated no more than 15 months prior to submittal of the prequalification application.**
8. The number of Arizona employees and the names and registration number(s) of any members of a firm registered with the Board of Technical Registration (BTR) and/or The Registrar of Contractors (ROC) to practice in the State of Arizona. All the proper Arizona Licenses and/or registrations for the services the firm and employees will perform, as applicable, shall be provided as outlined in the Prequalification Package.

For information on Technical Registration for Architects, Assayers, Engineers, Geologists, Home Inspectors, and Land Surveyors may contact the Arizona Board of Technical Registration, 1110 W. Washington Street, Suite 240, Phoenix, AZ 85007, call (602) 364-4930 or visit <http://www.btr.state.az.us>.

For information on Contractor Licensing, contact the Arizona Registrar of Contractors, 3838 North Central Avenue, Suite 400, Phoenix, AZ 85012, call (602) 542-1525 or visit <http://www.azroc.gov>.

For information on Real Estate Licensing, contact the Arizona Department of Real Estate, 2910 North 44th St., Suite 100, Phoenix, AZ 85018, call (602) 771-7799 or visit <http://www.re.state.az.us>.

9. Applicable project experience that demonstrates the Consultant's ability to perform the specific work type(s) the Consultant is applying for. Prior work experience with ADOT is NOT a requirement. Information such as resumes, firm's historical information, staff overview, company philosophy, current job progress, company brochures, references, etc. will not be accepted. Only the requested information should be provided. Additional information provided will not be reviewed by ECS.
10. Consultants must register with the Arizona Corporation Commission (ACC) and be in "Good Standing" with the ACC at the time the prequalification application is submitted.

For information on registering a business, contact the Arizona Corporation Commission, 1300 W. Washington St., Phoenix, AZ 85007, call (602) 542-3026 or visit <http://www.azcc.gov>.

ECS will review the Prequalification applications submitted via the eCMS Prequalification Module for completeness and compliance with requirements stated above and described in the prequalification instruction manual. After the firm has submitted all of the required information and satisfactorily met all of the prequalification requirements, the Department will review the firm's application and will notify the firm's primary point of contact of its decision.

The name of each prequalified Consultant will automatically be added to the eCMS Submittal of Qualifications (SOQ) Module, to allow prequalified firms to submit for ECS contract solicitations with an SOQ due date during the defined prequalification period. The Consultant's name and the contact information of the firm's "primary contact" will be added to an ECS Prequalified Consultant list which will be updated regularly and posted on the [ECS Prequalification](#) website. The list will be used by ECS for courtesy email notifications of Information Bulletins, rule changes etc. The ECS Prequalification Consultant list will NOT be used to send notifications of future contract solicitations. Prior to the expiration of the prequalification period, all currently prequalified firms will receive an email from ECS, notifying them of the end of the current prequalification period and the procedures for renewing in the new prequalification period. ECS is not responsible for any email communications not received by a Consultant. Failure by ECS to send courtesy email notifications or non-receipt by the Consultant is not grounds for protest.

Once prequalified, both ECS and the Consultant can review the prequalification application as needed in a "read only" view. Only contact information can be updated anytime by the Consultant through the Prequalification Module. Prequalified Consultants shall keep the contact information current during the prequalification period. Prequalified Consultants shall notify ECS of significant changes in the Consultant's information, such as, address changes of local and out of state offices identified in the prequalification application, organizational changes, mergers, acquisitions, consolidations, transfers of ownership, key personnel changes, and DBE designation changes within 10 business days of the change. If ECS determines the Consultant's organizational changes are significant, the firm may be required to submit a new prequalification application via eCMS prequalification module. Failure to report changes may result in disqualification from SOQ submittal.

2.02 DISQUALIFICATION

Once pre-qualified, a Consultant may be disqualified from submitting SOQs, or any other forms of proposals, for ADOT contracts as a Prime Consultant or Subconsultant for a number of reasons including, but not limited to, if the Consultant or proposer:

1. Fails to report changes to information submitted in the online Prequalification application.
2. Fails to report changes that affect the firm's contractual obligations, such as a change in key personnel, etc.
3. Fails to report any conditions that could adversely affect the firm's capability to effectively fulfill the terms of the contract.
4. Falsifies any document or misrepresented any material fact in information furnished to the Department, including a consultant's Pre-Qualification application.
5. Breaches a current/previous contract or subcontract with the Department, other agencies, other entities or Consultants.
6. Is deemed by ADOT to have made significant or egregious errors or omissions in previous contract(s).
7. Fails to submit financial information and documentation including financial statement no more than 15 months prior to submittal of the prequalification application.
8. Has a documented unsatisfactory work performance record/evaluation history with the Department in the areas of producing quality work, project team issues, completion of work product within established time frame(s), effective communication with the Department, submission of required information, meeting contract terms and conditions, timely delivery of documentation and/or deliverables for closing out a contract, as documented in the Consultant Performance Evaluation.
9. Fails to submit Progress Payment Reports, Contract Modifications and other required contract documents within established time frame(s) documented in the contract documents.
10. Fails to pay Subconsultants or report such payments within the established time frame(s) in accordance with Prompt Pay law and the contract documents.
11. Fails to repay ADOT for overbilled charges based on the results of pre-award or incurred cost audits within time frame(s) established in the contract.
12. Fails to report key personnel change or made unauthorized key personnel change without ADOT approval.
13. Fails to notify ECS of changes within 10 business days of any change in ownership, corporate officers or general partners, relocation of offices, license or registration, major financial conditions such as bankruptcy, receivership, reorganization, or other conditions that could affect the Consultant's capability to effectively fulfill the terms of any contract or subcontract.
14. Is suspended, allows its license to lapse or otherwise become unlicensed to do business in the State.
15. Destroying, damaging or losing accounting records, files, cost proposals, invoices and backup data representing substantial parts or all documents related to the contract in violation of the Records Retention provision of the contract.
16. Repeated noncompliance with DBE regulations and procedures.

Disqualification from SOQ Submittal may take one of the following forms:

- A. Discipline-Based Suspension or Disqualification from SOQ Submittal – a temporary or permanent loss of Prequalification within a specified discipline which would prevent the Consultant from pursuing any additional work with ADOT within the particular discipline. If the suspension is temporary, a time period must be stated along with action needed by the Consultant to lift the suspension.
- B. Full Suspension or Disqualification from SOQ Submittal – a temporary or permanent loss of Prequalification status that would prevent the Consultant from pursuing any additional work with ADOT in any discipline. If the suspension is temporary, a time period must be stated along with action needed by the Consultant to lift the suspension.

A suspended or disqualified Consultant or Subconsultant is prohibited from responding to RFQs, submitting a proposal or otherwise offering to perform work for the Department as a Consultant or a subconsultant for a specified period or until such time as the Department determines that the Consultant or Subconsultant has cured the issues for which it was suspended or disqualified and could reapply for Pre-Qualification.

ECS shall notify the Consultant in writing of the Department’s intention to suspend or disqualify the Consultant and the reasons and time period of the suspension or disqualifications, the required solution or remedy (if appropriate), and a specific deadline for implementing a cure. If no progress is made to address the issues within the established time, the ECS Manager shall notify the Consultant, in writing, that the firm has been suspended or disqualified. The Consultant may appeal the ECS Manager’s decision, in writing, to the State Engineer within 10 business days of the ECS notification. The State Engineer’s decision shall be administratively final.

2.03 SCOPE OF WORK

The Scope of Work for a project is a defined division of work to be performed under a contract or subcontract in the completion of that project. The ADOT Project Manager is responsible for preparing this document, which shall be included in each solicitation and contract. The Scope of Work shall include detailed information containing:

1. Purpose and Description of the Project.
2. Services which need to be performed.
3. Deliverables to be provided.
4. Estimated Schedule for completion of the work.
5. Applicable standards, specifications, and policies affecting the work on the project.

2.04 COMPETITIVE NEGOTIATIONS

The Department’s “Competitive Negotiations” process complies with the federal Qualifications Based Selection procurement procedures for architectural and engineering services, commonly referred to as “The Brooks Act”, 40 USC 1101-1104, and related federal regulations, particularly 23 CFR Part 172.

2.04.1 SOLICITATION & SUBMITTAL OF STATEMENTS OF QUALIFICATIONS

a) SOLICITATION

The Department is committed to have a process which promotes informed free and open competition. 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. 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 <http://www.azdot.gov/business/engineering-consultants/advertisements/current-advertisements> page. The official notices are placed not less than six (6) but no more than 10 calendar days apart. The Request for Qualifications (RFQ) Package containing the solicitation is available for download from the ADOT ECS website. The deadline for ADOT receipt of proposals shall be documented in the RFQ Package or any subsequent amendments, and shall provide sufficient time for interested consultants to received notice, prepare, and submit a proposal, but shall not be less than 14 calendar days from the date of the initial issuance of the solicitation/RFQ. Consultants are responsible for regularly checking the newspapers and the ECS website <http://www.azdot.gov/ECS> for the information on recent contract solicitations, contract selections, Information Bulletins, rule changes, insurance requirements, contract boilerplates, and other valuable information. ECS does NOT send out notifications directly to firms regarding solicitations.

ADOT's solicitation process and schedule may be varied for emergency needs or by direction of the State Engineer.

The proposal solicitation, or Request for Qualifications (RFQ) shall provide all information and requirements necessary for interested consultants to provide a response to the RFQ and compete for the solicited services. The RFQ shall:

1. Provide clear, accurate and detailed description of the Scope of Work, technical requirements and qualifications of consultants necessary for the services to be rendered.
2. Identify if interviews may be conducted as part of the evaluation process.
3. Identify evaluation factors including their relative weight of importance.
4. Specify the contract type and compensation method for the solicited services.
5. Identify any special provisions and contract terms and conditions associated with the solicited services.
6. Require that any submission of cost proposals or elements of cost, if requested by the Department, be in a concealed format and separate from technical qualifications proposals. The cost information or proposals shall not be considered in the evaluations, ranking and selection phase.
7. Provide an estimated schedule for the procurement process.
8. Identify if the contract has a DBE Goal, and if so, what the DBE Goal is for the contract.

b) CONTACT WITH ADOT STAFF DURING SOLICITATION PERIOD

Except as specified in the RFQ, Consultants are not permitted to communicate with any ADOT staff or local public agencies, including management, project manager, project staff and selection panel members about an advertised project during the solicitation period. Such communication shall result in action including, but not limited to, disqualification from proposing/submitting, or rejection of the proposal (if applicable). Restrictions on discussions regarding selection panel membership, scores, comments and deliberations shall remain in effect for perpetuity.

All questions regarding the RFQ shall be submitted in writing to the assigned ECS Contract Specialist listed in the RFQ. The RFQ will define a deadline for submitting questions and no further questions will be accepted after the date and time specified. All Consultants will be notified of the Consultant's question(s) and ADOT's response to the question(s) via an amendment posted to the ECS website. Failure by ECS to

send courtesy email notifications regarding amendments or non-receipt by the Consultant are not grounds for protest.

c) AMENDMENTS TO REQUEST FOR QUALIFICATIONS (RFQ) PACKAGE

When necessary, ECS provides amendments to the original solicitation. Amendments are posted on the ECS website with the original RFQ package. The proposers are responsible for checking the ECS website for amendments. A courtesy email may be sent to all firms on the contract advertisement registration list, but this does not relieve the proposers from their responsibility to check the ECS website for amendments. Failure by ECS to send courtesy email notifications regarding amendments or non-receipt by the Consultant are not grounds for protest.

Firms submitting an SOQ proposal must acknowledge receipt of all amendments or their proposal shall be rejected. Before submitting, a Consultant is responsible for checking the [ECS website \(http://www.azdot.gov/business/engineering-consultants/advertisements/current-advertisements\)](http://www.azdot.gov/business/engineering-consultants/advertisements/current-advertisements), print all amendments for the RFQ, sign each amendment acknowledging receipt, and append it to the SOQ proposal before submitting the completed document. Instructions and requirements specific to the solicitation are outlined in the RFQ.

d) NOTIFICATION OF SOLICITATION AMENDMENTS

Consultants intending to propose or submit for an ECS contract are encouraged to register for the specific RFQ to receive courtesy notifications for amendments to the solicitation. ECS uses the contract advertisement registration to send courtesy notifications of RFQ amendments posted to the ECS website. ECS contract advertisement registration is recommended but not required since all amendments are posted to the ECS website and available to SOQ submitters at any time before the SOQ deadline. Failure by ECS to send courtesy email notifications regarding amendments or non-receipt by the Consultant are not grounds for protest.

e) PRE-SUBMITTAL MEETING

If stated in the RFQ Package, a pre-submittal meeting will be held at least one (1) week prior to the submittal deadline for SOQs. Attendance instructions and agenda items for Pre-Submittal meeting are as outlined in the RFQ Package. Agenda items may include instructions relating to the submission of the proposals, project description, selection process to be used, and other issues or questions that come up during the meeting relating to the project.

ECS may record the proceedings of pre-submittal meetings. A formal amendment to the RFQ may be issued as needed to answer questions not clarified at the meeting or to clarify or revise information in the RFQ Package, and will be posted on the ECS website. An email notification of the amendment's posting on the ECS website will be issued to all consulting firms who have registered for the specific project's RFQ Package. Failure by ECS to send courtesy email notifications regarding amendments or non-receipt by the Consultant are not grounds for protest.

Consultant questions relating to the project may be discussed and clarified during this meeting. After the meeting, Consultants may submit questions, in writing, on or before the date stated in the RFQ. No further questions will be accepted after the question deadline outlined in the RFQ Package has passed.

f) STATEMENT OF QUALIFICATIONS (SOQ) SUBMITTAL

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. At the time an SOQ is submitted to ECS, the Consultant and all proposed subconsultants shall have a valid AZ UTRACS registration, be prequalified with ECS, and have all the proper Arizona Licenses and/or registrations for the services the firm will perform, as applicable, for the specific advertisement. In addition, the Prime Consultant is responsible to verify that all Subconsultants in the SOQ submittal have a valid AZ UTRACS vendor registration number and all the proper Arizona licenses and/or registrations, and DBE certification, if applicable, for the services the Subconsultants are to perform. Prequalification is not required for Subconsultants, but is recommended.

SOQ's shall be submitted to ECS electronically through eCMS or through the ECS on the <http://www.azdot.gov/business/engineering-consultants/advertisements/current-advertisements> website. Paper copy SOQ proposals are NOT accepted under any circumstances. A Consultant cannot submit an SOQ proposal unless it is prequalified.

The Consultant's submittal of an SOQ is conclusive evidence that the Consultant is satisfied with the Terms and Conditions of the contract, has visited the site and is familiar with the conditions of the project. The Terms and Conditions of the contract are incorporated by reference in the Request for Qualifications (RFQ).

The SOQ submittal is comprised of an acknowledgement page, SOQ Proposal Certification Form, a Consultant Information Page (CIP), and an SOQ proposal document uploaded by the Consultant. On the CIP, the Consultant must add each Subconsultant listed in their SOQ proposal, indicate whether the firm is a DBE or not and the type of work the Subconsultant will perform. 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. The Subconsultant information added to the CIP page must match the information provided in the SOQ proposal document. Failure to add all Subconsultants to the CIP page may result in a disqualification of the firm's SOQ submittal. For a successful submittal, a Consultant must update the contact information as necessary, add subconsultants, complete and meet the requirements of the checklist and upload a properly formatted SOQ proposal document. The Consultant will receive an email acknowledging that the SOQ proposal was received. ADOT does not review the proposal for completeness or compliance when acknowledging its receipt of an SOQ proposal. Receipt of a proposal does NOT guarantee the proposal will not be rejected later by ECS for failure to meet the requirements of the SOQ.

For every SOQ submittal, the Consultant shall submit SOQ Proposal Certification Form and a Proposer's Solicitation list, indicating every firm who expressed interest in working or who was solicited to do work or who was proposed on the SOQ to do work on the contract. The document must include the Consultant's name and a valid AZ UTRACS Vendor Registration Number as well as AZ UTRACS number for all subconsultants proposed to do work on the contract. In case of noncompliance or failure to complete and submit the SOQ Proposer's Solicitation list, the firm's SOQ will be rejected.

The RFQ package may provide a specific list of defined Labor Classifications appropriate for the scope of work for the project. Only labor classifications specified in the RFQ should be included in the SOQ proposal submitted by the firm. Consultants must use labor classifications on the approved list based on the classification description, regardless of the title/name the firm currently uses for their own staff. Consultants shall ensure that proposed team members meet the qualifications as defined by the specified labor classifications.

Project team members for design contracts must be employed by the firm at the date of SOQ submittal. Firms shall certify on the SOQ Proposal Certification Form that all information and statements written in the proposal are true and accurate. ADOT reserves the right to investigate and verify, as deemed appropriate, information contained in proposals. Consultants shall also certify that key members of the Project Team, including Subconsultants, are currently licensed in the State of Arizona to provide the required services as requested in the RFQ Package. Consultants shall further be required to certify that work equaling at least 51% of the contract value will be completed by the firm unless otherwise specified in the contract. Consultants must certify to other conditions as stated in the RFQ package or their SOQ proposal will be rejected.

Information included in the introductory letter of the SOQ submittal will not be considered in the scoring of the proposal. No work-hour estimates or price information shall be submitted by the Consultants in their Statements of Qualifications.

Consultants responding to Cost-Plus Fixed Fee (CPFF) RFQs are required to have a compliant accounting system at the time of proposal submittal as specified in the RFQ package. A compliant accounting system is an accounting system that conforms to the requirements of the Generally Accepted Accounting Principles (GAAP), Federal Acquisition Regulation (FAR) Part 31, applicable Cost Accounting Standards (CAS), and ADOT Consultant Audit Guidelines.

Consultants and Subconsultants interested in or who have been awarded Cost-Plus Fixed Fee and Lump Sum type contracts shall provide evidence attesting that the firm has a compliant accounting system. Consultants shall be prepared to submit specified financial information to ADOT Office of Audit & Analysis for review within the prescribed timeframe after contract award and prior to execution of the contract.

No SOQs will be accepted after the date and time specified in the RFQ package. Timely receipt of the SOQ will be determined by the date and time the document is received by ECS as specified in the RFQ package. Consultants are solely responsible for timely and complete submission of CIP and SOQ documentation and are encouraged not to wait until the last minute to submit proposals. Unless otherwise stated in the RFQ, online submission of SOQs will be the only acceptable method of receipt. Hard copies of SOQs will not be accepted.

A list of firms submitting proposals will be made available on the ECS website within two (2) business days after the SOQ deadline. All materials submitted in response to the RFQ become the property of the State of Arizona and will not be returned.

In instances where only two or less qualified consultants respond to a solicitation, the Department may proceed with the evaluation and selection process if the Department determines that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the Department may elect to perform the work through its own forces or pursue procurement following the Non-Competitive Method (Section 2.05) when competitions is determined to be inadequate and it is determined to not be feasible to re-compete under a new solicitation.

g) CONSULTANT INTERVIEWS

ADOT may at its discretion, elect to incorporate consultant interviews into the selection process. The determination for the need for consultant interviews shall be based on the size and complexity of the project and the need to obtain additional information or clarification from the consultants on their

technical approach, qualifications, and capabilities. All contract solicitations shall document if interviews will or may be included as part of the selection process. Instructions for the weight and application of interview scores shall be outlined in the solicitation.

Interviews, if held, shall be with a minimum of the three most highly qualified consultants, as determined by the Consultant Selection Panel. Notification must be provided to responding consultants of the list of the three most highly qualified consultants selected to be interviewed. Members of the interview panel must be the same as the selection panel members evaluating the consultant's SOQs.

If two or less qualified consultants respond to a solicitation, the Department may elect to proceed with the interviews in connection to the evaluation of the SOQs pursuant to the provisions in Section 2.04.1(f) of this Manual.

h) NON-RESPONSIVE STATEMENT OF QUALIFICATIONS (SOQ) SUBMITTAL

Consultants responding to advertisements must strictly adhere to the format and instructions outlined in each RFQ Package, as they may vary. ADOT shall reject SOQs that materially vary from the format and substantive requirements outlined in the RFQ.

The Department will reject an SOQ, if the proposer:

1. Fails to completely and correctly fill out all sections of the CIP page
2. Submits a SOQ proposal with more pages than specified in the RFQ
3. Submits a document that is a larger size than the specified file size indicated in the RFQ
4. Fails to sign and acknowledge every amendment included with the solicitation
5. Fails to be in "Good Standing" with the Arizona Corporation Commission at the time of the submittal
6. Fails to have required licensing or certifications for Consultants, Subconsultants, vendors, and any of their employees or agents at the time of SOQ submittal or through the duration of the contract
7. Fails to be prequalified at the time of the SOQ submittal
8. Fails to submit (attach) the SOQ via eCMS by the deadline indicated in the RFQ package
9. Fails to follow the specific format as identified in the RFQ Package.
10. Submits a proposal that varies materially from the RFQ requirements.
11. Fails to submit SOQ Proposal Certification Form.

The Department may reject an SOQ, if the proposer:

1. Fails to include all Subconsultants listed in the SOQ proposal document on the CIP page
2. Fails to have a valid AZ UTRACS registration at the time of the submittal or ensure that a proposed Subconsultant has a valid AZ UTRACS registration at the time of the submittal
3. Fails to ensure the proposed Key Personnel meet the requirements for the defined Labor Classifications specified in the SOQ.
4. Submits a proposal that varies from the RFQ requirements.

Consultants shall be notified in writing if their proposals have been rejected.

Please see Section 1.13 of this Manual for the dispute resolution procedures specific to SOQ Disqualification.

2.04.2 EVALUATION OF STATEMENTS OF QUALIFICATIONS (SOQ)

a) SELECTION PANEL INFORMATION

It is the intent of the Department to avoid not only the fact of impropriety, but also the appearance of impropriety. The SOQs will be evaluated confidentially by qualified selection panel members who are familiar with the contract and related project requirements. Selection panel members for each advertisement are recommended by ADOT Group/Section Managers from technical groups identified by the ADOT PM. The technical groups represented on the selection panel and the final selection panel members are approved by ECS Manager. There shall be no communication made between Consultants and selection panel members or other ADOT staff, specifically regarding the solicitation, during the solicitation period and the selection process.

Current or former ADOT employees who serve, or have served on a Selection Panel serve in a Significant Procurement Role for the Department (as defined in ARS 41-741 and ARS 41-2503). Therefore, Selection Panel Members must maintain strict confidentiality and not disclose or distribute any information regarding contract procurement procedures, proposal or contract documentation before, during or after the evaluation process (ARS 41-2578 and ARS 41-2616). Additionally:

- i. It is unlawful for a person holding a Significant Procurement Role to accept an offer of employment or have employment discussion with any person or entity lobbying for or potentially responding to a solicitation until one year after the award of the contract.
- ii. Persons holding a Significant Procurement Role must complete and sign a statement before starting any participation in the selection/negotiation process, disclosing any real or potential conflict of interest as required by ARS 38-503, 41-2534, 41-2537, 41-2538, 41-2578, 41-2616C, 41-753, and 41-2517.

Selection panel members, ECS staff, and any other ADOT personnel present for any panel meetings, deliberations, interviews, or any other events related to the evaluation, must sign a Confidentiality Statement attesting that they will maintain strict confidentiality and security regarding the content of proposals and proceedings of the evaluation panel meetings before, during and after the evaluation process.

It is essential that the integrity and transparency of the selection process be maintained to:

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

Selection panel members and any participants in the process must not participate in any evaluation process in which they may have an actual or potential conflict of interest, either of a business or personal nature with the Consultants involved. A selection panel member who believes there is any actual, potential, or perceived conflict of interest in serving on a panel shall notify the ECS Contract Specialist immediately and excuse himself/herself from the panel. If the panel member believes that there is the possibility that anyone could believe that an actual, potential or apparent conflict of interest exists, they shall immediately notify the ECS Specialist for determination of action to be taken.

Examples of potential selection panel member conflicts of interest include, but are not limited to:

1. Have a financial interest in a Consultant or Subconsultant firm that has submitted an SOQ.

2. Have an immediate relative, spouse or significant other who works for a Consultant or Subconsultant that submitted an SOQ.
3. Have previously worked for, or are seeking employment from, a Consultant or Subconsultant firm that has submitted an SOQ.
4. Will be serving on the same Selection Panel as a relative, spouse or significant other.
5. Have an acknowledged or stated preference or bias toward a particular Consultant or Subconsultant firm that has submitted an SOQ.
6. Have a long standing or close personal/social relationship with a Consultant, Subconsultant or their representatives that has submitted an SOQ that would result in an actual or perceived bias toward that firm.
7. Have worked closely in the same group with a Supplemental Services Consultant that has submitted an SOQ.
8. Have a pension, stock agreement, or retirement account held in a Consultant or Subconsultant firm that has submitted an SOQ.

SOQ evaluation panels will consist of no less than three (3) members. However, in most cases, the panel shall consist of more than three (3) members as deemed appropriate by ADOT. SOQ evaluation panels may include personnel other than ADOT employees, as deemed appropriate by ADOT.

All selection panel members will sign a Panel Member Participation form indicating their willingness to attend the panel meetings and participate in all aspects of the selection process, including interviews, as necessary. Failure to attend meetings, interviews or any part of the selection process shall result in elimination of that member's scores from the panel evaluation and the selection panel member shall be excluded from any further participation in the selection process. In addition, failure to complete the comment forms to justify scores shall also result in elimination of that panel member's scores from the final panel evaluation scores.

b) SELECTION PANEL REQUIREMENTS

Selection Panel Members must evaluate/assess the demonstrated competence and qualifications presented in a consultant's Proposal/SOQ for the type of professional services solicited and based on the established and published evaluation criteria. The evaluation criteria will be included in the RFQ Package and may include Project Understanding and Technical Approach, Firm Experience/Qualifications and Team Experience/Qualifications, Consultant's and Subconsultants availability, current workload status, and past performance on other ADOT contracts. Any specialized evaluation criteria and alternative selection processes used on certain contracts will be documented as part of the solicitation. Selection panel members shall not consider outside information or factors not included in the RFQ Package. Additionally, price shall not be used as a factor in the evaluation, ranking or selection phase. In-State or Local Preference shall not be used as a factor in the evaluation, ranking or selection phase. The Department may elect to include the following two non-qualifications based evaluation criteria in its evaluations, ranking and selection phase (if applicable, the value of these criteria will be documented in the solicitation and the combined value shall not exceed 10% of the total evaluation criteria):

1. Local Presence (as defined in 23 CFR 172.7(a)(1)(iii)(D)(1).
2. Qualified and Certified DBE Participation (as defined in 23 CFR 172.7(a)(1)(iii)(D)(2).

Each selection panel member shall conduct an independent evaluation of each firm and shall not discuss his/her evaluation with other selection panel members, other non-selection panel members, or consultants during the initial phase of the process. This includes communications with

Consultants/Subconsultants, potential Consultants/Subconsultants, releasing information regarding scores, and comments or deliberations of the selection panel. Each member will score each proposal in its entirety on how it addresses the requirements outlined in the RFQ Package.

Selection panel members will meet to discuss the rationale for their scores once independent scores are submitted and calculated. Rationale for scores shall be documented on the comment forms. All selection panel members' scores are equally weighted and will be used unless they have been disqualified.

The assigned ECS Contract Specialist and/or other ADOT staff will attend panel selection meetings to ensure compliance with ECS Consultant Contract Manual, but they will not participate in scoring. Selection panel members, Project Manager and any non-voting ADOT staff attending any panel selection meeting or reviewing SOQ documentation shall also sign the Conflict of Interest/Confidentiality Statement form. Confidentiality shall be maintained in perpetuity.

2.04.3 SELECTION PROCESS

a) STANDARD

During the evaluation process, selection panel members analyze all of the proposals individually and independently, based on the evaluation criteria stated in the RFQ Package. Proposal evaluations shall consider the qualifications of the consultant and any subconsultants identified within the proposal/SOQ with respect to the Scope of Work and established criteria. Consultant evaluation scores related to past performance/experience identified in the proposal/SOQ will be used as one evaluation criterion in the selection process.

If outlined in the RFQ documents, the panel may select a short list of proposers to participate in an oral interview process. For oral interviews, a minimum of the three most qualified consultants, as determined by the selection panel utilizing the established and published criteria shall be interviewed. If an interview is required, all short-listed Consultants shall be notified by letter after the proposal review of the date, time, location, and format of the interview. Interviews will be conducted by the same selection panel members who conducted the original SOQ evaluation. Short-listed Consultants will be interviewed in random order at an ADOT office or facility.

After scores are compiled, the selection panel will meet to discuss the scoring. Any selection panel member may elect to amend his or her score based on the discussion. Scores are recompiled, if necessary, and the firms are then ranked based on the highest to the lowest average scores. A firm shall not be qualified for selection if its score is less than 70% of the maximum available points.

In summary, the final Selection Panel Scores are determined as follows:

1. Individual SOQ scores of selection panel members and other criteria scores such as past performance are combined to arrive at a selection panel member composite score for each Consultant.
2. When interviews are required, interview scores are also included in the selection panel member composite score for each Consultant.
3. The selection panel members' composite scores of each Consultant are totaled and averaged by the total number of selection panel members to arrive at an average score for each Consultant.
4. If consultant interviews are included in the overall Consultant Selection process, the selection panel member's composite scores for each consultant's interview are totaled and averaged by the total

number of selection panel members to arrive at an average score for each consultant. These interview scores are then added to the selection panel's average scores for the SOQ's to develop a combined score.

5. The selection panels combined, average score for the SOQ's (and interviews, if applicable) are ranked in order of highest to lowest to determine the Selection Panel's recommendation for selection.

The listing, in ranked order, of the Consultants recommended for selection is signed by all selection panel members and forwarded to the ECS Manager for review and final approval. The ECS Manager will review the rankings and scores. ECS Manager will review the selection process for compliance with the specifications in the RFQ Package. ECS Manager will not review the judgement made by the individual selection panel members in the determination of their evaluation scores and comments.

b) ADDITIONAL REQUIREMENTS

Additional requirements for the consultant selection process are:

1. If ADOT elects to request consultants to submit costs proposals or elements of costs as part of their response to an RFQ, this information must be submitted in a concealed format separate from their qualifications submittals (SOQs). The selection panel will not be provided or have access to cost proposals or elements of cost information provided by a consultant during their evaluation. This information shall not be considered in the evaluation, ranking and selection phase. Cost proposal information submitted by non-selected firms will be destroyed immediately upon execution of the contract. ADOT shall not review any cost information submitted by firms not selected for a project.
2. The Department shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant.

2.05 NON-COMPETITIVE NEGOTIATION

In some instances, ADOT may exercise the option of using "Non-Competitive Negotiation" procurement because of the unique characteristics of the project or if it deemed to be in the public's best interest. 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. If Federal-Aid funds are used for the project, an approval from the FHWA must be obtained before proceeding. In this case, advertising requirements may be waived by the State Engineer and the FHWA.

In accordance with 23 CFR 172.7 (a)(3)(iii), circumstances under which a contract may be awarded by non-competitive negotiation are limited to the following:

- (i) The service is available only from a single source; or
- (ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations (see Section 2.04 of this Manual); or
- (iii) After solicitation of a number of sources, competition is determined to be inadequate.

If "Non-Competitive Negotiation" procurement is being considered, the ADOT Project Manager shall secure, in coordination with ECS and as required by 23 CFR 172.7 (a)(3)(iii), written approval from the State Engineer and

the FHWA justifying that “Non-Competitive Negotiation” procurement is appropriate, and that no reasonable alternatives exist. The written request shall include:

- Project description
- Efforts to locate other qualified Consultants
- Qualifications, experience or other justification that demonstrate why the recommended Consultant is the only qualified firm to perform the service
- Estimated cost of the project

ECS shall process the request after written approval from the State Engineer and the FHWA, if applicable. Written justification for using “Non-Competitive Negotiation” method shall be included in the contract file, including documentation 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.

Negotiations of contracts under this methodology shall follow the process outlined in Section 3 of this Manual.

2.06 IMPRACTICABLE TO ADVERTISE (“LOW VALUE” OR “SMALL PURCHASES”) PROCUREMENTS

If the use of consultant services is expected to be less than \$100,000 and the services are not covered by an existing On-Call contract, the ECS Manager has the option to forego the advertising requirements outlined for “Competitive Negotiations” (see Section 2.04). A project Scope of Work, project phases and contract requirements shall not be broken down into smaller components merely to permit the use of the procurement method. If Federal-Aid funds are used for the project, an approval from the FHWA and ADOT ECS must be obtained before proceeding. To request that ECS waive the advertisement requirements, the ADOT Project Manager shall complete and submit an Advertisement Waiver form to ECS for approval. Upon written approval by the ECS Manager, the ADOT PM shall obtain short written Statements of Qualifications from at least three (3) firms that outline why they are the most qualified to provide the service. The ECS Manager and the ADOT PM shall select the most qualified Consultant to perform the services in the public’s best interest. After the selection is made, the ADOT Project Manager and ECS shall negotiate a reasonable price for the service, not to exceed \$100,000. ADOT shall negotiate with the second or third most qualified firm if failed negotiations occur with the most qualified firm.

If any contract modification or amendment causes the contract amount to exceed the established contract value threshold (\$100,000), the full amount of that contract modification or amendment is ineligible for Federal-Aid funding (23 CFR Part 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.

Negotiations of contracts under this methodology shall follow the process outlined in Section 3 of this Manual.

2.07 EMERGENCY PROCUREMENT

There may be some instances where ADOT may exercise the option of using “Emergency” procurement, when it is determined to be in the public’s best interest. If Federal-Aid funds are used for the project, an approval from the FHWA will be obtained before proceeding. In this case, advertising requirements may be waived by the State Engineer and the FHWA.

“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.”

The ADOT Project Manager or appropriate ADOT employee shall secure written approval for emergency procurement from the State Engineer and the FHWA. The PM shall not proceed without obtaining written approval from the State Engineer and FHWA of the emergency procurement procedure. The documentation shall include:

- Description of the nature of the emergency
- Risks, consequences, potential material loss or damage associated with inaction or delay
- Description of the selected Consultant qualification, experience or other justification related to the emergency service and the basis on which the Consultant will be selected and contract negotiated
- Estimated cost of the project

If prior written approval from State Engineer and FHWA is not practical in the State Engineer’s opinion, the State Engineer can grant non-written consent to proceed. The State Engineer shall provide written consent to proceed as soon as practicable after determination is made and direction given.

All written documentation must be submitted to be included in the contract file, properly documenting the action and proper justification. ECS shall process the request after approval from the State Engineer and the FHWA. Written justification for using the “emergency procurement” method shall be included in the contract file, including documentation of how fair, reasonable, and allowable costs were negotiated for the project in accordance with Federal cost principles.

Negotiations of contracts under this methodology shall follow the process outlined in Section 3 of this Manual, unless the State Engineer makes a written finding that insufficient time to complete the process exists.

2.08 SELECTION NOTIFICATION; PROTEST

After the ECS Manager’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 Department will enter into negotiations with for the contract.

Any protest of the selection(s) shall follow the protest policy outlined in Section [1.13](#) of this Manual.

2.09 DEBRIEFING SESSIONS

Prior to the Department issuing a written notification to the proposers of the final ranking, including the name of the highest ranked firm, the Department will not release any copies of proposals (SOQs) or results of the selection panel’s evaluation. However, after the written selection notification, the Department will take the following action in the release of SOQ and selection panel results:

1. Release of Statement of Qualification document(s):
 - An electronic copy of the SOQ submitted by the selected firm(s) will be provided to all proposing firms which submitted an SOQ for the contract.
 - An electronic copy of the SOQ submitted by the selected firm(s) will be made available to all firms pre-qualified with ECS upon their request.

- For parties not pre-qualified with ECS, after the contract has been executed, an electronic copy of the SOQ submitted by the selected firm(s) will be made available, upon request, through the Departments Risk Management Office, following the public records request process.
- Copies of SOQs submitted by non-selected firms will not be distributed or available for review by any party at any time.

Note: The electronic copy of the Statement of Qualifications is the property of the Arizona Department of Transportation. The release of the electronic copy of the document is for the convenience of the party requesting the document. Any unauthorized use, disclosure or distribution of the document or information contained in the document is strictly prohibited, without prior written consent from the Department. Recipients that did not propose (submit SOQs) for a contract are not permitted or entitled to protest the Department's selection of the SOQ.

2. Release of Selection Panel Results:

- Prime Consultants which submitted SOQs for a specific contract will be provided with a copy of the Selection Panel's average evaluation scores and written comments of their submittal only. Copies of Selection Panel's written comments and scores of any other proposing Prime Consultant will not be released to any other proposer at any time.
- The average scores of the SOQ submitted by the highest ranked firm will be provided to Prime Consultants which submitted SOQs for the specific contract. However, the Selection panel's written evaluation comments of the SOQ submitted by the highest ranked firm will not be provided at any time.
- Copies of the Selection Panel's individual and average scores and comments generated from their review of SOQs submitted will not be made available to any non-proposer, pre-qualified firm, or the public at any time.
- Proposers with a remote access CRYPTOCard are able to access and review their scores and comments on-line. Proposers without remote-access CRYPTOCard access must request a copy of their scores and comments by contacting the assigned ECS Specialist.

Note: Firms that did not propose (submit SOQs) for a specific contract are not permitted or entitled to view the scores or written comments made by the Selection Panel at any time and may not protest the Department's selection of the SOQ at any time.

3. Other Notes:

- The composition and identities of the Department's selection panel members will not be released to the public at any time.
- Written comments and scores made by the Department's selection panel will not be attributable to individual panel members.

Electronic copies of the SOQs submitted for individual contract solicitations are the property of the Arizona Department of Transportation. Any unauthorized use, disclosure or distribution of these documents, files or information contained in it is strictly prohibited, without prior written consent from the Department. Receipt of an electronic copy of an SOQ does not permit or entitle a consultant or subconsultant to protest the Department's selection of the SOQ or receiving copies of the Department's evaluation comments or scores.

2.10 DEPARTMENT RIGHTS AT SELECTION PROCESS

Until the contract is signed by the Department, ADOT reserves the right to:

- a. Cancel the solicitation;
- b. Reject any or all SOQs or proposals;

- c. 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; and
- e. Retain any and all documents submitted by the Consultant as part of the selection process.

2.11 CONTRACTS FOR SUPPLEMENTAL SERVICES POSITIONS OR MANAGEMENT SUPPORT ROLES

If the Department determines there is a need to use a consultant in a Management Support Role, FHWA approval will be required prior to solicitation.

The Department may determine that it is necessary to enter into a contract with a consultant to provide Supplemental Services. These types of services include providing support on large projects or when circumstances where unusual costs or time constraints exist, when unique technical or management expertise is required, and/or an increase in the Department's staff is not a viable option. These services are performed under the direct oversight of the Department. Prior to soliciting for these types of services, approval from the State Engineer's Office is required.

Consultants or Subconsultants contracted to provide Supplemental Services may provide the following services:

1. Provide project management service or technical design/review of a project or series of projects under the direct oversight of the Department.

Consultants or Subconsultants contracted to provide Management Support or Supplemental Services may not provide the following services (See Section 1.10 of this Manual for further restrictions):

1. Serve in the capacity of a Significant Procurement Role, including:
 - a. Consultant Selection Process
 - b. Development of Project Scope Documents for Contract Solicitation or Modifications.
 - c. Negotiate Contracts or Contract Modifications.
 - d. Review, Approve or reject Consultant Payment Reports (invoices).
2. Manage or supervise ADOT employees.
3. Manage, direct, review or provide oversight of services being performed by their employer (firm).

SECTION III – NEGOTIATION THROUGH NOTICE TO PROCEED

3.01 COST PROPOSAL DEVELOPMENT

a) COST PROPOSAL DEVELOPMENT OVERVIEW

In determining fairness and reasonableness of a cost proposal, ADOT will 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 most highly qualified consulting firm's cost proposal, the ADOT Project Manager will prepare a scope of work, schedule and an independent cost estimate of the work to be performed on the contract. The independent cost estimate shall include the estimated cost and resources needed by the State and Consultants to complete the project. The Project Manager's independent estimate shall include a detailed estimate of the person-hours, types or classifications of labor to complete project tasks, other direct contract costs, and fixed fee for the Consultant to complete their contracted work. This estimate is only available for review by ADOT and the FHWA, is confidential and as such 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 (23 CFR 172.7 (a)(1)(v)(B)).

The Consultants contract costs shall be made up of:

1. Indirect Costs: Updated on an annual basis in accordance with the Consultant's annual accounting period and in compliance with Federal Cost Principles. ADOT's review and acceptance of a Consultants' Indirect Costs Rate shall be in accordance with 23 CFR Part 172.11.b.1 and Section 3.02.a of this Manual.
2. Direct Salary or Wage Rates: Compensation for each employee assigned to the contract which has been reviewed, negotiated, and accepted as fair and reasonable in accordance with 23 CFR Part 172.11.b.2 and Section 3.01.c of this Manual. Labor Classifications for each employee shall be consistent with ECS established Labor Classification List.
3. Fixed Fee: The fixed fee percentage (profit) for the contract will be stated in the RFQ package. ADOT shall make the determination of the amount of the fixed fee, considering the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract, in accordance with 23 CFR 172.11 (b)(3). The Fixed Fee is not negotiable by the Consultant.
4. Other Direct Costs: Other direct costs allocable to the project which are reasonable and allowable in accordance with Federal Cost Principles and 23 CFR 172.11(b)(4).

The Consultant's cost proposal is reviewed by the ADOT Project Manager, ECS Contract Specialist, and ADOT Office of Audit & Analysis. ADOT's review is to ensure that person-hour estimates and costs submitted by the Consultant are within budget, compliant with approved labor classifications. Additionally, ADOT's review is to ensure costs and rates are fair, reasonable, within ADOT's guidelines, and compliant with FAR (48 CFR Part 31) cost principles, if Federal-Aid funded. ADOT will use the indirect cost rate (overhead rate), established unit rates, or commercial item prices established through A&A's review or by a cognizant audit. Acceptable cognizant audits must have been reviewed for reasonableness in accordance with the FAR cost principles contained in 48 CFR Part 31 for contract negotiation, administration, and payment as specified in 23 USC 112(b) (2) (B-D), 23 CFR 172.11 and ECS Cost Proposal Preparation Guidelines. Indirect cost rates, unit rates or commercial item prices shall not be negotiated by the Consultant. See Section 3.02 for applicable cost accounting requirements, codes and guidelines.

ADOT, at its discretion, may request additional financial information and may also require a pre-award review. Selected Consultant(s) must have a compliant accounting system and submit specified financial information to ADOT Office of Audit & Analysis for a pre-award review within the prescribed time prior to submission of the cost proposal and execution of the contract, as outlined in the RFQ Package. At the discretion of ADOT Office of Audit

& Analysis, the pre-award review will require an examination of the Consultant's records, in accordance with generally accepted government auditing standards. Failure on the part of the Consultant to provide this information within the prescribed time may lead to ADOT declaring failed negotiations.

The ADOT Project Manager and ECS Contract Specialist will be responsible for maintaining and retaining documentation of the Department's cost negotiation efforts in the contract file including dates of any negotiation meetings, comparison of total hours and costs included in the Consultant and ADOT estimates.

b) COST PROPOSAL INITIATION

In preparation for cost negotiation, selected firm(s) shall complete and submit a Consultant Audit Questionnaire and any other information specified in the RFQ to ADOT Office of Audit & Analysis within the timeframe specified. Failure to have the Prime Consultant's and Subconsultants Schedule of Indirect Costs and Financial Statements available for review by A&A within the prescribed time, may result in ADOT declaring a failed cost negotiation as outlined in Section 3.01.f of this Manual and proceeding to negotiate with the next highest ranked firm. All Indirect Costs and Financial Statements must be of the firms' most current Fiscal Year End (FYE). If the Department is negotiating a contract more than 6 months after a firm's FYE, then the firms' preceding year's audited finances must be utilized for negotiations.

Indirect cost rate proposals shall not be accepted and no agreement shall be made by ADOT to establish final indirect cost rates, unless the costs have been certified by an official of the consultant as being allowable in accordance with Federal Cost Principles (Certificate of Final Indirect Costs form - 23 CFR Part 172.11 (c)(3)(iii)).

c) NEGOTIATIONS AND AWARD

After selection notification, the selected Consultant may attend a Pre-Negotiation meeting, as needed, with the ECS Contract Specialist and the ADOT Project Manager, depending on the complexity of the project. The objectives of the Pre-Negotiation meeting are: (1) to achieve a clear and mutual understanding of all contract requirements, terms and conditions; (2) an understanding of the scope of work and level of effort; (3) to identify and resolve potential problems; and (4) to define negotiation parameters. Items for discussion include, but are not limited to, online cost proposal submission format and instructions, cost justification, Consultant audit information, scope of work, etc.

Following the Pre-Negotiation meeting and an understanding on the scope of work and level of effort, the Consultant is required to submit a detailed cost proposal (CP) for the work to be performed, through eCMS or other format specified by ECS, including a Cost Proposal for each proposed Subconsultant. Submittals shall be made within 21 calendar days from the date of the Pre-Negotiation meeting or other time agreed to at the Pre-Negotiation meeting and must follow the [Labor Classification Rate Negotiation Process](#), [Labor Classification Guidelines](#) and [ECS CP Preparation Guidelines](#). If a time extension is needed, the firm must request an extension, in writing, no less than five (5) calendar days prior to the established cost proposal due date. Failure to submit a cost proposal within agreed upon parameters and time may result in ADOT declaring a failed cost negotiation, as outlined in Section 3.01.f of this Manual and proceeding to negotiate with the next highest ranked firm.

ECS has established guidelines and procedures for the submittal of required documentation associated with various contract types. As each contract type (Specific Rates, CPFF, CPFFTO, LS, LSTO, CPUW) has unique contractual requirements, Consultants shall follow the Cost Proposal submittal requirements outlined in the [ECS Cost Proposal Preparation Guidelines](#) and Online Cost Proposal Sample Forms accessible on [ECS Forms and Templates](#).

When negotiations are complete, all approvals are obtained, and contract funds are encumbered, the contract will be submitted to the Consultant for signature. After the Consultant has signed the contract and returned it to ECS, the contract is signed by the ECS Manager. Once signed by the Consultant and ADOT, the contract is considered fully executed. A copy of the executed contract, along with a Notice to Proceed (NTP) letter, will be electronically transmitted to the Consultant and distributed to appropriate ADOT personnel. For federal aid projects, no contract authorizations will be given until FHWA authorization is received.

ECS approved contract authorization types include:

c.1. NOTICE TO PROCEED (NTP)

After the contract is signed by the Consultant and the ECS Manager, a written Notice to Proceed (NTP) is issued by the Department, which will identify the effective date of the NTP. ADOT will not be responsible for any cost incurred by the Consultant prior to the effective date of the NTP. The signed contract will be retained by ADOT. The NTP authorizes the Consultant to proceed with services and invoice for costs as defined in the contract.

c.2. LIMITED NOTICE TO PROCEED (LNTP)

ADOT has the discretion to issue a Limited Notice to Proceed (LNTP) under certain circumstances, prior to execution of a contract. These authorizations are issued for new Project Specific Contracts for which the contract has not been previously executed, but negotiations have begun and are proceeding in good faith towards completion. The LNTP authorizes a defined, but limited scope of work, with defined costs (direct/indirect), resources (labor classifications, subconsultants, etc.), and hours. All costs (direct/indirect), hours, etc. are noted as Negotiated Provisional and subject to true-up upon receipt of pre-award audit recommendations and successful negotiations of the final contract. Negotiated Provisional rates are not relevant to the final determination of reasonable rates and shall not be admissible in any subsequent court or arbitration action. The LNTP will document the appropriate Contract Terms and Conditions and the Consultant will be required to provide Certificates of Insurance prior to execution of the LNTP. The Consultant will be authorized to proceed with services and invoice for costs as defined in the LNTP. The LNTP is valid upon signature by the Consultant and the Department's authorized signature authority.

The LNTP shall document the duration for which services will be provided. If a contract is subsequently signed by both parties, the Consultant shall be paid as provided for in the executed contract. If both parties fail to successfully negotiate and sign a contract within the defined duration of the LNTP, ADOT reserves the right to end negotiations and proceed with negotiating with the next highest ranked firm or re-advertise the contract. If negotiations are terminated, the Consultant will be notified to stop all work and can submit a final invoice for services performed under the LNTP. 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.

c.3. LIMITED SCOPE CONTRACT MODIFICATION (LSCM)

ADOT has the discretion to issue a Limited Scope Contract Modification (LSCM) under certain circumstances, prior to execution of a contract modification. These authorizations are issued for new Task Orders or Contract Modification in which the original contract has been previously executed, but negotiations on the Task Order/Contract Modification have not been finalized. The LSCM serves as a Contract Modification and authorizes a defined, but limited scope of work, with defined costs (direct/indirect), resources (labor classifications, subconsultants, etc.), and hours. All costs (direct/indirect), hours, etc. are noted as

Negotiated and shall be consistent with previously authorized and negotiated contract rates and costs. All items not previously approved or negotiated will be excluded, or if a need is justified, may be noted as Negotiated Provisional and subject to true-up upon receipt of pre-award audit recommendations and successful negotiations of the final contract. Consultant will be authorized to proceed with services and invoice for costs as defined in the negotiated LSCM.

Any Negotiated Provisional rates included in the LSCM are not binding on either party in the final determination of reasonable rates and shall not be admissible in any subsequent court or arbitration action.

d) OTHER AUTHORIZATION TYPES

d.1. ADVANCE NOTICE TO PROCEED (ANTP)

For emergencies, if extenuating circumstances exist, and upon approval by the State Engineer's Office, if it is determined to be in the public's best interest, ADOT 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, ADOT Group/Section Manager, State Engineer's Office, and ECS Manager and ADOT is under no obligation to pay for work without the proper written authorization or completing the appropriate ECS documentation. ADOT 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 Department 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.

e) POST AWARD INFORMATION

The Consultant shall be responsible for familiarizing themselves with information and forms needed to successfully fulfill the terms of the contract. The executed contract will document the terms and conditions for which the Consultant will perform and be compensated for the negotiated scope of services. A Consultant's submittal of an SOQ is conclusive evidence that the Consultant is satisfied with the Terms and Conditions of the Contract, has visited the site, and is familiar with the conditions of the project.

f) UNSUCCESSFUL OR FAILED COST NEGOTIATION

If ADOT and the Consultant cannot negotiate a cost for the project that is fair and reasonable to both parties over a protracted period of time (no more than 90 calendar days after the initial submittal of the cost proposal), the ADOT Project Manager, ECS Contract Specialist and Contract Manager shall document negotiation efforts in eCMS and recommend that a "Best and Final" offer be made to the Consultant. ECS shall present the firm with the written "Best and Final" offer. The firm shall have up to 10 business days to

accept or reject the offer, as indicated in the letter. If the offer is accepted by the firm, ADOT shall move toward final execution of the contract. If the offer is rejected by the Consultant, ADOT reserves the right to declare failed negotiations. Failure to respond to the written "Best and Final" offer within the time indicated in the letter shall be regarded as a rejection of the offer.

Other reasons for unsuccessful or failed negotiations by the Consultant include, but are not limited to:

- (1) Failure to submit cost proposal and required documentation (i.e. DBE affidavits and other documents, insurance (COI), direct expense back-up, etc.) in the required format
- (2) Failure to submit cost proposal and required documentation within the prescribed timeframe
- (3) Failure to submit or respond timely and appropriately to requests for information from any related ADOT offices (ECS, ADOT Audit & Analysis, ADOT Risk Management, ADOT Project Manager)
- (4) Failure to have the Prime Consultant's and Subconsultant's Schedule of Indirect Costs and Financial Statements available for review by A&A. All Indirect Costs and Financial Statements submitted by the consultant and subconsultant must be of the firms' most current Fiscal Year End (FYE). If the Department is negotiating a contract more than 6 months after a firm's FYE, then the firms' preceding year's audited finances must be utilized for negotiations.
- (5) Failure of the Consultant to make Good Faith Effort to use DBEs on the contract as determined by the Department.

If ADOT declares failed negotiations with the selected firm, the Department may at its option:

- (1) Proceed with negotiating with the next highest ranked firm.
- (2) Re-advertise the contract.
- (3) Cancel the solicitation.

ADOT 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 (IGA) or other extenuating circumstances.

Reasons for ceasing negotiations and taking the subsequent resulting actions will be documented in the contract file.

3.02 CONTRACT COMPLIANCE REQUIREMENTS

a) COST ACCOUNTING

ADOT is responsible for providing reasonable assurance that consultant costs on contracts reimbursed in whole or in part with Federal-Aid are allowable in accordance with Federal Cost Principles and consistent with the contract terms, considering the contract type and payment method.

The criteria used to determine allowability of contract costs are governed by 48 CFR Part 31. In seeking to interpret the FAR, ADOT utilizes the AASHTO Uniform Audit and Accounting Guide and ADOT Consultant Audit Guideline, 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 ADOT Consultant Audit Guidelines may contact: ADOT Office of Audit & Analysis, 1739 W. Jackson Street, Modular C, Mail Drop 158A, Phoenix, Arizona, 85007 or 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 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 firm for the purpose of lobbying (2 CFR 200.450).

If the Consultant should report lobbying activities, the Consultant is required to submit Anti-Lobbying/Disclosure Forms. These forms are supplied to the Consultant by the ECS Contract Specialist and must be completed and received by ECS prior to execution of the contract (click [here](#) to access forms). 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 ADOT 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 ADOT Risk Management Office for approval during the cost proposal negotiations and prior to the execution of the contract.

Certificates of Insurance are designed to certify that: (1) a person or company (Consultant) has the specific type of insurance needed to protect both itself and the State of Arizona 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 according to AM Best; and (5) special conditions required by the contract are specifically endorsed onto the policy.

Contracts shall require the insurance to name the State of Arizona and The Arizona Department of Transportation (ADOT) as additional insureds in accordance with the [Insurance Guidelines](#) (see ECS website for the current version of this policy) 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 ECS contracts include contract language requiring Consultants and Subconsultants to comply with Federal, State and local immigration law and regulations, allowing ADOT the right to inspect records and giving ADOT the right to take necessary action if violations occur.

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 is regarded as a material breach of the contract.

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.

SECTION IV – CONTRACT ADMINISTRATION

4.01 FINANCIAL MANAGEMENT SERVICES VENDOR REGISTRATION

The State of Arizona utilizes a statewide accounting system which makes all payments based on a Master Vendor File. Consultants who have been awarded a contract for the first time must complete and return the State of Arizona Substitute W-9 Vendor Authorization Form (IRS Form W-9 Request for Taxpayer Identification Number and Certification) to ECS during contract negotiations. The form can be found on <http://www.gao.az.gov/>. The Consultant shall upload the completed form to the eCMS using the Cost Proposal Module. The W-9 Form will then be forwarded to the Arizona Department of Administration, General Accounting Office for further processing by the Department. ADOT will not execute the contract and no payments will be processed unless the form is submitted or uploaded to the eCMS Cost Proposal Module. If there are name changes, Consultant shall follow the organizational change process outlined in Section 4.09 of this Manual.

4.02 DBE SYSTEM REPORTING

All federally-funded contracts are monitored for DBE utilization, participation and compliance with DBE requirements in the ADOT DBE System.

Upon receipt of the NTP letter and before the first payment report has been submitted to ECS, all Prime Consultants must enter contract and budget information for themselves and for all their Subconsultants (DBE, non-DBE, and tier-subconsultants) and must upload their contract and their subcontract agreements made with all their Subconsultants into the DBE System.

The executed contract will document the Prime Consultants responsibilities and requirements for making and reporting payment to all Subconsultants (DBE, non-DBE, and tier-subconsultants). Applicable penalties or sanctions for non-compliance will also be documented in the contract.

All Subconsultants (DBE, non-DBE, and tier-subconsultants) must confirm amounts paid to them in the ADOT DBE system as required in the contract documents.

4.03 MONTHLY PROGRESS AND WORK-HOUR REPORTS

The Consultant shall submit progress reports to the ADOT Project Manager with the monthly progress payment reports. The form and format to be utilized are provided in the Post-Award Information Package, posted on the ECS website under Consultant Resources: <http://www.azdot.gov/business/engineering-consultants/consultant-resources/ecs-consultant-resources>. The Consultant, unless notified otherwise, shall include in the progress payment report detail on work completed to date based on contract type. These reports shall follow the form and format provided by ADOT. The ADOT PM or ECS Contract Specialist may request further breakdown by personnel name, classification, expenses incurred or any other supporting information regardless of contract type. Failure to meet this requirement will result in a delay in approval of the work, thereby resulting in a delay in processing monthly payment to the Consultant.

4.04 PROGRESS PAYMENT REPORTS

The Consultant shall invoice ADOT monthly for work performed under a contract by the Consultant and the Subconsultant during the preceding billing period by submitting a Progress Payment Report (PPR) form that corresponds with the appropriate contract type and provided as part of the Post-Award Package and subsequent

contract modifications. Billing periods and PPR issue dates shall be as defined in the contract. If no work has been performed in the preceding month, the Consultant shall submit a zero (\$0.00) PPR and progress report indicating that no work had been performed for that month. Monthly \$0.00 PPR submittal does not apply to On-Call contracts without any assigned Task Orders added by executed Contract Modification (CM). Monthly PPRs must be submitted in sequence. PPRs submitted out of sequence will result in delayed payments.

The Consultant shall submit PPR to ADOT for work performed by its Subconsultants within 30 days of receipt of invoice from the Subconsultant, even though the Consultant may not have performed any work during the preceding month. By submitting a Monthly PPR, the Prime Consultant is certifying that: 1) The Prime Consultant and all Subconsultants have satisfactorily completed all the work described in the PPR, and 2) All subconsultants have submitted invoices for the work they performed during the billing period and their invoiced amounts are included in the PPR. A monthly summary of costs billed by category or subcategory shall be included with PPRs and submitted for reimbursement to the ADOT Project Manager, electronically or on forms provided by ECS. The PPR shall be formatted to permit comparison of actual to proposed costs and shall be submitted with required information and back-up documentation based on the contract type.

Repeated violation of the requirement to submit monthly PPRs in accordance with the terms of the contract will be evaluated accordingly in both annual and final consultant evaluations and may result in sanctions up to and including liquidated damages, termination of the contract, removal of the offending Prime Consultant or Subconsultant, or disqualification of the offending Prime Consultant or Subconsultant. Furthermore, ADOT may be prohibited by state law from paying an invoice that is submitted more than 60 calendar days after the end of the State's fiscal year in which the cost was incurred.

The ADOT Project Manager or his/her designee will review the PPR for project progress, work-hours expended, funds availability and forward their recommendation for approval of the PPR to ECS. ECS will review the PPR to confirm the PPR's accuracy, comprehensiveness, and compliance with the original contract terms, costs/rates and allowability (as outlined in Section 3.01 and 3.02 of this Manual). Upon confirmation of the PPR, ECS will forward it for payment processing.

If the Department approves a PPR and variances to that PPR are discovered at any time, even after a PPR has been previously approved, the ECS Contract Specialist may make adjustments to the current or future PPR(s) as necessary or may return it to the Consultant if significant variances/deviations are present.

Any disputes will follow the dispute resolution procedure identified in Section [1.13](#) of this Manual.

4.05 PROMPT PAY LEGISLATION (A.R.S. § 28-411)

ADOT's Consultants and Subconsultants must comply with A.R.S. § 28-411 and the contract terms and conditions in the issuance of invoices and payments for services performed in contracts.

Prime Consultants shall not withhold retainage of a Subconsultants' payment if ADOT has not withheld retainage of a Prime Consultants' payment. If ADOT does withhold retainage of a Prime Consultants' payments, then the Prime Consultant may withhold retainage of a Subconsultants' payment, but not in excess of the percentage amount ADOT withheld from the Prime Consultant. Failure by the Prime Consultant to invoice ADOT in accordance with Section [4.04](#) of this Manual and 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 may be subject to disqualification in accordance with Section [2.02](#) of this Manual. ADOT reserves the right to request that Prime Consultants provide proof of payment to Subconsultants at any time.

All Prime Consultants must report all payments made to Subconsultants in the DBE System (DBE, non-DBE, and tier-subconsultants) and all Subconsultants (DBE, non-DBE, and tier-subconsultants) must confirm amounts paid to them as required in the contract. Consultant shall refer to the requirements outlined in the contract terms and conditions.

Unless stated in the Contract, If a Prime Consultant fails to pay a Subconsultant within seven (7) days of receiving a progress payment from the Department, the Consultant shall pay the Subconsultant interest on the unpaid balance, beginning on the eighth day at the rate of one percent per month or fraction of a month. This requirement does not apply if it is documented in the contract between the Prime Consultant and Subconsultant that the provisions of ARS 28-411(C) do not apply to their agreement.

4.06 CONTRACT MODIFICATIONS

Amendments to the terms of the contract that change the cost of the contract; significantly change the character, scope complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed, shall be authorized by the issuance of an approved written Contract Modification (CM). A Contract Modifications shall clearly define and document the changes made to the contract, establish the method of payment for any adjustments in contract costs, and be in compliance with the terms and conditions of the contract and original procurement. The Department shall negotiate the Contract Modification following the same procedures as the negotiation of the original contract. The Department may add to the contract only the type of services and work included within the scope of services of the original solicitation from which qualifications based selection was made. For any additional engineering and design related services outside of the scope of work established in the original request for qualifications, the Department will procure these services under a new solicitation, use a different contract under which the services would be within the scope of work, or perform the work itself.

The CM may be unilaterally directed by ADOT, or a bilateral supplemental agreement which requires written approval of all parties. All CMs shall be approved and signed by ADOT designated signatory authority (ECS Manager, applicable Sr. Deputy State Engineer, or State Engineer) based on the contract modification amount and after all negotiations are complete.

Costs for the CM shall be based on the rates and classifications approved as part of the original contract. 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. If a DBE goal was assessed on the contract, Prime Consultant must submit DBE documentation with each task assignment consisting of either DBE affidavits or evidence of Good Faith Efforts made in accordance with DBE contract provisions. 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.

ECS will review all CM requests for adherence to applicable ADOT and ECS policies, procedures, and contract terms. ECS has the authority to make any necessary changes resulting from that review and the Consultant accepts any and all changes by signing the CM. At any point in the CM process, the Department may request additional supporting documentation from the Consultant.

ADOT is not responsible for payment of any work performed by the Consultant prior to receipt of a fully signed/executed CM or an Advanced Notice to Proceed (ANTP). Any extra work performed by the Consultant, without an approved and executed CM, is done at the Consultant's risk.

Any disputes will follow the dispute escalation procedure identified in Section [1.13](#) of this Manual.

4.07 POST-DESIGN SERVICES

If Post-Design Services (PDS) are determined to be necessary during the construction phase of the project, the services shall be negotiated by the ADOT Project Manager prior to time of advertisement of the construction contract. The PDS shall be authorized by means of an executed CM. ADOT will issue an NTP for the PDS after the Transportation Board's award of the Construction Contract. The Consultant shall work with the ADOT Project Manager and Resident Engineer to provide PDS as listed in Section 600, of the Dictionary of Standard Work Tasks provision of the contract and shall perform all work in accordance with the most current ADOT policies and procedures, unless otherwise directed. Failure to comply with any of the requirements outlined in the CM or respond to request from ADOT Project Manager and Resident Engineer in a timely manner shall be considered a breach of contract and the matter shall be resolved in accordance with the Termination of Contract guidelines set forth in Section [4.17](#) of this Manual.

The final payment for PDS shall only be approved by the ADOT Project Manager after all Record Drawings work and documents have been completed, submitted to ADOT and determined to be in compliance with the ADOT requirements. Record Drawings shall be completed within the timeframe previously agreed to by ADOT and the Consultant.

Regardless of contract type, PDS is billed at 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. Identification of personnel within each proposed classification may be required. The Consultant shall only bill for actual hours worked. Prior to payment, all expenses must have supporting documentation submitted for determination of allowability per FAR. Negotiated contract rates shall be set for duration of the contract and will not be renegotiated at any time.

4.08 CHANGES OF CORPORATE STRUCTURE OR OWNERSHIP

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 a 10% change in ownership, the Consultant or Subconsultant under the contract with ADOT shall notify ADOT of the changes within 10 business days from the date when the change is agreed upon. Work performed by the new or reformed Consultant cannot proceed until ADOT has been notified in writing of the change and has authorized the work to proceed. The new or reformed Consultant must take responsibility for fulfilling all obligations, liabilities, and contract terms/conditions for all ADOT contracts of the original firm. The new or reformed Consultant shall provide ECS with the required information to document the transaction, including, but not limited to, 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 ADOT contracts affected by the change. Provide the name of the ECS contract and contract number and indicate if the firm served as a Consultant or Subconsultant.
 - iii. A statement certifying that the new or reformed Consultant or Subconsultant shall assume all obligations and liabilities set forth in the respective contracts for all listed contracts between the new or reformed Consultant and ADOT.

- iv. A statement certifying that no changes have been made in the Key Personnel for the affected contract(s), or a statement identifying changes proposed to be made in the Key Personnel for the affected contract(s). If a Key Personnel change occurs as a result of the transaction, the Consultant or Subconsultant shall also submit a separate request to obtain ADOT's approval for the Key Personnel change for each affected contract.
 - 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 agrees that the Department is not obligated to pay or reimburse it 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 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 Arizona Corporation Commission (ACC) documentation that the new or reformed Consultant or Subconsultant is in "good standing" and is authorized to do business in the State.
 3. Updated professional license(s) of the new or reformed Consultant or Subconsultant.
 4. Updated W-9 Form of the new or reformed Consultant or Subconsultant.

If ADOT approves the new or reformed Consultant to take over the contracts, the contracts shall be modified to include the new or reformed Consultant's name by a Contract Modification. The Consultant shall also obtain prequalification pursuant to Section [2.01](#) of this Manual.

4.09 NAME CHANGE WITHOUT A CHANGE IN CORPORATE STRUCTURE

If a Consultant or a Subconsultant (e.g. corporation, limited liability company, partnership, or joint venture) listed in the contract changes its legal name without any changes in corporate structure (including DBA designations), the Consultant or a Subconsultant shall notify ADOT of the name change within 10 business days when the name change is agreed upon. Work performed by the Consultant cannot proceed until ADOT has been notified in writing of the change and has been authorized to proceed. The new or reformed Consultant must take responsibility for fulfilling all obligations, liabilities, and contract terms/conditions for all ADOT contracts of the original firm. The name-change request shall include, at a minimum, the following:

1. A letter, on company letterhead, indicating the new Consultant/Subconsultant(s) legal 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 ADOT contracts affected by the change. Provide the name of the ECS contract and contract number and indicate if the firm served as a Consultant or Subconsultant.
 - iii. A statement certifying that the new or reformed Consultant or Subconsultant shall continue to provide quality work under the Contract.
 - iv. A statement certifying that no changes have been made in the Key Personnel for the affected contract(s), or a statement identifying any changes proposed to be made in the Key Personnel for the contract(s).

- v. A statement certifying that the Consultant or Subconsultant agree that the Department is not obligated to pay or reimburse it 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 name change would have been obligated to pay or reimburse under the terms of the contract.
 - vi. 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.
 - vii. 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.
2. A copy of the new/acquiring Consultant/Subconsultant's Arizona Corporate Commission (ACC) documentation, reflecting the new name of the Consultant/Subconsultant and that it is in "good standing" and is authorized to do business in the State.

4.10 CHANGE OF KEY PERSONNEL

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. The Consultant acknowledges that the Department relied on this representation and commitment in its selection process and was a key factor in the selection of the most qualified Consultant and award of the contract. The Department does consider changes in Key Personnel seriously and Consultants shall not assume that proposed changes will be accepted. If the changes are considered substantial, the Department may terminate the negotiations or the contract.

The Department will review the Consultant's proposed list of Key Personnel presented in the SOQ and during contract negotiations and will approve the list of Key Personnel assigned to the Contract. The Department's decision as to Key Personnel composition shall be final. No substitution or transfer of personnel, specifically identified in the approved Key Personnel list shall be made without prior written approval by the Department (2 CFR 200.201 (Subpart C) and 2 CFR 200.308 (Subpart D)).

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 a minimum:

1. The Consultant's registered Project Principal/Owner responsible for the overall technical and administration aspects of the Contract;
2. The person in direct charge of the overall project work (Project Manager);
3. The person in charge of each major engineering disciplines of the work (e.g., project engineer for bridge, pavement design, environmental, etc.);
4. Where applicable, the person in charge of overall scheduling of the project work.

The Consultant shall not change any of the Key Personnel assigned to the Contract until it has obtained written approval from the ADOT PM and ECS through a Contract Modification. The Consultant shall notify the Department of a proposed change in the Key Personnel at least 10 calendar days prior to the change and shall inform the Department in writing of the reasons for the change and certify that the overall intent of the contract will not be impaired by the change. The request for a Key Personnel change 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 better than the qualifications of the person being replaced. A supposed need on another project will not constitute justification for a change in key personnel.

The Department shall have the right to approve or reject the proposed successor. The Department will evaluate any proposed change in Key Personnel, and at its discretion, may decide to terminate the contract if in the Department's sole discretion, the Department believes that the project team is materially different because of the change. The Department will make reasonable efforts to make its decision within 30 calendar days of the Consultant's request to change Key Personnel. The request is not approved unless the Department states in writing of its approval of the change. If accepted, the Consultant does not have the right to re-negotiate the labor rate for the wage classification because of the change in personnel. The Consultant is not entitled to any additional compensation associated with any delay in the approval or the Department's non-approval of the change. Failure to provide the Department with notification of a Key Personnel change may result in termination of the Contract, award of damages to the Department and loss of prequalification status.

For Supplemental Service contracts, if the selected individual associated with a supplemental service contract is not able to complete the term of the contract, the Department may terminate the contract. The effective date of termination may be immediate or the Department, at its sole discretion, may request the Firm to furnish a temporary replacement for not more than sixty days or until the new contract can be advertised. The temporary replacement must possess qualifications equal to or greater than the original supplemental service employee. ADOT shall not be charged a higher rate for the temporary replacement than was agreed to in the original contract. ADOT will terminate the old contract when the new contract has been executed. The Department may also choose to continue the contract with the replacement employee, but that is solely at the discretion of the Department.

4.11 CONTROL, UTILIZATION AND DISPOSITION OF PROPERTY OR EQUIPMENT

Unless otherwise stated in the contract, the Consultant is responsible for providing all property, equipment or software to perform work related to the project. The control, utilization and disposition of property or equipment acquired using Federal-Aid Highway Program and State funds shall be determined by ADOT in accordance with the property management standards set forth in 2 CFR 200.313, ADOT Manual - FIN 11.02 and shall follow ADOT's Fixed Assets procedures in both property identification and inventory control processes.

4.12 ON-CALL CONTRACT TASK ORDER ASSIGNMENT

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.

Each solicitation for an On-Call Contract will clearly document the method for awarding project task orders. Under an On-Call Contract, ADOT will award Project Task Orders utilizing the Competitive Negotiation or Impracticable to Advertise (Low Value) Procurement Procedures (See Section [2.04](#) and [2.06](#), respectively). Under Competitive Negotiations Procurement Procedures, ADOT shall award each specific task order to the selected qualified consultants through one of the following options:

- a. On a regional basis whereby the State 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.

Except for Construction Administration services, for ADOT administered On-Call contracts, each task authorization shall not exceed \$500,000 and no contract shall exceed \$2,000,000 per year without the waiver signed and approved by the ECS Manager 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 ADOT. The total duration of the On-Call contract period shall not exceed 5-years and the total contract amount that may be awarded under the contract cannot exceed the maximum contract value specified in the original contract solicitation. After the three (3) year contract limit, if it is determined to be in public's best interest, assignment of new tasks will require the ECS Manager's written approval, before proceeding or the contract will be re-advertised.

For utilization of Construction Administration contracts, the total programmed construction cost for the project shall not exceed \$10,000,000 from the 5-Year Highway Construction Program. Construction Administration contracts are established for three (3) years and may be renewed for an additional year twice, for a maximum of five (5) years, at the discretion of ADOT.

4.13 CONTRACT TIME EXTENSION

A contract Time Extension may be granted to complete unfinished tasks, to allow time for re-advertisement, to complete Post-Design Services and other appropriate circumstances, as determined by ADOT. No work shall be performed or compensated for beyond the expiration date and the contract will be closed unless a time extension is granted.

A Time Extension of no more than 365 calendar days at one time may be requested by the ADOT PM with adequate justification. Each time extension request will require adequate justification and is valid only if approved by the ADOT PM and the ECS Manager. Time extensions for On-Call contracts using Federal-Aid Highway funds beyond five (5) years from the original Notice to Proceed date must be approved by FHWA. All contract Time Extensions will be executed by a Contract Modification.

The issuance of a time extension to a contract shall not provide an opportunity for the Consultant to renegotiate rates or costs for the contracted services. However, if after 5 years a contract is approved to be extended, Consultants can elect to renegotiate their rates and costs established for the contract. Consultants who wish to renegotiate labor rates or costs must initiate the request at time of contract renewal. The new rates/costs will not be applied to previously negotiated and executed task orders, contract modifications or contracted services. The Contract Modification execution date shall be the effective date for all redetermination of costs and shall be applied to future contract modifications only.

4.14 CONTRACT SUSPENSION

Work on a contract may be suspended when extenuating circumstances occur beyond the control of the Consultant or ADOT or when work cannot proceed as expected. Contracts are suspended and released from same, at the discretion of the ADOT PM. For a contract which has been place in suspension, the period of suspension will not count against the contract duration defined in the contract. The Consultant is not entitled to any compensation when a contract is suspended.

Suspending of a contract is confirmed in writing through a Notice of Suspension issued by ECS. The Consultant is advised that no work can be performed and no costs can be incurred while the contract is in suspended status, unless specifically addressed as part of the suspension notice. A contract is released from "suspended" status upon issuance of a written notice by ECS to resume work and through the processing of a Contract Modification by ECS. The Consultant is notified in writing by ECS when work may resume, and informed of the adjusted contract completion date.

4.15 CONSULTANT PERFORMANCE EVALUATIONS

The Consultant Evaluation Program is a vehicle to provide feedback, foster communication, and achieve desired changes or improvements. It provides a means for ADOT to monitor the quality of work done on projects. A positive approach to the program assures that project scope, schedule, cost, and quality of design and construction are attainable, and that potential problems that may impact other projects or the 5-Year Construction Program are identified and resolved in a timely manner.

Consultant evaluations are conducted periodically throughout the life of the project by the ADOT staff involved in the project, in accordance with the contract provisions. The Consultant Evaluations shall be used for the following purposes:

1. To identify the Consultant performance strengths and weaknesses, as well as help identify, document and resolve performance issues, as needed.
 2. Used as one factor or criterion in the selection process for subsequent contracts.
- a. Evaluation Procedures: Consultant's performance on a contract will be performed annually and upon completion of the contract. Annual consultant evaluations will be initiated by ECS on the contract NTP anniversary date. Final consultant evaluations will be initiated by ECS when services on the contract have been completed and prior to contract closeout. ADOT ECS, PMs, Resident Engineers and other applicable staff will assist in the compilation of the evaluation comments.

Consultants shall review the completed evaluations and notify ADOT within 20 calendar days of date published by ADOT if they accept the evaluations or if they wish to appeal the results of the evaluations. If the Consultant fails to reply to the evaluation within 20 calendar days from the date of the evaluation, the evaluation will be final and cannot be appealed, and will automatically become part of the firm's evaluation history.

Final Evaluation scores of 2 and 3 as well as Annual Evaluations are not subject to appeal. A Consultant may appeal FINAL evaluation scores of 1 only. To appeal a score of 1, the Consultant must submit an appeal in writing to the ECS Manager within 20 business days of receipt of the evaluation detailing reasons why scores do not reflect the Consultant's performance for the contract.

The ECS Manager will review the disputed issues with appropriate Group/Section Manager and discuss or meet with the firm to resolve the matter. The ECS Manager will issue a written decision to the Consultant within 10 business days of receipt of the Consultant's written appeal. If the Consultant disagrees with the ECS Manager's decision, the Consultant may appeal the decision to the State Engineer's Office within 10 business days of the ECS Manager's written decision. The State Engineer's Office will review the disputed issues and make a determination on the matter. The decision of the State Engineer's is administratively final.

- a. Consideration of Evaluations: Final evaluations for Contracts executed after July 1, 2010, shall be used as part of the consultant selection process. Up to five (5) points may be deducted from the Consultant's score during the selection process for each final evaluation rating(s) of one (1) on performance factors of evaluation for projects a firm has completed for ADOT over a three-year time period.

Evaluation history to be used for selection shall include evaluation scores encompassing the most current three-year period at any given time. The three (3) year evaluation history shall be maintained for firm

contracts executed after July 1, 2010. For example, a Consultant's evaluation history in FY 2016 would include scores from FY 2014 through FY 2016, in FY 2017, the evaluation history would include FY 2015 through FY 2017.

ECS will deduct points from the scores of submitted Statements of Qualifications (SOQ) for each Consultant based on final performance rating as follows:

Performance rating of 1 on 1-2 evaluation factors	-1 Point
Performance rating of 1 on 3-4 evaluation factors	-2 Points
Performance rating of 1 on 5-6 evaluation factors	-3 Points
Performance rating of 1 on 7-8 evaluation factors	-4 Points
Performance rating of 1 on 9 or more evaluation factors	-5 Points

4.16 ERRORS AND OMISSIONS

ADOT relies on the quality of the services provided by its Consultants selected and contracted with to perform the services. If ADOT determines that the Consultant has made an Error and Omission (E&O) in the work product delivered to the Department under the terms of a contract, Consultant shall make all necessary revisions or corrections resulting from E&Os without additional expense to ADOT. 'Error and Omission' is defined as a deviation from the standard of care on the part of a design engineering consultant in the performance of architectural and/or engineering services under the contract. ADOT and the Consultant shall actively pursue the resolution of E&Os at the lowest possible level within a reasonable timeframe in accordance with Terms and Conditions of the contract and as required by 2 CFR 200.318. No waiver, release or settlement of claims or potential claims against a Consultant shall be valid except when made in writing by a Deputy State Engineer or the State Engineer. ADOT's process for administering Error and Omission claims will be defined in the contract.

4.17 TERMINATION FOR DEFAULT OR CONVENIENCE

a) Termination for Default

The Department may terminate the contract for default under the following circumstances:

- 1) Consultant's failure to perform the services as detailed herein and in any modifications to the contract
- 2) Consultant's failure to complete the contract within the timeframe specified herein and in any modifications to the contract
- 3) Consultant's failure to comply with any of the material terms of the contract
- 4) Consultant's failure to comply with prompt payment requirements specified herein, in the contract and in any modifications to the contract.

If the Department contemplates termination under the provisions of a.1., a.2., and a.3., above, the Department shall issue a written notice of default describing the deficiency. The Consultant shall have five (5) business days, or such longer time the Department states in its written notice of default, to cure such deficiency. In the event the Consultant does not cure such deficiency, the Department may terminate the Contract without further consideration by issuing a Notice of Termination for Default.

The Department may also recover compensation for damages arising from the default or the termination.

If, after the Notice of Termination for Default has been issued, it is determined that the Consultant was not in default or the termination for default was otherwise improper, the termination shall be deemed to have been a Termination for Convenience.

b) Termination for Convenience

The Department may terminate the contract for convenience, in whole or in part, when, for any reason, the Department determines that such termination is in its best interest. The contract termination is effected by notifying the Consultant, in writing, specifying, that all or a portion of the contract is terminated for convenience and the termination effective date. The Consultant shall be compensated only for work satisfactorily completed or costs incurred prior to the termination of the contract. The Consultant is not entitled to compensation for loss of the contract or for lost profits. The amount due to the Consultant shall be based on the terms of the contract.

In the event of termination for convenience, the Department shall be liable to the Consultant only for Consultant's work performed prior to termination and only to the extent and as provided in Section 3 (Consultant's Compensation) of the contract.

c) The Department's Right to Proceed with Work

In the event the contract is terminated, the Department shall have the option of completing the work with its own forces or entering into an agreement with another party to complete services outlined in the contract.

d) Additional Remedies

Additional remedies, sanctions, or penalties may be applied by the Department if terms of the contract are violated or breached. These remedies, sanctions, or penalties will be defined in the contract.

4.18 CONTRACT COMPLETION

When technical review establishes that all phases of the contract have been completed to the satisfaction of ADOT, the ECS Contract Specialist, in partnership with the applicable technical group, completes a written concurrence to initiate the contract closeout phase. The ADOT PM and Group/Section Manager must complete and sign the Contract Status Form (CSF), documenting the completion of contracted work. The ECS Specialist, ADOT PM and the Consultant initiate and publish a final consultant evaluation. The Consultant is notified, in writing (Initial Closeout Letter), of the final closeout procedure which may include submittal of final Progress Payment Report/invoice, deliverables and a final audit, if applicable, of the Consultant's and all Subconsultants' records, including the certificate of payment made to any and all DBE firms for work completed on the contract, if applicable. The Consultant shall submit documentation to explain any discrepancies between actual payments made to DBEs and commitments made to utilize DBEs which were established as part of the original contract. The Consultant's achievement of the goal is measured by actual payments made to the DBEs. The Consultant shall submit the "Certification of Payments to DBE Firms" form for each DBE firm working on the contract. This form shall be signed by the Consultant and the relevant DBE, and submitted in accordance with the contract provisions. ADOT reserves the right to review all records and request additional information as a result of its review. In the event that DBE was not paid in accordance with DBE affidavits, cost proposals, contract modification or other documents submitted by the Consultant, all documentation supporting the Consultant's position as to the reasons why DBE goal was not met or payments made to DBE, shall be submitted with the [Certification of Payments to DBE Firms](#).

The Consultant shall submit all required deliverables in a timely manner and as detailed in the contract. Failure by the Consultant to provide the required documentation will result in sanctions or penalties, as outlined in the contract.

4.19 FINAL AND INCURRED COST AUDIT

Final and Incurred Cost Audit (ICA) of Consultant's costs may be performed by ADOT Office of Audit & Analysis to determine the allowability, allocability, and reasonableness of the contract costs in accordance with the terms of the contract. Information related to final audits can be found in [ADOT Consultant Audit Guidelines](#).

An Audit issued by a Cognizant Agency or CPA must be performed in accordance with generally accepted government auditing standards and tested for compliance with the requirements of the Federal cost principles. A Final and Incurred Cost Audit prepared by a Cognizant Agency or CPA is acceptable for establishing a 1-year applicable period's overhead rate with the concurrence of ADOT Office of Audit & Analysis.

Disagreements related to the results of the ICA draft report shall be addressed or resolved with the ADOT Incurred Cost Auditor within 10 business days of receipt of the draft report. Any issues not previously discussed with the auditor during the draft phase or within 10 business days of receipt of the draft report are waived. The final ICA report will be issued by ECS to the Consultant after ADOT Office of Audit & Analysis review and approval. Only issues identified as part of the draft report will be addressed. Once the final audit report is issued, ADOT will not re-examine any new issues not addressed in disagreements raised during or before the date of the formal Exit Conference with the ADOT Incurred Cost Auditor and the Consultant. Consultants disagreeing with the final ICA report may file a protest within five (5) business days of the receipt of the final audit report and as outlined below:

1. The Consultant may register any disagreements during the draft phase of the audit with ECS Contract Compliance Unit Manager (CCUM) and ADOT Audit & Analysis (A&A). Supporting documentation must be submitted to ADOT within five (5) business days after the issuance of the draft report. An extension, if requested in writing, may be granted at the request of the Consultant or ADOT. No communication or response from the Consultant after five (5) business days shall be regarded by CCUM and ADOT A&A as the Consultant's acceptance of the findings in the draft report and the final audit report will be issued. Once the final audit report is issued, the Consultant has five (5) business days from the date of the ICA letter to concur with the result of the ICA. If the CCUM modifies the Pre-Award Audit or ICA, the rationale for the change shall be documented in the contract file. If a resolution is not achieved, the CCUM sends a letter to the Consultant advising them that the CCUM's decision may be appealed to ECS Manager.
2. The Consultant notifies the ECS Manager, in writing, within five (5) business days from the CCUM's decision indicating that it does not agree with the CCUM's decision. The Consultant has an additional five (5) business days to present, in writing, its justification for disagreement. The Consultant letter shall include a justification of the desired indirect cost (overhead) rate(s). If a meeting is requested by the Consultant to present its argument, the meeting may be attended by its company Accountant /Financial Advisor, representatives from A&A, ECS Manager, appropriate ECS Contract Branch Manager and CCUM. The ECS Manager weighs the information provided by the Consultant and consults with the appropriate ECS Contract Manager, among others, to decide if the indirect cost (overhead) rate(s) or results of ICAs under dispute should be modified or stand as is. The ECS Manager shall notify the Consultant, in writing, of the decision made within 10 business days of receiving the Consultant

information or after a requested meeting has been held. The letter shall include a statement that if the Consultant disagrees with the ECS Manager’s decision, the decision may be appealed to the Deputy State Engineer – Contracts. If the ECS Manager modifies CCUM’s decision, the rationale for the change shall be documented in the contract file.

3. The Consultant shall notify the Deputy State Engineer – Contracts, in writing, within five (5) business days from the ECS Manager’s decision, that it is appealing the ECS Manager’s decision. The letter should outline the Consultant’s position and include any supporting documentation. If a meeting is requested by the Consultant to present its position, the meeting may be attended by its company Accountant/Financial Advisor, representatives from A&A, ECS Manager, assigned Resident Engineer and/or appropriate ADOT Program Manager. The Deputy State Engineer – Contracts weighs the information provided by the various parties to render a decision. The Deputy State Engineer – Contracts issues a final decision and notifies the Consultant, in writing, of the decision made within 15 business days of receiving the Consultant information or after a requested meeting has been held. If the Deputy State Engineer – Contracts modifies any previous decisions, the rationale for the change shall be documented in the contract file. The decision of the Deputy State Engineer – Contracts shall be administratively final. If the final resolution of the disagreement results in the Consultant owing ADOT money, the matter will be forwarded to ADOT Accounts Receivables and the Consultant shall have 30 business days to remit payment to ADOT. If payment is not received within 30 business days, the matter shall be forwarded to the Arizona Attorney General’s Office for further action. If ADOT owes the Consultant, a payment report shall be processed within 30 business days to remit payment to the Consultant.

<u>Level</u>	<u>Consultant</u>	<u>ADOT</u>
1	Submit w/in 5 days of ECS notification	ECS Contract Compliance Unit Manager (CCUM)
2	Submit w/in 5 days of CCUM notification	ECS Manager
3	Submit w/in 5 days of ECS Manager’s notification	State Engineer’s Office

ADOT or the Consultant shall reimburse the other party in accordance with the final ICA results. Failure of the Consultant to reimburse ADOT for overbilled charges based on the results of pre-award or incurred cost audits may result in disqualification of the Consultant in accordance with Section [2.02](#) of this Manual, in addition to other remedies.

4.20 OWNERSHIP OF DATA

All documents, materials and deliverables developed or created by Consultant under contract with ADOT are confidential and considered as property of the State of Arizona for perpetuity. These documents and materials which include, but not limited to, drawings, tracings, specifications, maps, survey notes, reports, photographs and computer programs, shall be provided to the Consultant solely for the purpose of completing the Contract and for no other purposes and shall be delivered to ADOT prior to contract closeout. ADOT-developed software including manuals, electronic information, programs, and associated materials remains the property of ADOT. Consultant shall not assert any ownership rights to these materials and shall not patent or copyright any of these materials or demonstrate the software to other entities. The unauthorized release or use of any of this information is prohibited without written approval from the Department. Evidence of any unauthorized release or use of the

information during or after the contracted services are complete may result in contract termination in addition to other remedies, and the Consultant may be disqualified from submitting on any future proposals or contracts.

4.21 RECORDS RETENTION/DESTRUCTION

The Consultant and its Subconsultants shall 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 shall 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 that ADOT issues a final acceptance to the contractor of the construction project or the design consultant's work is complete as defined in the contract, whichever is later. If any contracted work does not result in a construction project, project records and documents must be retained for 5 years after the consultant's work is complete per the contract, unless otherwise directed by ADOT in the contract or contract closeout documents. ECS will issue a letter to the Consultant notifying them when the work is complete and when the required records retention period concludes. 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.

Failure to retain records in accordance with the contract is a material breach of contract. Further, in case of an audit and the Consultant has failed to retain records in accordance with the applicable contract provision, it shall be presumed that the documents would not have supported the Consultant's position. Therefore, failure to retain such records shall result in the Consultant being required to pay the Department for resulting damages. The Consultant may also be disqualified per Section [2.02](#) of this Manual from submitting SOQ proposals.

Upon completion and final closeout of contracts, project and contract documents and any supporting materials shall be maintained in accordance with ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.

SECTION V – DEFINITIONS

5.01 DEFINITIONS

ADOT

Arizona Department of Transportation; may be used interchangeably with State or the Department

ADOT Group/Section Manager

An individual responsible for management of an ADOT technical function or department, for example, Roadway Design, Right of Way, Statewide Project Management, Urban Project Management, etc.

ADOT Project Manager (ADOT PM)

An Engineer or technical leader of a project or contract

Advanced Authorization (AA)

A written authorization from the State that allows the Consultant to proceed/start work on a contract modification (CM) for services in the modification before the CM has been executed.

Advance Notice to Proceed (ANTP)

A written authorization from ADOT, prior to execution of the contract or contract modification which documents a preliminary scope of work, schedule and preliminary budget for costs associated with the requested services.

Allocable Cost

Cost which is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or equitable relationship.

Allowable Cost

Cost which complies with all of the following requirements:

1. Reasonableness
2. Allocability
3. Standards promulgated by the CAS Board, if applicable, generally accepted accounting principles and practices appropriate to the circumstances
4. Terms of the contract
5. Any limitations set forth in FAR 31.201-2(a)(b)(c)

Architectural and Engineering Services

1. Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
2. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
3. Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.

Audit

A formal examination, in accordance with professional standards, of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allowability, and allocability of costs in accordance with the Federal cost principles (as specified in 48 CFR Part 31).

AZ UTRACS

Arizona Unified Transportation Registration and Certification System (AZ UTRACS); A centralized database of companies that have indicated that they are ready, willing and able to perform work on federally funded ADOT and local government transportation projects in the state of Arizona.

BECO

Business Engagement and Compliance Office; Responsible for ensuring that ADOT, its sub-recipients, contractors and consultants achieve full compliance with all applicable federal regulations related to disadvantaged and small business inclusion, equal and fair employment opportunity in contracting and on-the-job training for women and minorities in the construction trades.

Board of Technical Registration (BTR)

The Board is a regulatory agency for the following professions and occupations: Alarms, Architects, Assayers, Certified Remediation Specialists, Clandestine Drug Laboratory Site Remediation On-Site Workers and On-Site Supervisors, Engineers, Geologists, Home Inspectors, Landscape Architects, and Surveyors.

Brooks Act

Commonly used term for competitive negotiation as specified in 23 U.S.C 112(b)(2)(A), 23 CFR 172.7 (a)(1) and based on 40 U.S.C. Chapter 11, Section 1101-1104, for all federally funded projects. It requires the selection of all federally funded architectural and engineering services be based on competence and qualifications and without regard to price. Contracts are then negotiated at fair and reasonable prices.

Business Day

All days in a month, excluding weekends and State holidays

Calendar Day

All days in a month, including weekends and holidays

Change of Scope

An addition, a reduction, a substitution or a revision in the complexity, character or duration of the services as defined in the original contract.

Cognizant Agency

Means any governmental agency that has performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (as specified in 48 CFR part 31) and issued an audit report of the consultant's indirect cost rate, or any described agency that has conducted a review of an audit report and related work papers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). A cognizant agency may be any of the following:

- (1) A Federal agency;
- (2) A State transportation agency of the State where the consultant's accounting and financial records are located; or
- (3) A State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred in writing by the State transportation agency identified in paragraph (2) of this definition.

Cognizant Audit

Contracting Agencies must accept indirect cost rates established in accordance with the FAR cost principles (48 CFR 31) by a cognizant Federal or State agency, if such rates are not under dispute (as specified in 23 USC 112(b)(2)(C) and 23 CFR 172.7(b)).” Except in the case of error or failure to follow GAGAS, only the consulting firm may dispute a cognizant approved indirect cost rate. An error is defined as a complete misinterpretation of FAR, or simple mathematical errors of calculation.

Compensation Type

Cost reimbursement method to be paid by the Department to the Consultant for services set forth in the contract.

Competitive Negotiation

Any form of negotiation that utilizes the following:

- (1) Qualifications-based procedures complying with 40 USC 1101-1104 (Brooks Act), Title IX of the Federal Property and Administrative Services Act of 1949 (Public Law 92–582, 86 Stat. 1278 (1972));
- (2) Equivalent State qualifications-based procedures; or
- (3) A formal procedure permitted by State statute that was enacted into State law prior to the enactment of Public Law 105–178 (TEA–21) on June 9, 1998.

Compliant Accounting System

An accounting system that properly captures, classifies and summarizes costs allowing for conformance to the ADOT Cost Allowability Guidelines and Generally Accepted Accounting Principles (GAAP), Federal Acquisition Regulations (FAR) Part 31, and applicable Cost Accounting Standards.

Construction Manager at Risk (CMAR)

A project delivery method in which there is a contract for construction services that is separate from the contract for design services. Instead of a single contract for construction services, the Department may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

Consultant

An individual, engineering firm, or other qualified specialized entity having contract(s) with / or contemplating providing services to ADOT to perform professional engineering, design related or specialized services as a party to contract. This term may also refer to Prime Consultant.

Consultant Performance Evaluation

A process in which ADOT monitors the consultant’s work and prepares a consultant performance evaluation (23 CFR 172.9(d)(2)) which may be used to provide feedback on the consultant’s performance, identify areas of improvement, or input into selection of the consultant for future assignments.

Contract

The written procurement contract or agreement between a contracting agency and consultant reimbursed under a FAHP grant, sub-grant, or other funding source and includes any procurement subcontract under a contract.

Contract Award

Upon successful negotiations, contract execution and contract notice to proceed, the Consultant is awarded the contract.

Contract Compliance Unit Manager (CCUM)

The ECS representative who oversees the implementation of administrative and contract compliance functions. This position supervises the Contract Compliance Specialist position.

Contract Execution

Signing of the contract by both ADOT and the Consultant to perform services outlined in the contract.

Contracting Agency

A State transportation agency or a procuring agency of the State acting in conjunction with and at the direction of the State transportation agency, other recipients, and all sub-recipients that are responsible for the procurement, management, and administration of engineering and design related services.

Contract Modification (CM)

An agreement modifying the terms or conditions of an original or existing contract.

Contract Selection

Before the contract is negotiated and signed, and upon successful completion of the Consultant Selection process, ADOT designates a firm as the best qualified proposer for a contract.

Contract Specialist

ECS representative assigned to advertise and administer the contract.

Contract Suspension

An action taken by the State to temporarily stop all or selected services that are included in a contract.

Contract Termination

An action or agreement taken by the State to stop and conclude all or selected services related to a contract before completion.

Costs

Costs means the sum of direct and indirect costs as defined in this section of this Manual.

Cost Accounting System

Part of the basic accounting system that accumulates cost for use in both managerial and financial accounting.

Cost Proposal

The Consultant's written submission of the project requirements which includes a narrative description of the project and proposed services along with a detailed schedule of requested compensation for the work proposed.

Design-Build (DB)

A process of entering into and managing a contract between the department and another party in which the other party agrees to both design and build a highway, a structure, a facility or other items specified in the contract.

Design-Builder

Any individual, partnership, joint venture, corporation, or other legal entity that enters into a Design-Build contract with ADOT.

Design Contracts Unit Manager

The ECS representative who oversees the management of the assigned contracts from specified ADOT work groups. This position supervises the Sr. Procurement Specialist and Contract Specialist position.

Deputy State Engineer (Sr.)

An administrator in the State Engineer's office for ADOT Infrastructure Delivery and Operations (IDO) who reports to the State Engineer and who is designated to act on behalf of the State Engineer in some matters.

Dictionary of Standardized Work Tasks

A compiled list of work activities to be completed by the Consultant during the implementation for a project.

Direct Cost

A direct cost is any cost that can be identified specifically with a particular final cost objective.

Disadvantaged Business Enterprise (DBE)

A for profit small business concern which meets both of the following requirements:

- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

ECS Assistant Manager

The Assistant to the ECS Manager.

ECS Manager

The lead administrator in ADOT responsible for management of the Engineering Consultants Section and who approves contract awards, Notice to Proceed letters, signs contracts and approves any contract modifications, which are exempt from the State Procurement Code.

Electronic Contract Management System (eCMS)

The automated computer system utilized by ECS to manage the engineering consultant contracts.

Emergency

Emergency means 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.

Engineering Design Related Services

As defined in 23 CFR part 172:

- (1) Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project subject to 23 U.S.C. 112(a) as defined in 23 U.S.C. 112(b)(2)(A);
- (2) Professional services of an architectural or engineering nature, as defined by State law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project subject to 23 U.S.C. 112(a) and as defined in 40 U.S.C. 1102(2).

Engineering Consultants Section (ECS)

The section within ADOT, responsible for the advertising, selection, and administration of engineering consultant contracts, which are exempt from the State Procurement Code and for which this Manual applies.

Error

Plan or specification details or contract administration actions which are incorrect, conflicting, insufficient or ambiguous.

Federal Cost Principles

The cost principles contained in 48 CFR Part 31 of the Federal Acquisition Regulation for determination of allowable costs of commercial, for-profit entities.

FHWA

The Federal Highway Administration of the United States Department of Transportation.

Fee

A negotiated dollar amount to compensate the firm for business risk associated with undertaking the contract.

Fixed Fee

A sum expressed in U.S. dollars established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost. The fixed fee percentage (profit) for the contract will be stated in the RFQ package. ADOT shall make the determination of the amount of the fixed fee, considering the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract. The Fixed Fee is not negotiable by the Consultant.

Incurred Cost Audit

An audit of the Consultant's or Subconsultant's actual costs to ascertain the costs' allowability in accordance with the terms of the contract.

Indirect Cost (Overhead) Rate

Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective.

Key Personnel

The Consultant's and Subconsultant's personnel identified in the Statement of Qualifications (SOQs) or elsewhere in the contract, and who are primarily responsible for providing critical services in accordance with the contract provisions.

Liquidated Damages

Amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific event or deviation from the contract terms (e.g., late performance, untimely submission of reports, etc.).

Limited Scope Contract Modification (LSCM)

The LSCM serves as a Contract Modification and authorizes a defined, but limited scope of work, with defined costs (direct/indirect), resources (labor classifications, subconsultants, etc.), and hours

Limited Notice to Proceed

The LNTP serves as the authorization, issued for new Project Specific Contracts for which the contract has not been previously executed but negotiations have begun, authorizing a defined, but limited scope of work, with defined costs (direct/indirect), resources (labor classifications, subconsultants, etc.), and hours.

Management Support Role

Consultant performing engineering management services or other services or actions on the contracting agency's behalf, which are subject to review and oversight by agency officials, such as a program or project administration role typically performed by the contracting agency and necessary to fulfill the duties imposed by Title 23 of the USC, other Federal and State laws, and applicable regulations.

May

Indicates something that is not mandatory but is permissible.

Must

Indicates a mandatory requirement.

Noncompetitive

The method of procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods.

Notice to Proceed (NTP)

A written authorization from the State to the Consultant to start work on a contract or any unit or element of the contract to be performed as specified in the contract after the contract has been signed.

Omission

Plans or specifications or contract administration actions are silent on an issue that should otherwise be addressed in the documents.

On-Call Contract

At the discretion of ADOT, On-Call contracts are used to expedite A&E design projects under \$500,000 and for Construction Administration tasks. On-Call contracts administered by ECS do not constitute a representation of any particular amount of work or guarantee any work will be ultimately assigned.

On-Call Task Order Assignments

After On-Call contract is executed, Task Orders are assigned to the highest ranked prime Consultant first, provided the prime Consultant has the required expertise to complete the assigned task, followed by tasks which will be assigned with the goal of equalizing the cumulative dollar value awarded to every contracted prime Consultant in the On-Call series.

One-Year Applicable Accounting

The annual accounting period for which financial statements are regularly prepared by the consultant.

Post-Design Services (PDS)

The engineering services requested by the department to be performed by the consultant during the construction of a project, after the final design has been completed.

Post-Selection Instruction Package

Instruction Package provided to the Consultant with information and forms needed to successfully negotiate and if awarded, fulfill the terms of the contract.

Pre-Award Review

A review of the Consultant's or Subconsultant's financial information (1) to determine allowability of contract costs in accordance with Federal Acquisition Regulation (FAR, Part 31) and ADOT Cost Allowability Guidelines; and (2) to use for negotiations of billing rates.

Prequalification

The Department's process of review and evaluation of a consultant's qualifications and eligibility, before a consultant is allowed to submit an SOQ proposal or before allowing a consultant to propose on a project during a specific time period.

Prime Consultant

See Consultant definition.

Progress and Work-Hour Report

Monthly report submitted by the Consultant to the ADOT Project Manager of work-hours expended to date on the project by labor categories and design elements.

Progress Payment Report

An invoice for payment of monthly summary of costs billed by category or subcategory, as required by ADOT and submitted by the Consultant to the ADOT PM and ECS for approval and payment.

Project

The Scope of Work defined in the contract between ADOT and the Consultant in which the Consultant is agreeing to carry out specific tasks.

Project Manager

ADOT employee assigned to provide project management services and management support for the timely and cost-effective delivery of a project.

Project Schedule

A tabular delineation of the Consultant's agreed upon schedule of submittals to complete a task or project.

Project Team

A team of professionals proposed by the Consultant to work on the project whose qualifications and experience are factors in the selection of the Consultant for ADOT contracts (The project team may consist of Consultant's Project Principal, Project Manager, Project Engineer, Subconsultants, or other key personnel deemed vital to the completion of the project).

Public Private Partnerships (P3)

An agreement formed between the Department and a Private Entity pursuant to ARS Title 28 that allows for greater private sector participation in the delivery and financing of eligible facilities rather than by traditional delivery methods.

Reasonable Cost

Cost which does not exceed that which would be incurred by a prudent person in the conduct of competitive business. What is reasonable depends upon a variety of considerations and circumstances, including:

1. Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
2. Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
3. The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
4. Any significant deviations from the contractor's established practices.

Registrar of Contractors (ROC)

Agency which licenses and regulates residential and commercial contractors, investigates and work to resolve complaints against licensed and unlicensed contractors.

Resident Engineer

The Resident Engineer is the State Engineer's direct representative in matters relating to construction activities and is responsible for the administration and satisfactory completion of the contract. The Resident Engineer is authorized to determine the acceptability and quality of materials furnished and work performed.

Request for Qualifications (RFQ)

A document which contains project's Scope of Work, a sample contract boilerplate and instructions for responding to a contract solicitation.

RFQ Package

A document which includes all RFQ documentation, referenced material, and amendments associated with the contract solicitation.

Scope of Work

All services, work activities, and actions required of the consultant by the obligations of the contract.

Selection Panel Members

Individuals and partners responsible for reviewing and selecting Consultants for advertised projects.

Shall

Indicates a mandatory requirement.

Should

Indicates something that is recommended but not mandatory.

Small Purchases ("Low Value")

The method of procurement of engineering and design related services where an adequate number of qualified sources are reviewed and the total contract costs do not exceed an established simplified acquisition threshold.

Sr. Procurement Specialist

The ECS representative who oversees the management of the assigned contracts from specified ADOT work groups. This position supervises the Contract Specialist position.

Statement of Qualifications (SOQ)

The Consultant's written communication, expressing its interest and qualifications to be considered for selection to perform services on proposed contract/project.

State

The State of Arizona or the Department.

State Engineer

The Department's Director for the Infrastructure Delivery and Operations Division per A.R.S. § 28-6901(3).

State Transportation Agency (STA)

The Department or Agency maintained in conformity with 23 USC 302 and charged under state law with the responsibility for highway construction, and is authorized by the laws of the state to make financial decision in all matters relating to, and to enter into all contracts and agreements for projects and activities to fulfill the duties imposed by 23 USC, Title 23 CFR, and all other applicable Federal laws and regulations.

State Transportation Board

Responsible for establishing a complete system of state highway routes in Arizona, which is granted policy powers by the Governor and serves in an advisory capacity to the Director of the Arizona Department of Transportation. The Board awards construction contracts, monitors the status of construction projects and has the exclusive authority to issue revenue bonds for transportation financing.

Subconsultant

The individual or firm contracted by a consultant to provide engineering and design related or other types of services that are part of the services which the consultant is under contract to provide to a recipient (as defined in 23 CFR 200.86) or sub-recipient (as defined in 2 CFR 200.93) of Federal or State assistance.

Supplemental Services consultant

Individual consultant retained via contractual agreement with ADOT to perform contracted services as a representative of and the direct supervision of the Department.

Time Extension (TE)

An agreement that extends the contract time to complete unfinished tasks or projects.

Will

Indicates a mandatory requirement.

SECTION VI – APPENDICES

6.01 APPENDICES

1. AZ PROCUREMENT CODE – A.R.S. § 41-2501 (J)
<http://www.azleg.gov/ars/41/02501.htm>
2. BROOKS ACT (Public Law 92-582)
<http://www.azdot.gov/docs/business/brooks-act.pdf>
3. Arizona Revised Statutes (A.R.S.) § 38-503-506, 508, 510
<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=38>
4. ADOT Policies and Procedures PER-6.02
<https://www.azdot.gov/docs/business/adot-conflict-of-intrest-officers-and-employees-policy.pdf>
5. Consultant Participation in ADOT Contracts – MGT 02-3
<http://www.azdot.gov/docs/business/consultants-participation-in-adot-contracts-policy.pdf>
6. Filing a Consultant Protest – MGT 03-2
<http://www.azdot.gov/docs/business/filing-a-consultant-protest-policy.pdf>
7. ADOT Consultant Audit Guidelines
<http://www.azdot.gov/docs/about/adot-consultant-audit-guideline.pdf>
8. AASHTO Uniform Audit & Accounting Guide
<http://www.azdot.gov/docs/about/uniform-audit-and-accounting-guide.pdf>
9. Insurance and Indemnification Requirements
<http://www.azdot.gov/docs/default-source/adot-blog/insurance-requirements-effective-january-2015>
10. Error & Omission by Consultant Policy – MGT 00-2
<http://www.azdot.gov/docs/business/errors-and-omissions-by-consultants-policy.pdf>
11. Pre-Award and ICA Escalation Guideline
<http://www.azdot.gov/docs/business/pre-award-ica-escalation-guideline.pdf>
12. Cost Proposal Preparation Guidelines
<http://www.azdot.gov/docs/business/cost-proposal-preparation-guidelines.pdf>
13. FAR Part 31
<http://www.acquisition.gov/far/html/FARTOCP31.html>
14. 23 CFR Part 172
<http://www.gpo.gov/fdsys/pkg/FR-2015-05-22/pdf/2015-12024.pdf>
15. 49 CFR Part 26
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02

16. DBE System

<https://adot.dbesystem.com>