

## **CHAPTER 14**

# **PROFESSIONAL SERVICES CONTRACT SELECTION AND AWARD (CONSULTANT CONTRACTS)**

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## 14.1 OVERVIEW

A LA may use consultant services for a variety of tasks in the LAP including, but not limited to: planning; project development; preparation of design plans, specifications, and estimates; and CEI. The Department must ensure that when a LA seeks Federal-aid reimbursement for consultant services, the LA is in compliance with the procedures in this **Manual, Section 287.055, Florida Statutes (F.S.), 23 CFR 172, the Federal Brooks Act (40 USC 1101-1104)** and other applicable Federal and State regulations. The LA shall use the [LAP Checklist for Federally Funded Professional Services Contracts \(Form No. 525-010-49\)](#) and may use the Department's [Professional Services Procurement Manual \(Topic 375-030-003\)](#) as references for developing procurement procedures for LAP projects.

**Chapter 14** identifies the most common Federal and State contract requirements for professional services procurement and contract award. The chapter is not inclusive of all State and Local laws, requirements, or policies. Where Federal law and State law are in conflict, the LA must follow the most restrictive requirement, except in cases where the State or Local requirement is in direct violation of Federal requirements (e.g., local preference ordinances). Professional services phases of work **not** funded with FAHP funds are subject to State procurement laws and are not applicable to **Chapter 14**.

A LA's consultant acquisition process may **not** proceed beyond contract negotiations, prior to receipt of the FHWA authorization and a NTP from the Department. Work performed prior to Federal authorization of the funding and the date of the NTP issued by the Department is not eligible for Federal-aid or State funds participation. Once Federal authorization and Department concurrence is received, the LA may execute the consultant contract. Due to the variation in each LA's procurement process, project specific monitoring requirements will be identified by the District and provided to the LA at the onset of each phase of project delivery. Project specific monitoring is defined throughout **Chapter 14**.

If a LA chooses to retain a consultant at its own cost, the LA shall conform to procurement law pursuant to **Chapter 287, F.S.** Locally funded professional services phases of work where the contract was not procured in compliance with **23 CFR 172** may not be used as a "match" or non-Federal cost share for future phases of FAHP projects.

## 14.2 CONSULTANT QUALIFICATIONS

Qualification requirements shall match the detailed project scope of services. General consultant services (management support) or "umbrella" contracts for all engineering services, without a defined scope of work, are not allowed under **23 CFR 172.9(a)**.

### 14.2.1 Department Prequalified Consultants

LAs are required to use consultants prequalified by the Department for LAP Classification A, B, and C projects, as defined in **LPM Chapter 17.4**. Qualifications must be defined in the project advertisement or request for qualifications (RFQ), and request for proposal (RFP) documents (definitions provided in **Chapter 14.5**). **Chapter 14-75** of the **Florida Administrative Code (F.A.C.)** establishes minimum qualification standards by type of work for consultants. Prequalification requirements for sub-consultants are determined by the LA advertising the project, per **Chapter 14-75.003 subparagraph 3, F.A.C.** A link to **Chapter 14-75, F.A.C.** and a complete listing of Department prequalified consultants may be found on the Office of Procurement's website on the [Professional Services Prequalification page](#).

The definitions for "work group" and for "type of work" are provided in the [Department's Procurement Manual \(Topic No. 375-030-003\) Chapter 1](#). It is not sufficient to include a work group in the advertisement. The LA specifies the type of work (aka "work types") requested as categorized under each work group. The LA determines assignment or appropriateness of advertised work types, both major and minor, based on the scope of services or anticipated contract activities. The District LP project manager may assist with determinations as needed, but ultimately the LA is responsible for determining the minimum qualifications required for the contract activities. The RFP must include instructions on which work types must be met by the prime and which work types may be met by a subconsultant as needed. The Department's **Procurement Manual (Topic No. 375-030-003)** requires that the prime consultant must be technically prequalified in at least one or more of the major types of work specified in the advertisement and that each prime or subconsultant performing a standard type of work on a contract must first be qualified in that type of work.

Verification of qualification status using the Department's prequalified listing is insufficient. Each consultant firm prequalified by the Department is issued a "*Prequalification Letter*" from the Department's Procurement Office annually. A consultant firm's current prequalification status must be verified to the LA using the official *Prequalification Letter* issued to each firm. Each firm shall provide a copy of the Department issued letter to the LA for each contract award, for the prime consultant, all prequalified subconsultants, and peer review firms.

### 14.2.2 Local Agency Qualified Consultants

The LA may use its own consultant prequalification or qualifications process for LAP Classification D projects, also commonly referred to as "off-system" or local system projects. Qualifications requirements for Federal-aid projects must be consistent to ensure fair competition in the selection process. A description of the prequalification process must be clearly defined in each procurement document issued for Federal-aid projects, unless using the Department's prequalification process described in **Section 14.2.1**. The LA must "*provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services*

to be rendered” [(23 CFR 172.7(a)(1)(ii)].

### 14.3 CONFLICT OF INTEREST

Conflict of Interest is addressed in **23 CFR 1.33** and in **Sections 337.14 and 287.057 Florida Statutes**. A LA must adhere to the Florida Department of Transportation’s **Topic No. 375-030-006 [Conflict of Interest Procedure for Department Contracts](#)** for all projects partially or wholly funded by the Department.

LAs must include [Conflict of Interest Certification/Confidentiality Certification For Consultant/Contractor/Technical Advisors \(FDOT Form No. 375-030-50\)](#), in each RFQ or RFP and collect the forms from each consultant firm that submits a proposal as a key component of the qualifications-based selection process. Each LA staff member who participates in the selection process for Department funded professional services contracts shall certify the appropriate version of **FDOT Form No. 375-030-50** that defines their role in the selection process. The forms must be uploaded into **GAP**. District LP staff will review the forms received from both the consultant firm and the LA staff in **GAP** as part of their contract award concurrence process.

Allowing the EOR to perform CEI services on the same project funded by the Department is in violation of **Section 337.14, F.S.** and Department Procedure **Topic No. 375-030-006**.

The Office of Construction maintains [Conflicts of Interests - Frequently Asked Questions](#) to assist with further clarification where conflict may arise in the life cycle of a transportation project. Any exceptions to the Department’s **Conflict of Interest Procedure** shall be requested in writing and approved by the District Secretary where the project is located before the consultant firm responds to the project solicitation.

#### 14.3.1 Local Agency Conflict of Interest Procedures

The LA must ensure there are compensating controls in the form of policies, procedures, practices, and other safeguards to guarantee a conflict of interest does not occur in the procurement, management, and administration of consultant services and must include contract provisions specifying contracting agency requirements pertaining to conflicts of interest, as specified in **23 CFR 1.33** and the requirements of **23 CFR 172.7(b)(4)**, **LAP Agreement Section 14.f.** and as detailed in the **LAP Professional Services Checklist, Requirement No. 5**. The FHWA Program Administration website provides [questions, answers, and examples of controls](#). Conformance with **23 CFR 1.33** and **s. 287.057 F.S.** is the responsibility of the LA.

## 14.4 METHODS OF PROCUREMENT

The procurement of professional consultant services for FAHP funded contracts directly related to a highway construction project shall be subject to the provisions of **23 USC 112(a)** and shall be conducted in accordance with one of three methods:

- 1) **Small purchases**, also known as simplified acquisition
- 2) **Competitive negotiation**, also known as qualifications-based selection
- 3) **Noncompetitive** procurement, under specific conditions:
  - Emergency repairs
  - After solicitation, it is determined inadequate competition exists
  - Service is only available from a single source (LA must first attempt to procure competitively before single sourcing). This action requires a PIF approved by the Department.

Non-competitive procurement requires prior approval from the District LP Administrator on a project specific basis and will not be discussed in detail in **Chapter 14**. Contact your District LP Administrator for additional information, as needed. Applicable State laws, regulations, and procedures which are not in conflict with applicable Federal laws must be followed.

**Chapter 14** describes the processes for the competitive negotiations and small purchases procurement methods in detail. Contracts that may be procured under these methods include:

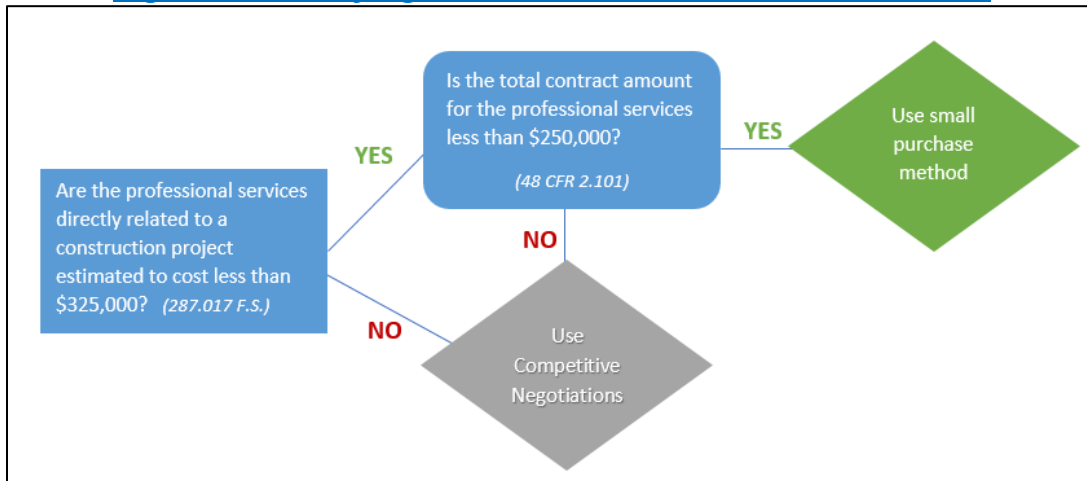
- **Project specific contracts** for the performance of services as detailed in the scope of work related to a specific project or projects.
- **Multi-phase contracts** for project specific services where the detailed scope of work is divided into phases, which may be negotiated and authorized individually as the project progresses (example: Design and Post Design phases of work).
- **On-call or indefinite delivery/indefinite quantity (IDIQ) contracts** for continuing services where performance is defined by the scope of services for an undefined number of projects. Task work orders for a detailed project specific scope of services are issued as needed for an established contract period.

### 14.4.1 Small Purchases or Simplified Acquisition Process

When a project meets the criteria established in **Category Two or Category Five**, as set forth in **s. 287.017, F.S.**, the project can be exempt from formal advertising and selection using the “Small Purchase” process. In the event a contract is procured under the small purchase criteria, the total fee cannot exceed the appropriate limits established in **48 CFR 2.101**, or the State limit, whichever is lower at the time of the review. Although exempt from formal advertisement, **a minimum of three qualified consultants are evaluated and ranked in order of qualifications**. Once the LA has contacted no less than three consultants and selected the most highly qualified, the LA must conduct negotiations as described in **Section 14.7**. The small purchase procedures may be used under the

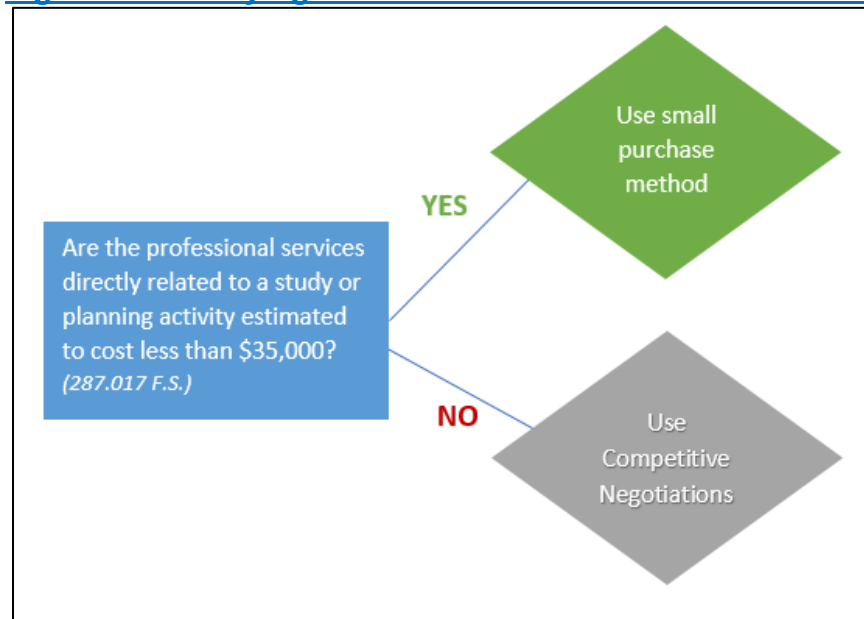
following two conditions illustrated in **Figure 1** and **Figure 2**.

**Figure 1: Identifying the Procurement Method Condition 1**



*Note: A FHWA Memorandum issued December 3, 2018 increased the threshold to \$250,000 in advance of its inclusion in the Federal Acquisition Regulation (FAR) definitions at 48 CFR 2.101. The memo is found here: <https://www.fhwa.dot.gov/federalaid/services/181203.cfm>.*

**Figure 2: Identifying the Procurement Method Condition 2**

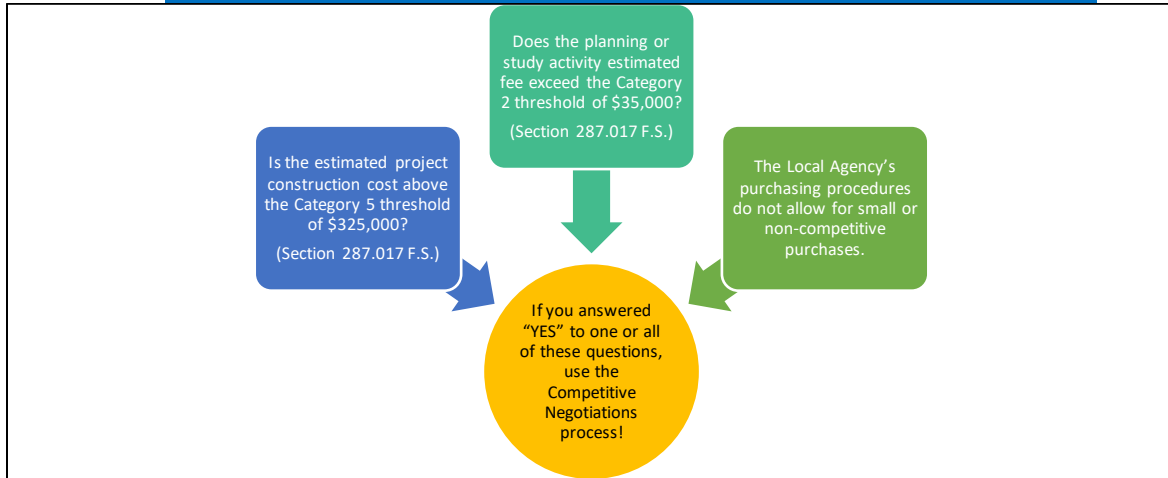


*Note: The State threshold of \$35,000 per study or planning activity is the lesser when compared with the Federal threshold; the State threshold is the limiting factor.*

## 14.4.2 Competitive Negotiations/Qualifications-Based Selection

Competitive negotiations procurement of professional services applies as illustrated in **Figure 3** on the next page. Competitive negotiations process involves a number of steps that lead to the final procurement of a professional services contract.

**Figure 3: When to Use the Competitive Negotiations Method?**

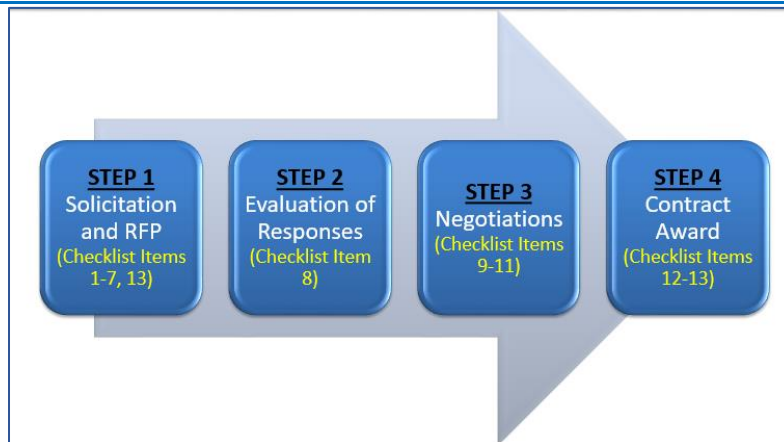


### 14.4.3 LAP Checklist for Professional Services Contracts

Once a procurement method and contract type is identified, the LA shall draft the RFP and/or the RFQ packages, based on the **LAP Checklist for Federally Funded Professional Services Contracts (FDOT Form No. 525-010-49)**. The draft documents shall be submitted to the District LP Administrator via **GAP**. The District LP Administrator confers with functional area experts as necessary to complete their review of the documentation. The final procurement package, as advertised, is uploaded into **GAP** by the LA.

The **LAP Checklist for Professional Services** is organized by common procurement process methodology as follows in **Figure 4**.

**Figure 4: LAP Professional Services Checklist and the Procurement Process**



The **LAP Checklist for Professional Services Contracts** identifies:

- the requirements described in this chapter,
- the related compliance documentation the LA shall retain or submit to the Department, and
- the District LP staff's monitoring responsibilities for each procurement action.

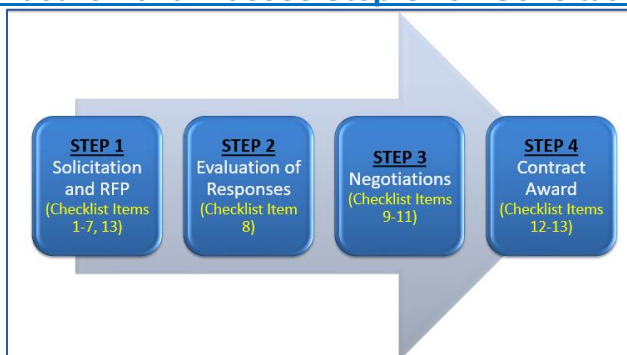
**DID YOU KNOW?**

The LAP Checklist does not include all applicable local, state, and federal laws, rules, or requirements. The LA is responsible for complying with current laws, rules, and regulations within each procurement action, or addressing conflicts within each procurement action and documenting justification for the LA's process.

District monitoring requirements may exceed the responsibilities identified on the Checklist as necessitated by the level of risk to the Department with each LAP project. The responsible LA staff person must execute the Checklist and certify the procurement action complies with Federal and State requirements. By executing the Checklist after the LA, the LP Administrator certifies the District monitored the procurement action and verified to the best of their ability that the LA's procurement action complies with Federal and State requirements as defined in this Chapter and on the Checklist.

## 14.5 PROCUREMENT PROCESS - STEP ONE

**Figure 5: Procurement Process Step One - Solicitation and RFP**



### 14.5.1 Project Solicitation(s)

The solicitation shall:

- Publicly announce projects in a uniform and consistent manner pursuant to **Section 287.055(3)(a)1, F.S.** and **23 CFR 172.7(a)(1)(i)**.
- Announce projects via a public forum (e.g. newspaper advertisement, ad service, etc.) that *“assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract”*.

- Be posted for a minimum of **14 days** and contain a submittal deadline. In unusual circumstances, the State LP Administrator *and* FHWA may provide exceptions to the 14-day minimum requirement. Requests for exceptions must be sent in writing to the District LP Administrator who will seek approvals accordingly.
- Addenda to the solicitation shall be submitted to the District LP Administrator for review and concurrence prior to issuance. This is to ensure compliance with the requirements and the project maintains Federal-aid eligibility.

The procurement officer or point of contact for questions regarding the solicitation must be a single individual who will not serve on the selection committee (reference **Section 14.6, Figure 7**).

The solicitation method utilized by the LA determines the information required to be published in the public announcement, as shown in **Table 1**. Either of the Single-Step or Two-Step processes are acceptable, but issuance of an RFP as the tool to evaluate consultants per **23 CFR 172** is a required step in the LA's process. The two-step or additional issuance of an RFQ document is optional.

**TABLE 1: Required Contents of Public Solicitations for LAP Projects**

Single-Step Process or Request for Proposal (RFP) Process	Two-Step or Request for Qualifications (RFQ) Process
<ul style="list-style-type: none"> <li>• General project description</li> <li>• General scope of services</li> <li>• Qualifications requirements, including FDOT Prequalification Work Types if applicable</li> <li>• Consultant response due date</li> <li>• Access to the RFP to all interested consultant firms via website address, email address, telephone, physical address, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed project description</li> <li>• Detailed scope of services</li> <li>• Qualifications requirements, include FDOT Prequalification Work Types if applicable</li> <li>• Evaluation criteria</li> <li>• Description of the procurement process including selection schedule and response due date.</li> <li>• Instructions for how to submit responses by the due date.</li> </ul>

The most common solicitation method LAs use in LAP is a **single step** process issuing a single RFP to all interested consultants specific to the project, task, or service that includes the evaluation method of a consultant's specific technical approach and qualifications. A full description of the RFP requirements is provided in **Section 14.6.3**. Evaluation criteria, a description of the procurement process, and detailed descriptions of the items listed may appear in the RFP versus the solicitation in the single step process.

LAs may also use a **"two-step"**, multi-phase, or longlist process. In step one, the initial solicitation is limited to publication of an RFQ and the responding firms are initially ranked based on the qualifications specified (longlist ranking). The LA evaluates the "longlist" of consultant firms' qualifications based on the responses to the RFQ, generating a

“shortlist” of firms to provide with the RFP. In step two, the LA issues to a minimum of the three (3) most highly qualified candidates the RFP and proceeds with evaluation and final ranking of the shortlisted respondents based on the RFP responses.

## 14.5.2 Request for Proposal Requirements

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

- **Provide a clear, accurate, and detailed scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered**, including:
  - Project purpose
  - Project description
  - Services to be performed
  - Deliverables to be provided
  - Estimated schedule for performance of work
  - Applicable standards, specifications, and policies to the contract.
- **Describe the procurement process.**
  - Include protest procedures pursuant to **Chapter 120.57(3)(a), F.S.**
  - Identify requirements for discussions (optional or mandatory) that may be conducted with consultants following the submission and technical evaluation of proposals. Parameters must be consistently applied for all shortlisted firms. Discussions are not required if technical proposals contain sufficient information to evaluate the consultants.
    - Discussions may be written, by telephone, video conference, or by oral presentation/interview.
    - Requirements for when and how discussions will be conducted must also specify evaluation criteria if they differ from the technical evaluation criteria.
    - Identify the final ranking/scoring process if discussions are held.
  - **Include a schedule of key dates for the procurement process** and establish submittal deadlines that provide sufficient time for interested consultants to prepare and submit a proposal (no less than 14 days). Key dates may include publication date, pre-proposal meeting date, deadline for questions, evaluation or selection committee meeting dates, discussion dates, negotiations meeting dates, contract award date.

### Florida Laws for Public Meetings and Procurement

Public meetings are held when necessary, are properly noticed, and minutes taken or recorded. Under Florida law, sealed bids, proposals, or replies received by a LA pursuant to a competitive solicitation are exempt from public records until the LA provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever is earlier. Oral presentations, negotiations, vendor question and answer sessions, and discussions of negotiation strategies are all exempt meetings. A complete recording shall be made of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording is exempt until such time as the LA provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever occurs earlier, pursuant to **Chapter 286.0113(2)(c), F.S.**

- **Include qualifications-based tie breaker procedures, as applicable.** Tie breaker procedures are not mandatory. Coin toss or preference programs are not acceptable tie breakers on Federally funded procurements. LA tie breaker procedures that include these types of non-qualifications based conditions will need to be amended or removed in order for the procurement procedure to comply with Federal regulation. If the LA chooses not to include tie breaker procedures and a tie occurs during the scoring process, the LA shall be required to re-advertise the contract.

**DID YOU KNOW?**

The Department’s prequalification work types include a minimum number of years of experience to be qualified in each type of work. When applying the Department’s prequalification requirements, the LA must review and mitigate for conflicts in “years of experience required” between the evaluation criteria and F.A.C. 14-75 types of work minimum requirements.

- **Identify evaluation criteria, including weight (or point value) for each criterion, and define each criterion** by specifying what type of information is required for evaluation (i.e. resumes, references, project histories, etc.). The LA may use the same criteria or include separate criteria if both technical review of the proposals and presentations will occur (see also item above). Example criteria are provided in **Table 2**.

**TABLE 2: Examples of Evaluation Criteria Allowed and Not Allowed for Use**

QUALIFICATIONS-BASED CRITERIA, ALLOWED FOR USE	NON-QUALIFICATIONS BASED CRITERIA, NOT ALLOWED FOR USE
<ul style="list-style-type: none"> <li>• Technical approach (e.g. project understanding, innovative concepts or alternatives, quality control procedures)</li> <li>• Work experience</li> <li>• Specialized expertise</li> <li>• Staff capabilities</li> <li>• Workload capacity (based on current volume of work)</li> <li>• Past performance</li> <li>• Locality criterion of no more than 10% with State LAP Administrator and may require FHWA approval. Locality is the distance from the consultant’s managing or field office to the project limits, NOT the LA’s offices.<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Price or cost elements (i.e. salaries, indirect, or direct rates)</li> <li>• In-state or local business preference</li> <li>• Preference for consultant firm location</li> <li>• Purchasing or materials preferences</li> <li>• FDOT Disadvantaged Business Enterprise (DBE) Program,</li> <li>• Other local, minority, small or disadvantaged business programs</li> <li>• Hiring preferences (e.g. homeless, welfare-to-work, veterans)</li> <li>• Exclusionary business preferences restricting competition in specific geographic locations, except those indicated by the US Department of State or US Department of the Treasury.</li> <li>• Equal distribution or rotating of work (based on past or current volume of work with the awarding agency).</li> <li>• Any other <u>non</u>-qualifications based criteria.</li> </ul>

<sup>1</sup>This criterion cannot be based on political boundaries and is established on a case-by-case basis for projects where a need has been established. If a firm currently outside the locality criterion indicates as part of its proposal that it will satisfy the criterion in some manner, such as establishing a local project office, the firm has satisfied the locality criterion.

- **Specify contract type** as defined in **Section 14.4**.
- **Specify method(s) of payment** applicable to the contract per **23 CFR 172.9**.
  - **Lump sum** – A firm fixed price not subject to adjustment due to the actual cost experience of the Consultant in the performance of the contract. Shall

only be used when the agency has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

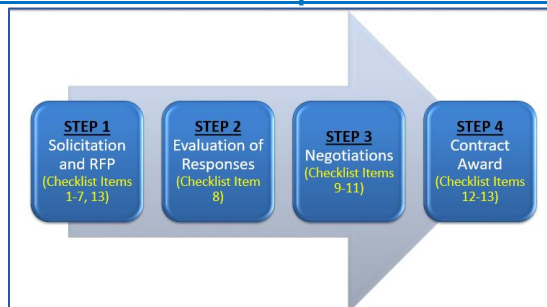
- Cost plus fixed fee or cost per unit of work – Agency shall specify a maximum amount payable or not to exceed amount with contract modification.
- Specific rates of compensation – Rates are established for units of time, usually per hour. Provides for reimbursement based on direct labor hours at specified hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum or not to exceed amount. Shall only be used when it is not possible to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy at the time of procurement. This method should be limited to contracts or components of contracts for specialized or support type services where the consultant is **not** in direct control of the number of hours worked, such as CEI services.

Additional information and definitions regarding Methods of Compensation are found in the [FDOT Negotiation Handbook](#).

- **Identify special provisions or contract requirements associated with services.**
  - Attaching the agency’s boilerplate, template, or draft project related contract to the RFP satisfies the requirement.
  - Reference **Section 14.8** and the **LAP Professional Services Checklist** for required Federal-aid and State contract terms, forms, and certifications to be incorporated as applicable.
- **Require submission of cost proposals or elements of cost be concealed** and separate from the technical/qualifications proposals. *Proposers SHALL NOT be evaluated, ranked, or selected based on cost or price.* Contract prices cannot be listed as “guaranteed” in the solicitation. Contracts must be negotiated and a cost determination completed to ascertain that costs are fair and reasonable.
- **Provide instructions for compliance with the Department’s Disadvantaged Business Enterprise (DBE) Program** including reporting of Bid Opportunity and DBE Commitments and Payments in the Department’s **EOC** web-based application (**FDOT Form No. 275-030-11**). Detailed information on how to comply with the Department’s DBE Program is located in **Chapter 11**.

## 14.6 PROCUREMENT PROCESS - STEP TWO

**Figure 6: Procurement Process Step Two - Evaluation of Responses**



### 14.6.1 Consultant Responses

A minimum of three (3) qualified responses are required when utilizing each method of procurement. If the LA does not receive a minimum of three (3) qualified responses, contact the District LP Administrator for additional guidance. The solicitation period may need to be extended or the project may need to be re-advertised. A LA may not move forward with the evaluation and selection process when less than three (3) qualified responses are received without approval in writing from the State LP Administrator. Approvals will require justification from the LA why it is not possible to receive adequate competition on the contract award.


### 14.6.2 Qualifications Verification

Upon receipt of the responses to the solicitation, the LA shall verify consultant and identified subconsultants' qualifications and disqualify those respondents not meeting the minimum qualifications requirements as set forth in the solicitation. Department prequalified consultants are required as specified in **Section 14.2**. Records of the verification process shall be maintained in the LA project file. Examples of common documentation include a copy of the Department issued *Prequalification Letter(s)*, professional license(s), insurance certifications, etc. The documentation shall include the [Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal-Aid Contracts \(FDOT Form No. 375-030-32\)](#) and corresponding verification of suspension debarment information performed by the LA (reference **LAP Checklist for Professional Services, Requirement No. 6**).

### 14.6.3 Ranking Qualified Consultants

The LA shall rank, in order of preference, a minimum of three (3) consultants determined to be most highly qualified to perform the services based on the established and published evaluation criteria. All staff in a decision making or recommendation capacity must be free from conflicts of interest, or have recused themselves where conflicts exist (**23 CFR 1.33; Topic 375-030-002, Section 1; LPM Chapter 14.3**).

**Figure 7: Florida Department of Management Services Florida Certified Contract Manager Training**

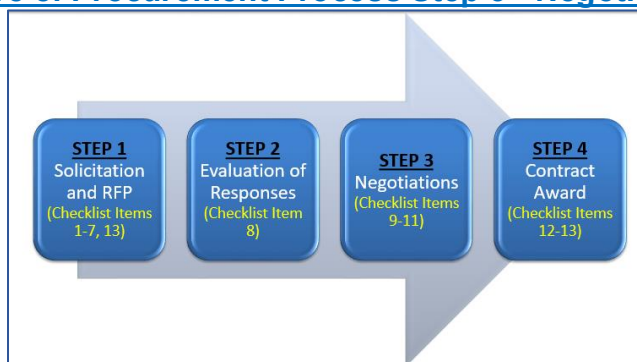
 Online Modules  Ethics  Stage 1  Stage 2  <b>Stage 3</b>  Stage 4  Stage 5	Stage 3 Review – Evaluation/Negotiation Team  Should the procurement officer serve on the evaluation team? <ul style="list-style-type: none"> <li>• No – they shouldn't</li> </ul> If the solicitation is a Category Four or higher, how many members must be on the evaluation team? <ul style="list-style-type: none"> <li>• Minimum of 3 (§ 287.057(16)(a), Florida Statutes)</li> </ul> Once a competitive solicitation is released, members of an evaluation team or a negotiation team cannot discuss proposals or replies outside of a public meeting. Not even through informal phone calls or through email.
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The LA shall submit raw, individual, and/or consolidated ranking or scoring sheets to the District LP Administrator for review, for each evaluation conducted by technical or selection committee members. Department concurrence to enter into negotiations with the most highly qualified consultant cannot be issued until rankings (and an independent staff hour estimate as described in **Section 14.7**) have been reviewed by the District staff.

LAs are required by Florida laws to properly notice and/or record selection committee meetings pursuant to **Chapter 286.0113(2)(c), F.S.** and maintain all such records in the LAP project file(s). The Department (and other interested parties per the LAP Agreement) reserve the right to request documentation of all meetings held in conjunction with the selection and award of Department-funded contracts.

## 14.7 PROCUREMENT PROCESS - STEP THREE

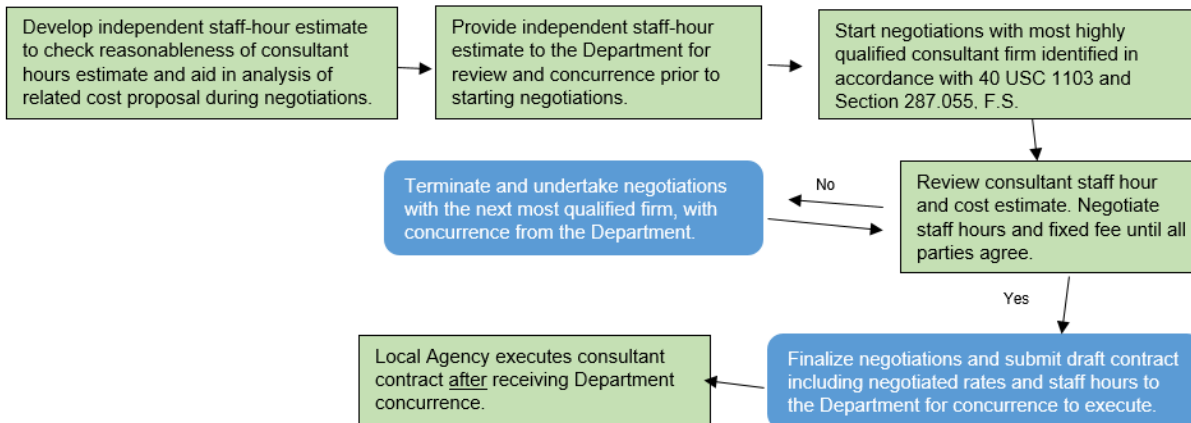
**Figure 8: Procurement Process Step 3 - Negotiations**



### 14.7.1 Negotiations Overview

**Figure 9** provides an overview for negotiating the consultant agreement including basic steps and related decision points encountered during the process.

**Figure 9: Negotiations Process Overview**



The LA negotiator uses all resources available to conduct effective negotiations. These include, but are not limited to, the independent staff hour estimate, the refined scope of work, and the evaluation factors and their relative importance.

## 14.7.2 Negotiations Resources for LAP Projects

Definitions for terms used in **Section 14.7** are provided in the [LAP Negotiations Quick Reference Guide](#). The Guide provides detailed information on each element of a consultant audit package and to aid in compliance with Federal and State requirements. The Guide includes: alternate names used by LAs for each element, detailed definitions, whether the item is negotiable or not, how a LA would verify what a consultant provided them for that item, variations in the process for that item that can occur or that have occurred and are not allowed, examples of each item, and resources available for that item.

The LA [Negotiations Verification Process flowchart](#) is a partner tool to be used with the LAP Negotiations Quick Reference Guide. This document illustrates the “yes” “no” decision-making process a LA uses to verify and document the negotiations process. The Department does not request or retain complete negotiations records for LAP projects; therefore, it is the responsibility of the LA to have this information available upon request.

The [LAP Consultant Fee Mock Up](#) spreadsheet is a multi-use tool that can be used to develop independent staff hour estimates and actual contract costs. Use of the LAP Consultant Fee Mock Up is a recommended best practice and may be required by your District. The tool is required for use to verify the operating margin to fixed fee conversion. See **Section 14.7.5** for detailed information on fixed fee.

The LA may request the consultant submit their cost proposal using the Department’s **Automated Fee Proposal (AFP)** worksheet. The AFP may or may not correspond to the LA’s method of calculating loaded rates; therefore, the LA should consult the [AFP LAP Guidance](#) document posted to the LAP Professional Services webpage to determine if this tool is useful for them.

Additional resources are available on the [LAP Professional Services webpage](#).

### 14.7.3 Independent Staff Hour Estimates

- The LA must develop an independent staff hour estimate prior to receipt or review of the consultant's proposal. The estimate is intended to check the reasonableness of the consultant estimate and conduct an analysis of costs proposed by the consultant.
- Estimates must include appropriate breakdown of the work or labor hours, job classifications, direct costs, and indirect rates including fixed fees for the defined scope of work for both prime and subconsultant tasks as applicable.
- A copy of the independent staff hour estimate shall be uploaded to **GAP** for Department review prior to entering into negotiations with the most highly qualified consultant. Documentation of Department's concurrence to enter into negotiations must be placed in the project file.
  - The independent estimate must be resubmitted for concurrence if revisions to the document occur after the Department's initial concurrence. Audit findings show that LA's with longer periods of time between initial concurrence with the estimate and negotiations with a consultant firm result in revisions to the independent estimates that have not been reviewed by the Department's LP Project Manager.

The Department offers various resources for the LA to use in developing independent staff hour estimates.

- Best practice is to use the [LAP Consultant Fee Mock Up](#) spreadsheet posted to the [LAP Professional Services webpage](#). Districts may require the use of this tool.
- The LA may use the Department's [Consultant Wage Rate Report](#) to view direct wage averages for job classifications.
- The LA may use average indirect cost rates provided in the Department's **Negotiation Handbook**.
- The LA may use the Department's **Operating Margin Justification Form No. 375-030-82** to estimate the operating margin also known as fixed fee for the project. See **Section 14.7.3** for definitions.
- The LA may also access sample scopes and a man hour estimating spreadsheet here: <https://www.fdot.gov/designsupport/Scope/>.

### 14.7.4 Consultant Audit Packages

Consultant Indirect Cost Rate audits are required annually to be performed by a certified public accountant and are supported with a Contractor Cost Certification form completed by the Consultant's Certifying Official. The audit is performed in accordance with generally accepted government auditing standards to test compliance with the requirements of **FAR Part 31** and applicable Cost Accounting Standards. LAs shall use the consultants' Department approved indirect cost rates established by an audit report prepared by an independent Certified Public Accountant, or a Federal or State agency. The Department

uses the “*Prequalification letter*” to establish the approved rates on an annual basis and the LA is required to use the rates established in this letter. *Prequalification letters* have an annual expiration date. *Prequalification letters* that expire during the LA’s negotiations period and prior to contract execution with the LA may not be used to establish contract rates. The LA must obtain the new *Prequalification letter* from the consultant prior to contract execution.

Contact the State LP Administrator for assistance if a consultant is self-certified or does not have Department approved audit rates. The Department’s State Procurement Office may have a self-certification on file if the consultant has submitted self-certification information within the past 12-month period.

**DID YOU KNOW?**

The LA is required to use FDOT’s (cognizant agency) approved indirect rates as provided on the FDOT prequalification letter even when FDOT’s prequalification is not required in the RFP?

“(ii) Contracting agencies shall accept a consultant’s or subconsultant’s indirect cost rate(s) established for a 1-year applicable accounting period by a cognizant agency ...once the most highly qualified consulting firm is identified, contracting agencies must use the consulting firm’s cognizant approved indirect cost rate, or rate accepted for use by the contracting agency if a cognizant approved rate does not exist...”

The contracting agencies shall apply these approved indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative or de facto ceilings (shall not be capped). A lower indirect cost rate than the audited rate may be used if submitted by the consultant firm; however, the consultant’s offer of a lower indirect cost rate shall not be a condition of contract award. The LA is responsible for documenting all deviations from the audited rates. If all parties are in agreement, the consultant’s approved audited rates may be applied to a period beyond one-year on the contract.

**The LA shall maintain records of the consultant’s audit package in their project files and only transmit the information to the Department upon request.** Consultant audit packages contain confidential cost data and must be protected in compliance with **23 USC 112(b)(2)(E)** and **23 CFR 172.11(d)**. The LA’s staff and the Department’s staff managing LAP projects must not share, transmit, or upload confidential cost data via unsecure methods. Confidential cost data cannot be shared with other consultant firms or their staff, including those working under contract for the LA or the Department. Security protocols in **GAP** limit user access to the documents uploaded under “Negotiations Documentation” and “Professional Services Contracts” to LA, Department, and FHWA staff user roles. **GAP** is an acceptable method of storing and transmitting documents upon request to Department and/or FHWA staff due to the security feature.

Consultant audit packages generally include:

- **Overhead Rates** – Indirect cost rate derived from costs of items attributed to “overhead” or non-project specific costs.

- **Direct Expense Rates** – Audited rate that is used in place of reimbursing direct expenses. When the Consultant is reimbursed on the basis of an audited direct expense rate (as referenced in the FDOT *Prequalification letter*), the consultant firm shall not be reimbursed for itemized direct expenses on the contract. If the consultant does not have an audited direct expense rate, the LA may reimburse for actual expenses. Review the Department’s ***Negotiation Handbook*** for a complete definition of what types of expenses are included in the direct expense rates.
- **Facilities Capital Cost of Money (FCCM) Rates** – Audited rate derived from costs associated with the consultant’s investment in fixed assets. Not all consultant firms have an audited FCCM rate. If this is the case on your project, as evidenced by the FDOT *Prequalification letter*, FCCM would not be included in the multiplier calculation for the contract.
- **Direct Salary or Wage Rates** – Direct salary rates are not negotiated per **23 CFR 172.11(b)(2)** but must be supported in the form of payrolls or other documentation of direct wages for each employee. Negotiating or averaging direct salary rates is not allowed. If multiple employees will serve under one job classification on a specific contract, then the LA may average only those employees’ direct salary rates performing services on that contract. The consultants’ direct wage rates for CEI services may not be limited or capped to the 75<sup>th</sup> percentile.
- **Consultant Fee Schedule** - List of pay items for defined services measured in unit prices; each consultant firm publishes a unique fee schedule of prices for the services. These fees may be negotiated.

### 14.7.5 Negotiating Fixed Fee

In accordance with **23 CFR 172.3**, the definition of fixed fee is “*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*”. Fixed fee shall be negotiated based on the scope and complexity of the project and must be contract or task-specific. Fixed fee must not exceed 15% of the total direct labor and indirect costs of the contract or task order. The methodology for calculating fixed fee is different from the Department’s methodology for calculating operating margin. In accordance with the Department’s ***Negotiation Handbook***: “*Operating margin in Department contracts is calculated as a percentage of direct salaries. The percentage is negotiated within a range of 12% to 42%. The resulting dollar amount is the “fixed fee” portion of a cost plus fixed fee type contract or becomes part of the total fixed price in a lump sum agreement, or part of the fully loaded billing rate.*” Fixed fee is an amount. Operating margin is a percentage that is applied to direct labor, resulting in a fixed fee amount.

Fixed fee must be negotiated between the LA and the prime and each subconsultant performing work on the contract. Best practice is for both parties to use the Department’s ***Operating Margin Justification Form No. 375-030-82*** to estimate and then negotiate an operating margin. The form will calculate operating margin in the range of 12% to 42%. Due to the differing methodologies for calculating fixed fee and operating margin, the Department developed a conversion tool that automatically determines if the negotiated

operating margin exceeds the Federal threshold of 15%. Justification and approval must be received from the State LP Administrator when fixed fee exceeds 15%. FHWA may provide additional approvals on select PODIs.

The fixed fee conversion tool is located in the [LAP Consultant Fee Mock Up](#) spreadsheet posted to the [LAP Professional Services webpage](#).

## 14.7.6 Finalizing Negotiations

Upon concluding negotiations with the most qualified firm, the LA submits a request to the District LP Administrator for concurrence to execute the consultant agreement or contract. The District LP Administrator confers with functional area experts as necessary to complete their review of the documentation. The LA shall not execute a contract or issue its NTP until concurrence is obtained, in writing, from the District LP Administrator. If work is performed prior to concurrence and/or a NTP from the District LP Administrator, the contract shall not be eligible for Federal reimbursement. The LA retains all negotiations documentation in their project file and must make it available upon request to auditing agencies and the public.

## 14.8 PROCUREMENT PROCESS - STEP FOUR

**Figure 10: Procurement Process Step Four - Contract Award**



### 14.8.1 Required Contract Provisions for Award

Per **23 CFR 172** and **287.055, F.S.**, all required contract terms or provisions shall be incorporated into the professional services contract document for Federal-aid reimbursement eligibility. **Chapter 14** and the **LAP Professional Services Checklist** identify the most common Federal and State contract requirements for professional services procurement and contract award; but they are not inclusive of all State and Local laws, requirements, or policies.

### 14.8.2 Local Agency Compliance with State Requirements

Contracts and subcontracts must contain the following State provisions:

### CONTRACT PROVISIONS REQUIRED BY STATE LAWS OR RULES

- Minimum insurance requirements must adhere to F.S. **LAP Agreement FDOT Form No. 525-010-40, Section 15** requires the FDOT be named as the certificate holder. The prime consultant provides proof of insurance. Self-insured retention is not allowed per the terms of the **LAP Agreement, Section 15**.
- Indemnification and Hold Harmless Clause required by **LAP Agreement, Section 15**.
- E-verify (included in LAP Terms for Federal-Aid Contracts FDOT Form #375-040-84)
- Public Entity Crimes Statement per **287.133 F.S.**
- Local Government Prompt Payment Act Provisions per **Ch 218, Part VII, F.S.**
- Public Access to Public Records Language per **Ch 119 F.S.**
- Records retention for a minimum of five years from date of final payment per the **LAP Agreement, Section 5**.
- Truth in Negotiation certification and contract provision pursuant **to Section 287.055(5)(a) F.S.** for any lump sum or cost-plus-a-fixed-fee professional services contract over the threshold amount provided in **Section 287.017 F.S.** Category Four.
- Cooperation with the Inspector General required by **Section 20.055(5) F.S.** and **LAP Agreement, 17.o.**
- Tangible assets are identified, as needed. If there are no tangible assets contemplated under the contract, this does not need to be addressed in the contract documents.
- Execution of **Affidavit Regarding Labor and Services (Form 375-030-31 Procurement)** as required by a nongovernmental entity every time a contract is executed, renewed, or extended per **787.06(13) F.S.**

Local requirements for conducting business as a drug-free workplace are acceptable for use on Federal-aid contracts. Drug-free workplace must not be used as a tie-breaker on Federal-aid professional services contracts, as it is not a qualifications-based method of evaluation or contract award. Do not use preference language for drug-free workplace as allowed by **287.087 F.S.** in the RFP or contract.

### 14.8.3 Local Agency Compliance with Federal Requirements

Contracts and subcontracts must contain the Federal provisions:

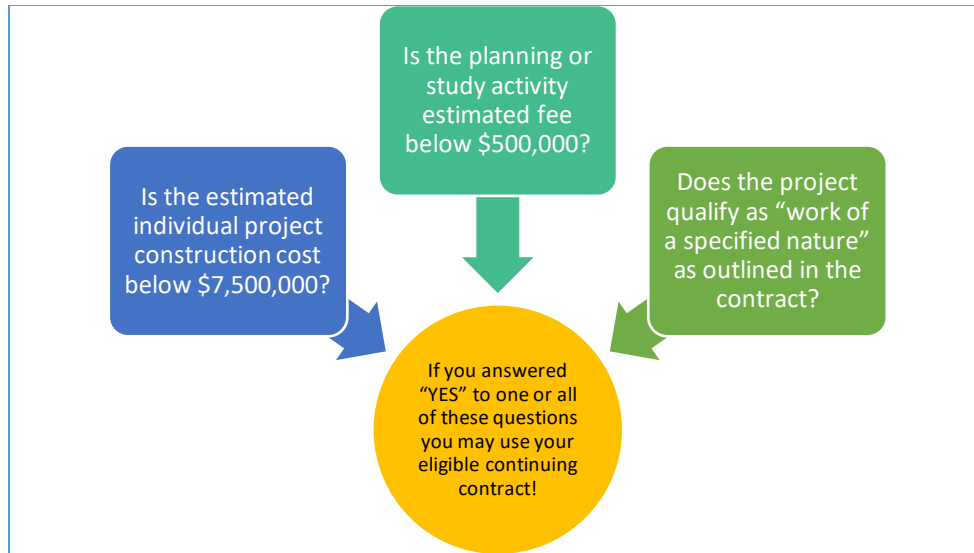
**CONTRACT PROVISIONS REQUIRED BY FEDERAL REGULATIONS, LAWS, OR RULES**

- **FDOT Form #375-040-84 LAP Terms for Federal-Aid Contracts** incorporated. Includes required contract terms and provisions for the following requirements:
  - Access to records by the recipient, subrecipient, FHWA, US DOT OIG, US Comptroller General, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
  - Standard DOT Title VI Assurances- LAP Appendices A and E (DOT Order 1050.2A).
  - Disadvantaged Business Enterprise (DBE) assurance.
  - Prompt pay requirements as specified in 49 CFR 26.29.
  - Provision for notification of change in status to Certification of Debarment, Suspension, Ineligibility and Voluntary Exclusion, as set forth in 29 CFR, Section 29.510.
  - Notice of contracting agency requirements and regulations pertaining to reporting, copyrights, and rights in data.
  - Administrative, contractual, and legal remedies for breach or violation of contract terms and conditions, and provide for sanctions and penalties as may be appropriate.
  - E-verify.
- Termination provisions for cause and convenience including manner and basis for settlement in the event of breach of contract.
- Performance evaluation of the consultant and conditions thereof.
- Determination of allowable costs in accordance with the Federal cost principles.
- Contracting agency requirements pertaining to consultant errors and omissions, separate from any Errors and Omissions insurance requirements.
- Lobbying certification and disclosure (all contracts greater than \$100,000) as specified in **49 CFR 20**.
- **F.A.R. 52.203-5** Covenant Against Contingent Fees: Contract warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee.
- Contracting agency requirements pertaining to conflicts of interest, as specified in **23 CFR 1.33**, **LAP Agreement Section 14.f**, and in **Section 287.057 F.S.**

## 14.9 PROFESSIONAL SERVICES PROVIDED ON A CONTINUING BASIS

In accordance with **Section 14.5** of this chapter, the LA must publicly announce in a uniform and consistent manner each project that exceeds the thresholds specified in **Section 14.5**. FHWA and State law permit the use of on-call type contracts (referred to in Florida as continuing contracts) when specialized services are needed for a number of different projects. In accordance with State law (Ref. [s. 287.055\(2\)\(g\), F.S.](#)), continuing contracts for professional services are restricted in use to services for projects as illustrated in **Figure 11**. Work of a specified nature refers to specific activities that may be performed by the consultant that are expressly referenced in the contract Scope of Services.

### [Figure 11: Continuing Contract Task Order Thresholds](#)



Continuing contracts shall be limited in duration to a period **not to exceed five (5) years** per Federal regulation. The **total cumulative contract amount of \$5 million** is limited per Department procedure, since Federal law requires a maximum dollar amount of the contract defined within the advertisement and contract provisions. The \$5 million threshold applies regardless of fund source for each task work order.

Continuing contracts must include the required Federal provisions contained in the Department's **LAP Terms for Federal-Aid Contracts (Form 375-040-84)**, and all required Federal provisions and forms as noted in **Sections 14.6-14.8**. The required Federal forms must be signed as part of the continuing contract and the applicable Federal provisions must be a part of the original contract. These items cannot be added after the master contract is executed via an amendment, supplemental agreement, or task work order. Existing contracts executed without the Federal requirements, or new contracts where the Federal requirements were inadvertently omitted will not be eligible for Federal reimbursement.

**DID YOU KNOW?**

LA RFPs for continuing services shall be sent to the State LAP Administrator for review and concurrence prior to soliciting for services.

LA RFPs for continuing services contracts shall be sent to the State LP Administrator for review and concurrence prior to soliciting for services. The LA shall seek concurrence from the District LP Administrator for the continuing contract award(s) prior to execution.

### 14.9.1 Solicitations for Continuing Contracts

All requirements for FAHP funded engineering and design-related services contracts shall be made by public announcement with evaluation and selection based on demonstrated competence and qualifications for the type of services required as specified in **23 U.S.C.**

**112(b)(2)(A), 40 U.S.C. 1101, and 23 CFR 172.7(a)(1).**

A LA may advertise and award for any eligible professional services phase the LA is certified to perform in the LAP (per **Chapter 7**). Solicitations for professional services under continuing contracts must include the scope of work, clearly defined contract award procedures, the cost and time limits identified in **Section 14.6**, and reference the Federal provisions. Each continuing contract must be work group, work type, or phase specific.

### **14.9.2 Limitations of Services Provided under Continuing Contracts**

Services for multiple phases of work cannot be awarded under one contract. For example, a contract inclusive of both design and CEI services would be representative of multiple phases of work. These types of multi-phase contracts are not eligible for use on FHWA assisted contracts.

### **14.9.3 Awarding Multiple Contracts under a Single Solicitation**

Multiple continuing contracts for the same phase of work may be awarded under one single solicitation but ranking and award of each contract must fully comply with all Federal and State requirements.

- The solicitation must expressly state multiple contracts will be awarded and the number of contracts anticipated to be awarded. A maximum may be stated if the exact number is unknown by the LA at the time of project solicitation.
- Where multiple contracts are being selected with one solicitation, at least two more consultants than number of contracts being awarded shall be considered for evaluation of proposals and discussions.
- The procedures for assignment of task orders among the selected firms must be defined in the solicitation and contract provisions. Task orders may be assigned to the selected, qualified firms through an additional qualifications-based procedure (i.e. staff availability at the time services are required) with opportunity for discussions between the contracting LA and qualified firms for each specific task order; or on a regional basis when consultants are selected to provide services within an assigned region as established in the advertisement. The procedures for awarding task orders among the selected firms shall be based on scope and qualifications and **not** based on a bidding process or cost proposals or based on “rotating” the work. In accordance with Florida law, firms providing professional services under continuing contracts shall not be required to bid against one another [**s. 287.055 (2)(g), F.S.**].
  - When assigning task orders based on region, it is also recommended to include language allowing assignment of task work orders across the assigned geographic boundaries in the event the other consultant(s) does not have qualified staff available during the time period the task is needed and the other consultant(s) is available.

## 14.9.4 Qualifications

A LA may elect not to require consultants be FDOT prequalified and use other established qualifications definitions. If the consultant firm(s) awarded the continuing contract is not FDOT prequalified, project tasks will not be eligible for reimbursement for LAP Classification A, B, or C projects as defined in **Chapter 17**. The LA determines assignment or appropriateness of proposed advertised work types based on the scope of services or anticipated contract activities. The District LP Project Manager may assist with recommendations or advise as needed, but ultimately the LA is responsible for determining the minimum qualifications required for the contract activities.

## 14.9.5 Scope of Services

The scope of services for a continuing contract shall identify the phase of work to be performed. When utilizing the FDOT prequalification process, the LA shall identify both major and minor types of work in accordance with **Chapter 14-75.003, Florida Administrative Code**. The tasks that may be potentially assigned under the phase type shall be clearly identified or listed in the scope. For example, a design scope may include work types for roadway design, geotechnical, field surveying, traffic signal design, lighting design, etc. Known Federal-aid projects may be identified in the scope of services when advertised and new Federal-aid projects may be added by task work order after the continuing contract is awarded. New projects identified after contract award must include only those specific tasks identified in the original scope of the contract as awarded and must not exceed the thresholds identified in **Section 14.9.1**.

## 14.9.6 Independent Staff Hour Estimates and Negotiations

Contract negotiations must comply in full with **Section 14.7**. The LA will negotiate job classifications for the master contract. The LA will verify direct and indirect cost rates via the consultant audit package for each job classification and consultant personnel identified to provide services. The LA must prepare independent staff hour estimates before receiving bids or proposals for services associated with each task order. Task order negotiations focus on staff hours, level of staffing, and job classifications required, and fixed fee. Task orders on continuing contracts may be negotiated as either cost plus fixed fee or lump sum method of payment. It is especially critical lump sum fees be established based on negotiated staff hours and negotiated level of staffing, involving key staff as identified in the consultant technical proposal.

A separate fixed fee must be negotiated for each task order. The LA must structure their master contract cost exhibit accordingly to show the fixed fee amount will be calculated at the task order level of the process. Some examples include:

- Show fixed fee as “to be determined”.
- Estimate a rate for fixed fee and note that the fixed fee amount will be established for each task order.

### 14.9.7 Task Work Orders

Task work orders are provided to the consultant on a continuing contract to identify what work and services are required for specific projects. The accumulated total of issued task work orders may not exceed the \$5 million limit for LAP eligible continuing contracts. The project services to be rendered by the consultant for each task work order will be completed within the time period specified in each task assignment, noting all services performed under the contract must be complete within five years from the execution date of the continuing contract. Post design/plans update services extending beyond five (5) years are not eligible for Federal funding.

The District LP Administrator shall request Federal Authorization and execute the LAP Agreement prior to execution of each Federally funded task work order. The District LP Administrator shall review the draft task work orders prior to issuance to the consultant to ensure tasks meet the original scope of the executed continuing contract.

### 14.9.8 Local Agency Responsibilities

All Federal and State requirements identified in **Chapter 14** are applicable to the procurement of continuing contracts. The LA may refer to the **LAP Professional Services Checklist Form 525-010-49** during the development, advertisement, negotiation, and award of the continuing contract. Each item identified on the LAP Checklist will be submitted to the District LP Administrator following the same process as a LAP project specific professional services advertisement and contract award. Submittal of a LAP Professional Services Checklist will not be applicable to project specific task work orders issued under an awarded continuing contract.

DBE utilization data and payment reporting will be required of the consultant on each LAP project utilizing the established methods identified in **Chapter 11**.

## 14.10 MANAGING, MONITORING, AND EVALUATING THE AGREEMENT

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

- Negotiate supplemental amendments to existing agreements and provide the LA's independent estimate of the costs for the work involved. Supplemental amendments may only be made for the type of services and work included within the original scope of services. **Services outside the scope of work established in the original contract are not eligible for Federal reimbursement unless they are solicited under a separate agreement.**
- Ensure no work is done or costs incurred until the agreement(s) and supplement(s) are concurred with by the Department.
- Act as the contact between the LA and the consultant to ensure compliance with the terms of the agreement.

- Monitor the consultant's progress reports to ensure progress follows the schedule and the consultant reports problem areas and takes corrective action.
- **Monitor all LAP agreement dates and terms as well as contract expiration dates between the LA and their consultant/contractors to ensure specified time limitations are not exceeded.**
- Validate the accuracy and approve invoices to ensure they match the work performed. The LA keeps cumulative cost records for each agreement to ensure costs are allowable, allocable, and reasonable.
- Establish controls to prevent payment greater than the agreement amount.
- Monitor the consultant to ensure compliance with the EEO provisions of the agreement.
- Monitor and validate any DBE Business Enterprise participation and Compliance.
- Perform the final performance evaluation of the consultant, provide a copy of the evaluation to the consultant, and upload the evaluation to **GAP** for the project record.

#### 14.10.1 DBE Data Reporting

Once the LA issues its NTP, the LA will record the contract data in **GAP**. This data includes but is not limited to the name of the consultant firm, the contract award amount, and execution date of the contract. This information is vital to the monitoring and proper recording of DBE activities and subrecipient auditing per **Chapter 11**. Instructions for recording the contract data are available within **GAP** under the "Help" module.

DBE information for LA continuing contracts as discussed in **Section 14.9** is reported for each task work order issued that correlates to a LAP Agreement and is tracked via **GAP**. DBE information for Department continuing contracts discussed in **Section 14.10** is not reported through **GAP** and does not require action on the part of the LA Project Manager.

#### 14.10.2 Invoicing and Progress Reports

The LA submits quarterly reimbursement requests to the District LP Administrator, per **Section 7** of the **LAP Agreement**, unless they are utilizing the Department's continuing contract as outlined in **Section 14.13** of the **LPM**. The reimbursement requests shall contain sufficient detail to determine the status of the project and all charges incurred by the LA and the consultant where Federal participation is requested. Invoicing and payment requirements as set forth by the State of Florida and Federal regulation are provided in **Section 5** of the **LAP Agreement**.

The LA shall ensure the consultant has met all terms and conditions of the agreement and has completed all services under the agreement before the final payment to and release of the consultant. LAs and their consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles.

### 14.10.3 Department Monitoring Responsibilities

The Department will decide on the degree of monitoring, which will depend on the nature and character of each project. Project records shall be maintained in accordance with the provisions of **2 CFR 200.333**. Upon completion of the project, the District LP Administrator will provide the LA with a copy of the LAP Performance Evaluation as described in **Chapter 7**.

### 14.11 TRAINING

Per **Chapter 7** of the **LPM**, [LAP Professional Services Checklist Training FDOT Course No. BT-05-0152](#) must be attended by a minimum of one LA staff person biennially. Additional LA staff who procure, participate in activities related to the procurement (i.e. serve on the selection committee, members of the negotiations team, etc.), or manage LAP related professional services contracts are highly encouraged to attend. This is an in-person course, instructed by Department and FHWA staff, and offered in each District periodically. LA, Department staff, or consultants may register on a first come, first serve basis via the [Florida LTAP Training Calendar](#).

In addition, the Department offers a [LAP Professional Services Computer Based Training](#) online. The CBT is an introduction to Federal procurement and should be used as a prerequisite or as a refresher to the in-person training. The District LP team may require LA staff to take the CBT as needed for certification or if corrective actions are required of the LA based on performance.

### 14.12 DEPARTMENT CONTINUING CONTRACTS AVAILABLE FOR LAP PROJECT DELIVERY

Districts may establish dedicated continuing services task work order driven contract or contracts to be utilized exclusively for delivery of LAP projects, for Design and CEI phases of work, at their discretion. Contracts are procured by the District in accordance with the procurement procedures referenced in the **Professional Services Procurement Manual, Topic 375-030-002**. Task work orders shall be issued for individual LAP projects, by the Department's Project Manager. LAP delivery continuing contracts must comply with Department Conflict of Interest policies.

It is recommended the Districts award a minimum of two (2) contracts per solicitation and consider awarding task orders to the selected firms on geography as allowed by **23 CFR 172**. It is also recommended to include language allowing assignment of task work orders across the assigned geographic boundaries in the event the other consultant(s) does not have qualified staff available during the time period the task is needed and the other consultant(s) is available. LAP projects are not always geographically contiguous within the District and the District must consider staffing and resource limitations if awarding a single contract for services. In addition, the anticipated volume of LAP project delivery within the 5-year contract period must be carefully analyzed when considering the number

of contracts to award. The total cumulative contract amount may be expended much faster than the 5-year contract term.

### **14.12.1 Department Responsibilities**

In addition to the direct procurement and administration of the consultant continuing contract, the Department's Project Manager shall be responsible for:

- Reviewing the LA's independent man-hour estimate for each task,
- Negotiating the task work order with the LA project manager,
- Maintaining the contract budget,
- Ensuring task work order amendments are timely and appropriately issued,
- Approval and payment of invoices through Consultant Invoice Transmittal System (CITS),
- Contract and task work order oversight, and
- Conducting the performance evaluation of consultant with the LA project manager.

The Department Project Manager shall hold a project kick off meeting with the consultant project manager, the LA project manager and other relevant staff to ensure all parties are in agreement on the project scope, schedule, and deliverables identified in the task order. The Department Project Manager is responsible for mediating any disputes that may arise between the consultant and the LA.

### **14.12.2 Local Agency Responsibilities**

The LA must be LAP Certified per **LPM Chapter 7** and shall assign a person or persons in responsible charge of the task at all times. Department oversight and responsibility for the task work order does not alleviate the LA's project management responsibilities for LAP projects. The LA project manager shall be responsible for:

- Developing the task work order scope.
- Developing the independent man hour estimate that includes estimated staff hours, level of staffing or job classifications required.
- Negotiating the task work order with the Department Project Manager, including establishment of the fixed fee amount for the task work order.
- The day-to-day task services as the entity in responsible charge of the project.

Functional activities of task management include but are not limited to conducting project meetings, deliverable reviews and approvals, invoicing reviews, and directing consultant's work in accordance with the project schedule and other activities as identified in **Section 14.11**. The LA project manager must communicate to and include the District contract manager in all activities related to the project delivery. Changes to a task order must be approved by the District contract manager. The LA Project Manager must participate in the performance evaluation with the District contract manager at the end of the task(s).

### 14.12.3 Eligibility and Funding

The District managing the continuing contract is responsible for identifying eligibility requirements for use of the contract by its partner LAP certified agencies. LAP projects are prioritized and funded with Federal-aid per the traditional process applicable to each LA and the fund source. Additional Federal-aid funding is not available to Districts utilizing this contracting method. Administrative costs must come from the District's annual funding allocations. Non-participating services related to ineligible project costs are the responsibility of the LA and will not be paid for with Department funds.

Programming LAP projects must conform to the [Department's Work Program Instructions](#). Programming and sequencing of Department staff in-house, consultant task, and LA phases of work may vary depending on the District's consultant contract and funding agreement with the LA. The LA may request project management reimbursement per the **Work Program Instructions, Chapter 17, E**. Additional allocations of Federal-aid funding are not available for project management costs and must be considered in the initial project funding request.

A **LAP Agreement (FDOT Form No. 525-010-40)** is only required when the District reimburses the LA for costs directly incurred delivering the professional services phase of work (i.e. project management costs). Resolutions or other documentation endorsing project delivery utilizing a Department contract is required in conformance with [Program Management Bulletin 15-03](#).

### 14.13 FORMS

The listed forms are available in the [LAP Forms Library](#) on the [LAP Website](#). Additional forms may also be found on the [Professional Services Forms](#) webpage.

### 14.14 RESOURCES

[Affidavit Regarding Labor and Services \(Procurement Form 375-030-31\)](#)

[Automated Fee Proposal Worksheet Guidance for LAP Projects](#)

[Conflicts of Interests- Frequently Asked Questions](#)

[Consultant Wage Rate Report](#)

[FDOT Negotiation Handbook](#)

[FDOT Work Program Instructions](#)

[FHWA Professional Services Guidance Q&A](#)

[LAP Consultant Fee Mock Up](#)

[LAP Forms Library](#)

[LAP Negotiations Quick Reference Guide](#)

[LAP Negotiations Verification Process flowchart](#)

[LAP Professional Services webpage](#)

[Department's Professional Services Procurement Manual \(FDOT Topic No. 375-030-003\)](#)

[Professional Services Forms](#)

[Professional Services Prequalification page](#)

[Program Management Bulletin 15-03](#)

[Scope of Services and Staff Hour Estimation](#)

[Suspension Debarment resources:](#)

Federal verification website: <https://sam.gov/content/home>

DMS State and Federally disqualified vendors link:

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists)