



**DIVISION OF LOCAL ASSISTANCE
Office of Policy Development and Quality Assurance**

PROCESS REVIEW #14-01

A&E Consultant Selection and Procurement

FINAL REPORT

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I. Executive Summary

Recent audits conducted by the California Department of Transportation (Caltrans) - Audits and Investigations (A&I) have identified deficiencies in the procurement of Architectural and Engineering (A&E) consultant contracts by local agencies. To assess the extent of irregularities and the level of compliance with Federal requirements in the procurement of these types of contracts, the Caltrans Division of Local Assistance (DLA) initiated and performed a process review. Problem areas identified in the review and recommendations for improvement are documented in this report.

For this process review, 31 projects were randomly selected for review. A summary of the findings, observations and recommendations is as follows:

Findings Summary:

The review finds that there is a significant level of non-compliance, or a potential for non-compliance, with various Federal regulations and Local Assistance Procedures Manual (LAPM) requirements. Detailed review findings are included in Section II.E of this report. A summary of some of the major non-compliance issues is provided below:

- Failure to conduct an appropriate cost analysis and competitive cost negotiation during the contract procurement process. This includes not preparing an independent cost estimate prior to receiving a proposal and lack of documentation and/or conduct of fee/profit negotiations
- Failure of the consultant evaluation panel to complete Conflict of Interest and Confidentiality statements.
- Poor record keeping that includes not retaining the original and/or secondary (interviews) evaluation score sheets, unsigned and undated records, and lack of documentation related to contract approval and authorization.
- Failure to follow LAPM Chapter 10 requirements for using consultant contract reviewer checklist (Exhibit 10-C), and not using the appropriate cost proposal format and content (Exhibit 10-H).
- Failure to follow LAPM Chapter 10 requirements for Request for Proposal (RFP)/Request for Qualifications (RFQ) preparation and solicitation. This includes missing selection criteria with weights, method of payment, and record of advertisement.
- Inadequate contract writing, that includes missing contract provisions as described in LAPM Chapter 10 (Exhibit 10-R).

Observations Summary:

The process to select and procure consultants for A&E services requires a time consuming effort, with a multitude of Federal requirements to be met over the course of the process. Based on initial desk reviews and subsequent interviews with selected local agencies, the process review team noted the following observations:



- Local agencies with limited resources are seriously challenged to meet all Federal requirements related to Brooks Act during the consultant contract procurement process
- Local agencies lack expertise, such as cost estimating or negotiating consultant labor costs
- Local agencies do not retain know-how because of staff turn-over
- Local agencies conduct procurement activities every few years and therefore lack consistency throughout the process – resulting in inadequate compliance with applicable requirements
- Local agencies are aware of available guidance (LAPM, FHWA, etc..) however, they fail to use the guidance effectively and consistently
- Local agencies are not aware of the requirements specific to on-call contracts and prequalified lists
- Lack of active and focused oversight by Caltrans seems to create complacency by the local agencies
- Available training (Federal Aid Series) and delivery methods should be improved

Recommendations Summary:

Caltrans

- ***Provide Feedback:*** Provide a written report to each local agency that was reviewed during the process review, to include detailed findings related to each specific project and procurement.
- ***Training:*** Provide training to local agencies and to Caltrans District Local Assistance Engineer (DLAE)/staff on a continuous basis. This includes subject specific instructor led training throughout the state, expansion of the existing Federal Aid Series training to include an in-depth consultant contract procurement module, and webinars
- ***Local Assistance Procedure Manual:*** Make improvements to the LAPM. This includes making Chapter 10 more user friendly by utilizing visual exhibits such as flow charts and fillable pdf forms, providing a more comprehensive checklist (Exhibit 10-C) and contract boilerplate (Exhibit 10-R), eliminating duplicative forms and templates and updating guidance and procedures for advertising, on-call contracts and pre-qualified consultant list.
- ***Website Guidance:*** Develop a Local Assistance A&E Consultant Contract Procurement web page to include updates, frequently asked questions (FAQ), the most error prone steps to avoid, and other guidance. Provide samples of documentation relating to the steps that need to be taken for common A&E procurements.
- ***Mandatory Procedures:*** If a local agency chooses to develop and utilize its own procedures rather than the mandatory LAPM Chapter 10 procedures and associated forms, allow them to do so subject to Caltrans review and approval of their procedures.
- ***Procedural Changes:*** Require local agencies to submit an A&E Consultant Contract Award Package to DLAE/Headquarters (HQ) for each solicitation prior to reimbursement and/or include in the “request for authorization” process a step in which certain consultant procurement documentation is provided to PDQA for review and approval prior to E-76 approval.



- **Consultant Contract Oversight Engineer:** Consider allocating resources for Consultant Contract Oversight Engineers to provide active assistance and oversight to local agencies during A&E procurement process.
- **Enhance MPO/RTPA or Caltrans Roles:** Explore whether it is feasible to have a centralized entity (such as an MPO/RTPA or Caltrans) take on at least some portion of the process on behalf of local agencies.

Local Agencies selected for this process review

- **Training:** Direct local agencies with identified deficiencies to seek training to address those deficiencies immediately.
- **Provide resources:** Advise local agencies to provide adequate resources to consultant contract procurement efforts or face serious consequences or sanctions.

II. Process Review

A. Background

- Prior to the re-engineering of the Local Assistance program in 1995, Caltrans provided oversight of local agency consultant selection processes for Federal-aid transportation projects. The oversight included review and approval of local agency consultant agreements. In 1995, during a state budget crisis, the Caltrans Local Assistance Program went through a “re-engineering” process that greatly reduced DLA oversight. With the issuance of Caltrans Deputy Directive 44 (DD-44), Local Programs Procedures 95-07 “Re-engineering” and the subsequent LAPM guidance, local agencies now complete a consultant selection checklist for each project/contract and document that the LAPM and federal requirements have been met. Caltrans oversight now consists of a “risk-based” review by A&I, review of required checklists by DLAEs, and other assistance when requested.
- Recently, several incurred cost audits conducted by A&I identified deficiencies in A&E consultant contract procurements by local agencies.

B. Process Review Goals and Methodology:

- The primary goal of this process review was to determine whether local agencies are complying with Federal and State regulations and are following the LAPM Chapter 10 when conducting consultant selection and procurement. It was an objective of the process review to attempt to find answers to the following questions:

Contract Plan, Scope of Work and Advertisement

- Are local agency consultant contract advertising documents – the RFQ and the RFP, in compliance with LAPM?
- Do local agencies publicize and/or advertise consultant contract RFQs/RFPs in widely distributed newspapers, professional journals, and/or web sites? Do they maintain supporting documentation?
- Are local agencies providing sufficient response time to RFQs/RFPs?
- Do local agencies seek Caltrans' District Local Assistance Engineer (DLAE) review of contract scope of work and advertising documents?
- Are contract scopes of work for project specific and for on-call contracts appropriate to comply with the Brooks Act (qualification based selection)?
- Does local agency A&E consultant contract scope of work include (or allow) both design and construction management in the same contract/project? How is it implemented?
- Does local agency A&E consultant contract scope of work include (or allow) multiple phases of a project in the same contract? How is it implemented?
- Are local agencies breaking up various activities for a specific phase of work into multiple personal service agreements (i.e. Archeology, Biology, document preparation, etc.)?
- Are local agencies using Personal Service Agreements only for services less than \$25,000? Did they follow small purchase process per 49 CFR 18.36 (d)?
- Are local agencies using consultants in management roles? If so, what is the duration of the contract? How were they selected and what is their authority? And do local agencies have conflicts of interest policies in place to address potential issues (actual or perceived)?
- Are selection criteria and weights properly defined in the RFQs and RFPs (Exhibit 10-B)?
- Are Disadvantage Business Enterprise (DBE) goals properly defined in RFQs and RFPs (Exhibit 10-I)?

Consultant Evaluation and Selection

- Do local agencies seek input or guidance from DLAEs on their consultant evaluation/selection processes? Or request participation by DLAEs?
- Do local agencies understand that if the DLAE participates on the selection committee their participation does not mean the DLAE has approved the entire procurement process?
- Do local agencies review Statement of Qualifications (SOQs) and Statement of Proposals (SOPs) for completeness and responsiveness? If proposals are found to be non-responsive, are they rejected?
- Are SOQs and SOPs date and time stamped to ensure they are submitted timely?
- Do local agencies follow the evaluation and selection processes as defined in the RFQs and RFPs? Are there any arbitrary actions taken during the selection process?
- Do local agencies retain (store) original score sheets? Are score sheets signed and dated by the evaluator(s)?



- Do local agencies retain secondary score sheets or other evaluation documentations used for interviews of top ranked consultants?
- Does local agency RFQs/RFPs have any requirement (real or perceived) that may violate qualification based selection?
- Do consultants who are in local agency management positions participate in consultant evaluation/selection processes? If they do participate, do they know and understand the conflict of interest regulations and restrictions? Do they sign the conflict of interest statements?
- Are DBE commitments (LAPM Exhibit 10-O1) in consultant SOQs and SOPs evaluated properly?

Consultant Contract Negotiation and Approval

- Do local agency consultant agreements include all provisions as described in Chapter 10, and do they comply with the requirements in the Local Agency/Caltrans Master Agreement for Federal-aid projects?
- Do local agencies prepare cost estimates that meet LAPM (Chapter 10, Section 2) requirements prior to receiving bids, and retain supporting documentations?
- Do local agencies follow the Consultant Audit and Review Process (risk-based audit) of Chapter 10.3?
- Do local agencies obtain an A&I Conformance letter prior to execution of the contract over \$1M?
- Do local agencies identify the selected method of payment (i.e. - Actual Cost plus Fixed Fee, or lump sum as described in LAPM Ch 10, Section 2) in consultant contracts properly? And is it the same method as stated in the RFQs/RFPs? If time and material method is used, do local agencies document justification?
- Do local agencies perform and document fee negotiations properly (as separate negotiations) and is the agreed upon fee justified? Is fee negotiation documentation retained in contract files?
- Do local agencies document DBE commitment (Exhibit 10-O2) properly?
- Are local agencies using the Consultant Contract Reviewer Checklist (Exhibit 10-C) properly?
- Do local agencies perform cost analysis of the consultant proposal when a procurement action results in a non-competitive (sole source) procurement? For example, when only one proposal is received or is found to be responsive.
- Do local agencies process Public Interest Finding and seek Caltrans approval for sole source procurement?
- Do local agencies properly document and justify any changes in the original RFP/RFQ that occur between selection of consultant and actual signing of the contract?

It was decided that a sample of project consultant contracts over a one year period would be reviewed and that a sufficient number of projects would be selected to meet a goal of a 95th percentile confidence level +/- 15, as had been done in prior process reviews.

C. Process Review Analysis:

- At the time this process review began, it was deemed reasonable to assume that most projects that had received Federal authorization between July 1, 2011 and June 30, 2012 (and that had utilized consultants) would likely have advanced through the selection and procurement process, and recently enough that most contracts would be ongoing or recently completed. A report was generated to produce a list of projects that had received Preliminary Engineering (PE) and Construction Engineering (CE) Federal authorizations within this timeframe. The report captured 1204 total PE and CE authorizations, and after adjustments to the universe of projects to select from (see Attachment A - “Process Review Sample Size Analysis and Design”), the total resulting pool size for this review became 519. To achieve a 95th percentile confidence level based on the resulting number (pool) of authorizations, a sample size of 31 was used based on a statistical analysis. For the purpose of selecting 31 projects from the list, random numbers were assigned to each project electronically, with the projects then reordered by assigned number from least to greatest value. Projects were then chosen from the top of the list down until 31 had been selected, with a split of nearly an even number of projects between the northern and southern geographic areas of the state.

- For the 31 randomly selected projects (See Attachment C for a list of projects), documentation to support the advertising, selection, and approval of the local agency consultant contracts was sought to determine compliance with the Federal Brooks Act (qualification based selection), negotiation, pricing, and other requirements. The Federal-aid transportation project files for each of the selected consultant contracts were requested through the DLAEs, with the following documents specifically requested to be submitted for review:
 - Local agency written A&E Procurement Procedures, if any
 - Copies of RFQs/RFPs
 - Copies of solicitation and publication/advertisement records
 - Consultant selection committee participants, and signed conflict of interest forms, if applicable
 - Original evaluation/scoring and ranking records
 - Independent cost estimates
 - Record of negotiations, including separate fee negotiations
 - Documentation of cost analysis for non-competitive (sole source) procurements
 - Executed agreement
 - Consultant Contract Reviewer Checklist (Exhibit10-C)
 - Local agency final contract approval/authorization procedure



- Due to subsequent difficulties in getting sufficient documentation from some selected agencies without needing to extend the review time frame excessively, 29 projects ended up being reviewed rather than 31. After receiving the documentation listed above, an initial (desk) review of the local agency packages was performed. To be able to perform a quantitative analysis, a list of key issues that could be gathered from answers to questions in Section II.B above was developed. Subsequent to desk reviews, interviews were held with 10 of the local agencies in the review. Along with Caltrans DLA Process Review Engineers, DLAE representatives participated in most of the interviews. Additional information was gathered from interviews and compiled into the final results.

D. Process Review Team

- Mohammad Maljai, Process Review Engineer, Caltrans DLA
- Adam Ambrosini, Process Review Engineer, Caltrans DLA

E. Process Review Findings:

- The following table shows the list of issues/items for which it was determined that a quantitative evaluation would be appropriate within the scope of this review. Shown to the right of each item is a percentage, which was calculated by dividing the number of projects that were non-compliant by the total number of projects taken into account for the particular item.



Process Review Issues:		
(A)	No independent cost estimate prior to review of proposals - 23 CFR 172.7(a)(1)(v)(A)	91%
(B)	Consultant Selection Panel Members did not complete the mandatory Conflict of Interest statements - 23 CFR 172.7(b)(4), LAPM Exhibit 10-T	87%
(C)	No documented price/fee negotiations - 23 CFR 172.7(a)(1)(v)(D)	87%
(D)	Score sheets were not signed or dated	61%
(E)	Secondary score sheets are not retained – 23 CFR 172.7(a)(1)(iv)(F)	60%
(F)	LAPM Consultant Contract Reviewer Checklist (Exhibit 10-C) was not used – LAPM Chapter 10	59%
(G)	Contract cost proposal does not meet LAPM standard (Exhibit 10-H) (labor costs are not broken down into direct, indirect and profit components) – LAPM Chapter 10	52%
(H)	Selection criteria and weights are not properly defined in RFP/RFQ - 23 CFR 172.7(a)(1)(ii)(C)	44%
(I)	RFP/RFQ was not publicized in newspaper or technical publication of widespread circulation - 23 CFR 172.7(a)(1)(i)	44%

<u>Process Review Issues, cont...:</u>		
(J)	Local Agency has no documented A/E Procurement Procedure (23 CFR 172.5)	38%
(K)	Local Agency did not document contract approval/authorization action – LAPM Chapter 10	38%
(L)	Selection made not using criteria stated in RFP/RFQ – 23 CFR 172.7(a)(1)(iv)(D)	32%
(M)	Original score sheets were not retained – 23 CFR 172.7(a)(1)(iv)(F)	28%
(N)	Method of payment is not clearly identified in RFP/RFQ - 23 CFR 172.7(a)(1)(ii)(D)	24%
(O)	Contract term has no expiration date – LAPM Chapter 10, Exhibit 10-R	14%
(P)	Contract does not have mandatory provisions specified in LAPM Exhibit 10-R – LAPM Chapter 10	8 less than 50% 11 between 50-75% 10 greater than 75%

A comparison between the above findings and a 2013 review performed by Caltrans A&I, in which they reviewed similar issues, indicates that the results were proportionally very similar.

Aside from the issues listed above, for which the findings are quantitative, other issues were assessed in this review. However, these other issues were not evaluated quantitatively for reasons such as: the nature of the issue made it difficult to quantify, or the issue did not apply to a significant number of procurements to provide for useful quantification. These other issues are listed in Attachment B (List of Consultant Selection Process Review Issues, Not Evaluated Quantitatively), and while quantitative findings were not made, some pertinent related observations are included in the following section, II.F.

F. Process Review Observations:

- Following are notes/observations pertaining to the issues with quantitative findings in Section E above:
- (A) No Independent Cost Estimate prior to receipt of proposals. (91%)
- From multiple Federal regulations, including 23 CFR 172.9, an independent cost estimate is to be used as a basis for negotiation and to insure services are attained at a fair and reasonable price. This estimate is to be prepared prior to receipt or review of the most highly qualified consultant's cost proposal and should include an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs and consultant's fixed fee for the defined scope of work.
 - Nearly all of the packages reviewed did NOT include documentation of a cost estimate having been done that would meet the CFR/LAPM requirements.
 - It appears that in most cases, local agencies use their (programmed) budget estimate for a project to compare to a consultant's cost proposal.
 - In some cases, local agencies compare cost proposals to those for previous contracts.
 - Based on our review, this appears to be one of the most common areas of non-compliance with CFR requirements during the consultant selection process. From interview discussions, some local agencies seemed to indicate that the CFR requirement does not seem practical because they typically lack experience in labor cost negotiations. Others seemed to indicate they could likely do better, but most seemed to indicate that this is an area where a considerable (and perhaps unreasonable, or impractical based on available and experienced resources) additional workload will be necessary.
- (B) Documentation of Conflict of Interest Statements not provided (87%)
- From interviews and documents received, many cited their annual conflict of interest form (Form 700), but very few complete the panel member conflict of interest form (LAPM Exhibit 10-T), or were even aware that it exists. Some indicated that they would consider using this form in the future, while others seemed to indicate that it seems somewhat redundant since they already fill out the Form 700. Note that this form is not listed in the LAPM Exhibit 10-C (Consultant Contract Reviewers Checklist) at this time.
- (C) Price/fee negotiations not documented (87%)
- Very little documentation of negotiations, as required by Federal regulation, 23 CFR 172.7, was evident in this review. It appears that some agencies may simply agree with the initial cost proposal. In some instances in which there was evidence of negotiation, it appears that the basis was a budget rather than an independent estimate as required.
 - Lack of experience in labor cost negotiations may be one of the reasons for lack of a viable negotiation.
- (D) Score sheets were not signed or dated (61%)

- Some were typed without the names of panel members or the date of the evaluation.
 - One local agency had only a Panel member on the score sheets without a separate name key to identify/tie back to the actual name, such as Panel # 1 or Panel # 2. Although confidentiality can be a useful tool, a name key as a paper trail to be able to validate documents is necessary.
- (E) Secondary score sheets not retained (60%)
- If an optional interview evaluation was performed, the original score sheets and final ranking documentation are to be retained, same as in (D) above.
 - Several local agencies were unable to provide original score sheets. Retention requirements are included in, but not limited to, those listed in 23 CFR 172.7 and the Local Agency Master Agreement for Federal-aid Projects.
 - Most local agencies relied on summary of scores and tabulated final ranking as the only source of documentation, which is inadequate
 - Some score sheets were unsigned and undated, and some were typed
- (F) Consultant Contract Reviewer Checklist (LAPM Exhibit 10-C) was not used (59%).
A primary intent of the LAPM Exhibit 10-C is to provide a checklist that a local agency can use to help insure applicable requirements have been met prior to contract execution.
- More than half of the packages obtained by DLA for review did not include an Exhibit 10-C that was completed correctly.
 - Some packages included 10-Cs in which the 10-C was either completed sometime after the related contract was executed, or boxes were checked even though it could not be shown that the items those boxes pertained to had actually been satisfied.
- (G) Contract cost proposal does not meet the LAPM standard (Exhibit 10-H). (52%)
- About half of the packages reviewed did not include documentation including a breakdown of the items indicated in 23 CFR 172.7.
 - Most local agencies rely on consultant labor “hourly billing rates” not realizing that this does not meet Federal requirements.
- (H) Selection criteria and weights not properly identified (44%)
- Some specific/common areas of non-compliance were:
 - criteria listed in RFP/RFQ, but no weights assigned to the individual criteria.
 - some mention in RFP/RFQ of evaluation criteria to be used, but a specific list of criteria/weights not included.
- (I) RFQ not publicized in newspaper or tech publication of widespread circulation (44%)
- Rather than advertise, it appears that some used a mailing list only.
 - Appears that some may have posted to their local agency’s website only.
 - Many appear to be using services such as Bidsync.com (as does Caltrans at this time), or A&E CIN (A&E Consultants Information Network), which appear to be quite useful. Few appear to utilize the historic means of newspaper advertising.

- (J) The local agency does not have a documented A&E procurement procedure (38%)
- Most local agencies indicated that they utilize the LAPM to some extent.
 - Of those who have their own procedures, the procedures vary widely in content and comprehensiveness, with some procedures appearing to be only a few pages, to others that are in the relative range of that in LAPM Chapter 10. We were not able to verify if those procedures had been approved by Caltrans. Federal regulation requires State agencies to review and approve local procedures.
 - Some local agencies noted that, while Chapter 10 is useful to them, it is necessary for them to have different procedures for other types of projects (for Federal Aviation funds, for instance), so Chapter 10 cannot be their “one-stop-shop” for all types of consultant procurements.
- (K) The local agency did not provide documentation of contract approval/authorization (38%)
- Several local agencies indicated that the documentation exists, or did at one time, but that they do not have it readily available now (retention issue).
- (L) Selection was, or appears to have been, made not using criteria in RFP/RFQ (32%)
- Some local agencies modify evaluation criteria for the interview portion of the competition without any notification.
 - Few RFP/RFQ actually stated that evaluation criteria are subject to modification without prior notice, which is not allowed under federal regulation.
 - One panel member of an evaluation process chose to change one of the evaluation criteria and weight on his/her score sheet only without notification to others and apparently it was not detected.
- (M) Original score sheets not retained (28%)
- Several local agencies were unable to provide original score sheets. Retention requirements are included in, but not limited to, those listed in 23 CFR 172.7 and the Local Agency Master Agreement for Federal-aid Projects.
 - Most local agencies relied on summary of scores and final tabulated results as the only source of documentation, which is inadequate.
 - Some score sheets were unsigned and undated, and some were typed.
- (N) Method of payment not clearly identified in RFP/RFQ (24%)
- Most were compliant in this area, however, the method of payment was not clear in a few. Of those few, the method was either not spelled out clearly (including instances in which it was explained that the method would be determined later), or omitted.
 - There may be some confusion regarding Actual Cost Plus Fixed Fee and Fixed Rate of Compensation methods of payments.
- (O) Contract Term (if any) does not include an expiration date (14%)
- An interview was held with one of the local agencies to which this applied and the agency indicated they will process an amendment to include a performance period.
- (P) Contract does not include the mandatory provisions specified in LAPM Exhibit 10-R.
(in 8, less than 50% of the mandatory provisions are included)
(in 11, between 50% and 75% of the mandatory provisions are included)
(in 10, greater than 75% of the mandatory provisions are included)

- LAPM Exhibit 10-R provides A&E Sample Contract Language that includes mandatory contract provisions, and suggested language to cover those provisions. Local agencies can modify specific language based on recommendation from their own attorneys to fit project or local agency needs.
- From interviews, it appears that some agencies may have felt that if they covered the provisions in the RFQ/RFP that they do not need to include them in the actual contract.
- A few local agencies asked if they can cover contract provisions by reference only, to which the answer is negative.

In the notes/observations above, in some instances where it is noted that an item was “not” completed/provided/made/etc, it may be that there was compliance during the process, but that the local agency did not retain or was unable to locate the respective records for Caltrans review. This contention was made by some local agencies during interviews. Regardless, retention of records is a Federal regulation (23 CFR 172.7) and included in the language in Article V of a local agency’s Master Agreement for Federal Aid Projects (document retention required for three years from the date of final payment).

Regarding additional information gathered during the review, primarily from the interviews that were held, local agencies provided various comments relating to this subject. These comments are included in Attachment D to this report.

➤ Other/General observations

Regarding Caltrans Guidance, it appears that generally, LAPM Chapter 10 includes sufficient guidance that should allow local agency personnel who are familiar with the Chapter, and who are able to take the necessary time to follow the Chapter closely through the process, to be able to comply with the applicable requirements. That said, there are updates that could help to improve the manual. Additional content to be incorporated into Chapter 10 specific to on-call contracts and the unique aspects associated with selecting and procuring (and likely administering) on-call consultants is appropriate. Clear guidance to local agencies on how to assign task orders when multiple firms are involved for instance, would be helpful. Very few agencies indicated that they utilize the Consultant Selection Guidebook.

Training to local agencies and to the districts would likely be helpful in this area, and is included in the recommendations that follow. However, the results of this review suggest that training alone may not be adequate to insure that risks of non-compliance are acceptably minimized. For instance, even when the Consultant Contract Reviewers Checklist (LAPM Exhibit 10-C) is used and the appropriate boxes have been checked to indicate compliance with various requirements, at least several review packages showed that the checkbox was checked without compliance (i.e. –the 10-C includes a box for an independent cost estimate having been completed and in some instances, even when the box was checked, the corresponding package provided often did not include such an estimate).

Based on the above, it appears that it will be highly challenging to minimize compliance risks without some kind of additional oversight/assistance provided to local agencies, or to work out a mechanism for at least some procurements, or perhaps certain aspects of some procurements to be done by a centralized unit (such as perhaps within MPO/RTPA or Caltrans).

G. Process Review Recommendations:

Caltrans

- Separate from this process review report, provide a written report to each local agency that was involved in the process review. This process review report does not detail specific items/findings of non-compliance by local agency, so the follow-up reports are intended to provide information and suggested areas of improvement tailored to each individual agency.
- Provide training to local agencies and to Caltrans DLAE/staff on a continuous basis. Options could be:
 1. Provide subject-specific instructor-led training throughout the state.
 2. Expand the Federal Aid Series to include an in-depth Consultant Contract Procurement module.
 3. Provide webinars to be able to reach a wide audience at minimal cost. Focus on critical/mistake-prone areas.
- Make Improvements to LAPM Chapter 10:
 1. Make the Chapter more user friendly by utilizing visual exhibits such as flow charts and fillable pdf forms and determine whether the content and format of existing forms and language in the body of the Chapter could be improved. Consider moving the overall process flowchart, Figure 10-3, to the beginning of the chapter.
 2. Eliminate duplicative forms and language.
 3. Provide a more comprehensive checklist (Exhibit 10-C) and contract boilerplate (Exhibit 10-R). In Exhibit 10-R, group the mandatory provisions separately from optional provisions.
 4. Update or include new guidance pertaining to procedures for advertising, on-call contracts and pre-qualified consultant lists. Determine the best way to address DBE requirements for on-call contracts and get FHWA concurrence.
- Develop a Local Assistance A&E Consultant Contract Procurement web page to include updates, frequently asked questions (FAQ), and other topical guidance.
- If a local agency chooses to develop and utilize its own procedures rather than the mandatory LAPM Chapter 10 procedures and associated forms, allow them to do so subject to Caltrans review and approval of their procedures.



- Augment existing procedures to require local agencies to submit an A&E Consultant Contract Award Package to DLAEs/HQ for each solicitation prior to reimbursement and/or include in the “request for authorization” process a step in which certain consultant procurement documentation is provided to PDQA for review and approval prior to E-76 approval by Caltrans.
- Consider allocating resources for Consultant Contract Oversight Engineers to provide active assistance and oversight to local agencies during A&E procurement process.
- Explore whether it is feasible to have a centralized entity (such as an MPO/RTPA or Caltrans) take on at least some portion of the process on behalf of local agencies.

Local Agencies selected for this process review

- Direct local agencies with identified deficiencies to seek training to address those deficiencies immediately.
- Advise local agencies to provide adequate resources to consultant contract procurement such that they will be able to comply with applicable requirements. Inform local agencies that future non-compliance will result in serious consequences or sanctions.

Attachments

- 1) Attachment A - “Process Review Sample Size Analysis and Design”
- 2) Attachment B - “List of Issues Not Evaluated Quantitatively”
- 3) Attachment C – “List of Projects/Local Agencies in Process Review”
- 4) Attachment D – “Local Agency Comments”



Process Review Sample Size Analysis and Design (8/15/13)

The Universe of Consultant Contracts for Projects

Adequate data on consultant contracts is not readily available. However, data on all of the authorized Federal aid highway projects is available. The universe of consultant contracts (those to be included in the review) is those that have been procured to perform work authorized for the Preliminary Engineering (PE) and Construction Engineering (CE) phases of projects between July 1, 2011 and June 30, 2012. The newest authorized project in this universe is thirteen months old, a reasonably adequate time to procure and award a consultant contract. However, this does not include any existing (previously executed) contract that could be used. Further adjustment should be made to account for new contracts to work on multiple phases of the same projects, or new “on-call” contracts to work on multiple projects/phases. There are 1204 PE and CE (CON) authorized projects.

Adjustments to the Universe of Contracts

- Count as one contract, those projects that have both PE and CE (CON) authorization in the same period, i.e. assuming single contract to perform work in both phases (-18)
- Remove any project under \$150,000 and count as one contract for each agency, if total over \$150,000 (-626)
- Count as one contract, all emergency projects for each agency, if total over \$150,000 (-12)
- Remove any project with CON authorizations and \$0 CE (-29)

Population Size

The population is the awarded consultant contracts executed to perform authorized PE and CE work. We estimated that about 20% of the projects use new contracts, based on average duration of consultant contracts of five years. Therefore the population (universe) of contracts is 104 contracts.

The population size is calculated below.

<u>Projects</u>	<u>New Contracts</u>	<u>Population</u>
1204 – 685 = 519	20%	104 (519 x 0.20 = 104)

<u>Confidence Level</u>	<u>Confidence Interval</u>	<u>Sample Size</u>
80%	15%	16
95%	15%	31
80%	10%	30
95%	10%	51

Sample size of 104 consultant contracts is 31 that gives us 95% +/-15% confidence level



List of Consultant Selection Process Review Issues, Not Evaluated Quantitatively

- Consultant Employee in Local Agency management role participating in consultant selection process? - conflict of interest consequence
- Any arbitrary action taken or changes made to RFQ/RFP requirement between solicitation time until award? If yes, was it documented?
- Did local agency have a defined procedure for assigning “task orders” for an on-call contract?
- Did local agency follow Audit review process (of any kind), or sought review from Caltrans A&I?
- Did local agency time-stamp SOQs/SOPs to ensure timely submittal?
- Did local agency review SOQs/SOPs to ensure completeness and responsiveness?
- Any requirement in RFP/RFQ that may violate qualification based selection process (23 CFR 172)?
- Did Caltrans/DLAE participate in consultant selection process?
- Did local agency seek input from Caltrans/DLAE during consultant selection process?
- Does A&E contract scope allow for design and construction inspection on same project?



LIST OF PROJECTS/LOCAL AGENCIES IN THE PROCESS REVIEW

CALTRANS DISTRICT	PROJECT ID	LOCAL AGENCY	PROJECT DESCRIPTION
02	STPLZ-5908(024)	Tehama County	BOWMAN ROAD AT SOUTH FORK COTTONWOOD CREEK BRIDGE REPLACEMENT
02	BRLS-5068(024)	City of Redding	TWIN VIEW BLVD 0.4 MILES S OF OASIS RD AT CHURN CREEK BRIDGE REPLACEMENT
03	BRLO-5925(111)	El Dorado County	CLEAR CREEK ROAD AT CLEAR CREEK BRIDGE REPLACEMENT
03	BR-NBIL(509)	Colusa County	LOW WATER CROSSING ON EVANS RD OVER CORTINA CREEK, NEW BRIDGE (TC)
03	BPMP-5922(090)	Yolo County	BRIDGE PREVENTATIVE MAINTENANCE - VARIOUS LOCATIONS IN YOLO COUNTY, BRIDGE PREV. MAINTENANCE
03	BR-NBIL(519)	Glenn County	COUNTY ROAD 35 AT WILSON CREEK, LOW WATER CROSSING - NEW BRIDGE
04	HRRRL-5928(085)	Contra Costa County	MARSH CREEK RD- ROUND VALLEY PARK TO LYDIA LANE, ROADWAY WIDENING FOR NEW SHOUL
04	CML-5332(018)	City of Saratoga	SARATOGA VILLAGE PED ENHANCEMENT PHASE II
04	RPSTPLE-5432(014)	City of Dublin	ALAMO CANAL CREEK UNDERNEATH I-580, CONSTRUCT TRAIL
04	BPMP-5322(047)	City of Fremont	IN FREMONT: ARDENWOOD OH, ARDENWOOD NORTH, PASEO PADRE OH; BRIDGE PREVENTATIVE MAINTENANCE
04	BRLO-5937(182)	Santa Clara County	NEW AVE OVER RED FOX CREEK, 1.6 MILE NORTH OF LEAVESLY ROAD, BRIDGE REPLACEMENT (TC)
04	HSIPL-5213(045)	City of Sunnyvale	INTERSECTION OF BERNARDO AVE AT REMINGTON DR, TRAFFIC SIGNALS, SIGNS, STRIPPING, CURB RAMPS
04	BRLS-5333(012)	Town of Woodside	PORTOLA RD IN THE TOWN OF WOODSIDE IN SAN MATEO COUNTY, 0.25 MI E OF SR 84, BRIDGE REPLACEMENT
05	BHL-5949(062)	San Luis Obispo County	PRICE CYN RD OH @ SPRR--BR NO 49C-0329, BRIDGE REHAB/WIDENING
05	BPMP-5936(104)	Santa Cruz County	CO. SANTA CRUZ- BPMP- 36C-0092 ZAYANTE CRK BOH & 36C-0040 SAN LORENZO RIVER BR, POLYESTER CONCRETE OVERLAY
06	CML-5950(293)	Kern County	BOWMAN ROAD FROM JACKS RANCH ROAD TO DOWNS ST., SURFACE UNPAVED STREET WITH 2 AC SHLDS & 2 BACKN



**LIST OF PROJECTS/LOCAL AGENCIES IN THE PROCESS REVIEW,
cont...**

CALTRANS DISTRICT	PROJECT ID	LOCAL AGENCY	PROJECT DESCRIPTION
06	RPSTPL-5946(119)	Tulare County	ON ROAD 80 FROM AVENUE 342 ALIGNMENT TO AVENUE 384 ALIGNMENT (PHASE 3), WIDEN ROADWAY FROM 2 TO 4 LANES (TC)
07	STPL-5953(656)	Los Angeles County	VALYERMO ROAD OVER PALLET CREEK, ET AL, REPLACE BRIDGE BARRIER RAIL (TC)
07	BHLO-5450(066)	Santa Clarita	LOST CANYON ROAD OVER SAND CANYON WASH., REHABILITATE AND WIDEN EXISTING BRIDGE.
09	BRLO-5948(051)	Inyo County	SABRINA ROAD OVER BISHOP CREEK, BR. NO. 48C-0025, BRIDGE REPLACEMENT (TC)
10	CML-5008(106)	Stockton	HAMMER LANE BETWEEN SR99 AND I-5, BRT PHASE III - INSTALL TRAFFIC SIGNAL IMPROVEMENTS
10	BRLO-5939(084)	Merced County	BAXTER ROAD OVER DEADMAN CREEK (BR. # 39C0230), BRIDGE REPLACEMENT (TC)
10	BRLO-5929(245)	San Joaquin County	BUCKMAN RD. OVER DUCK CREEK, BRIDGE REPLACEMENT (TC)
10	BRLO-5938(193)	Stanislaus County	ST. FRANCIS ROAD OVER MODESTO IRRIGATION DISTRICT (MID) MAIN CANAL, BR.# 38C0236, BRIDGE REPLACEMENT (TC)
11	TCSPDEMO-09CA(028)	Vista	WEST VISTA WAY, ROADWAY WIDENING
11	HSIPL-5957(107)	San Diego County	ON MISSION RD BETWEEN AMMUNITION RD AND FALLBROOK ST, INSTALL INTERCONNECT SIGNALS
12	BRLO-5151(026)	Newport Beach	PARK AVENUE OVER THE GRAND CANAL ON BALBOA ISLAND, BR. NO. 55C-0015, BRIDGE REPLACEMENT (TC)
12	CMLN-6071(072)	Orange County Transportation Authority	INTERSTATE 5 (I-5) FROM SOUTH OF VISTA HERMOSA TO SOUTH OF PCH(SEG 2), ADDING ONE HOV LANE IN EACH DIRECTION
12	STPL-5063(136)	Santa Ana	SANTA ANA BLVD. GRADE SEPARATION PROJECT
06	STPL-5060(228)	Fresno	HERNDON WESTBOUND AUXILIARY FROM FRESNO ST. TO SR41, CONSTRUCT AUXILIARY LANE
06	STPL-5170(043)	Kingsburg	SIERRA STREET RECONSTRUCTION FROM JOHNSON DRIVE TO SR 99, PAVEMENT RESURFACING/REHABILITATION

Local Agency Comments

Things that are/would be useful to help increase local agency knowledge in A&E Consultant Selection and Procurement

- Peer review/sharing, mentoring meetings such as this.
- Training might be helpful.
- More live training might be useful.
- District blog has been useful.
- Sharing of common issues, mistakes or deficiencies.
- Would be helpful if Caltrans had a database in which to share average hours it takes to perform specific tasks.
- Suggest more localized training. Local agency resources for travel are limited.
- Regular meetings at Caltrans District office (every 3 or 4 months or so) useful, though travel is an issue from a resource perspective.
- Would like to see Federal Aid Series held more locally.
- Webinars are somewhat useful but not as interactive.

Comments on Caltrans Publications/Forms/Website as it relates to A&E Consultant Selection and Procurement

- Fillable forms provided by local assistance are useful.
- Fillable pdf forms are useful, but it would be helpful to have forms in both pdf and Word available for flexibility of use.
- Need to clean up Chapter 10 – LAPM Exhibit 10-R does not agree with body of Chapter 10 and LAPM Exhibit 10-C (one of the forms refers “specifically to Construction”).
- In LAPM Exhibit 10-R, recommend grouping all mandatory provisions together so that they can essentially be copied/pasted. Perhaps the 10-R could be modified and included similar to Form 1273.
- Consultant guidebook is redundant to LAPM Chapter 10.
- LAPM Chapter 10 is useful.
- DBE boilerplate language needs to be updated as it refers specifically to Construction.
- Suggest consideration of implementing into the Local Assistance website a drop down menu (i.e. – “How do I...”) to make more user friendly, or include FAQ.
- Minimal engineering staff; suggest a pamphlet written for perspective of an elected official to describe what is required in the process.
- Suggest better summary/checklist for entire process.
- A simplified overview of the entire process would be useful.

Local Agency Comments, continued

Comments on requirements (challenges/compliance issues, etc) in relation to A&E Consultant Selection and Procurement

- Advertising in the newspaper is a waste of time.
- Requirements may be confusing as local agencies utilize other Federal funds (i.e. – Aviation), which have different regulations.
- 25% PE cap needs to be closer to 30% (particularly for projects such as bridge projects).
- If requirements were to change such that a completed LAPM Exh 10-C were required prior to PE authorization, it would be problematic because local agency needs to be able to get reimbursed for tasks required to complete the 10-C.
- Regarding independent cost estimate: the local agency does a comparison of the cost proposal to costs agreed to previously.
- LAPM is too much, too many questions end up needing to go to Caltrans, suggest putting the entire process on the locals.
- A \$40,000 Federal project [for example] is not worth it to the local agency due to there being so many requirements.

Comments pertaining to experiences working with Caltrans in relation to A&E Consultant Selection and Procurement

- Regarding Caltrans assistance, DLAEs/staff may have limited expertise in this area.
- Too many backlogs in Caltrans due to PYs being limited (notably in Environmental).
- Caltrans is more focused on construction.
- Backlog with A&I previously (note: discussed further and the contention appears to have been in the time prior to the current risk-based process and A&I 30-day turnaround commitment for the conformance letter).
- Can Caltrans do a better job of explaining to them what they will need to do (i.e. – in the Program Supplement Agreement cover letter, application for funds; can additional instructions be included therein)?
- Improve contact information; wrong people receive Program Supplement Agreements, etc.

Other/Miscellaneous Comments relating to A&E Consultant Selection and Procurement

- Serious staffing issues at local agency.
- For on-call contracts, it is useful to have at least two firms who you can rotate work through as the competition helps keep costs reasonable.
- On the subject of the potential for another entity to handle part of the selection process, the local agency would have reservations as the MPO would not have the necessary expertise. Work to be done by MPO or Caltrans would be less efficient.
- Some local agencies would prefer to NOT have others involved in doing the process for them as they want a choice in the selection. The potential to choose from an on-call list (Caltrans-determined) might be more palatable.