



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

STATEMENT OF QUALIFICATIONS SUBMITTAL INSTRUCTIONS AND
GENERAL CONTRACT PROCESS INFORMATION

Read carefully as this document has received a major update. It shall be read in its entirety.

- October 7, 2020 - California Disabled Veteran Business Enterprise Requirements form STD 840 change to DGS PD 843.
- Affected on December 6, 2019

Note: A copy of the selected consultants' Statement of Qualifications (SOQ) will be included as an attachment to the executed contract.

I. AUTHORITY

Section 1520.1(e) of the California Code of Regulations, Title 21.

II. DEFINITIONS

- A. Caltrans means the State of California, Department of Transportation.
- B. Architectural and Engineering (A&E) services include all architectural, landscape architectural, environmental, engineering, land surveying, right of way engineering, construction engineering, construction management and project management services, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, in support of the aforementioned services, including permitting and environmental studies, design phase services, construction phase services, public outreach and meeting facilitation related to the foregoing (as defined in section 1520.1(e) of the California Code of Regulations, Title 21).
- C. Environmental services those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code (as defined in section 4525(f) of the California Government Code, Title 1).
- D. Prime consultant/proposer means the lead individual or firm providing engineering and design related services as a party to a contract with a "recipient" or "subrecipient" of Federal assistance (as defined in 2 CFR 200.86 or 2 CFR 200.93, respectively).
- E. Subconsultant means the individual or firm contracted by a prime consultant to provide Architectural and Engineering and design related or other types of services that are a part of the services which the consultant is under contract to provide to a "recipient" (as defined in 23 CFR 172.3).
- F. Agreement also means Contract.
- G. Certify means a signature representing the information is true and correct under penalty of perjury under the laws of the State of California.
- H. Firm means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering, as defined in section 4525(a) of the California Government Code. It also means any bidder, proposer, consultant, or offeror participating in a competitive solicitation or contracting process.
- I. Small business firm is a firm certified as a "small business" in accordance with California Government Code section 14837 (d)(1)(A) or its successor provisions.

- J. Work Codes indicate the types of work DBE firms are certified to perform.
- K. RFQ is an acronym for Request for Qualifications, the solicitation document used to request a Statement of Qualifications of firms that perform A&E services.
- L. SOQ is an acronym for Statement of Qualifications, the response to an RFQ submitted by firms that perform.
- M. Key Personnel (and key personnel) are individuals who are expected to perform key roles to meet contract requirements. The key personnel composition shall be representative of all advertised classifications to meet project delivery. Key personnel are expected to be utilized substantially throughout the life of the contract. The consultant is required to identify the key personnel in their organization chart with a symbol (i.e. such as a star or picture of a key).
- N. Vendor is an individual, sole proprietorship, firm, partnership, corporation, or any other business venture that provides a service that is routine and commodity-like, and therefore the services can be procured from many sources and the vendors providing these services can be readily substituted for one another.
- O. Vendor Services are those services provided by a vendor. Vendor services will require a minimum of three bids to be submitted to the Caltrans Contract Manager at the time these services are required at the Task Order level.

Vendor services shall be listed in the SOQ transmittal letter. The name of the vendors should not be in the SOQ. For example, you may list "Traffic Handling Services Vendor"; however, you may not include the name of a vendor.

The table below is a guide for prime consultants to determine whether the company that is contributing to the contract is a subconsultant or a vendor. In both instances, a prime consultant cannot apply its profit or indirect cost rates to services provided by a subconsultant or a vendor. These services shall be invoiced to Caltrans as direct costs.

Description	Subconsultant	Vendor
Work Performed	<p>Performs a key portion of the scope of work/objectives of the program.</p> <p>Performs analysis or evaluation involving substantial discretionary judgement. Collaborated on design.</p>	<p>Performs analysis or evaluation involving substantial discretionary judgement. Collaborated on design. Does not participate and/or collaborate in project design/proposal development</p> <p>Performs services such as traffic control, simple testing, potholing and other routine and commodity-like services.</p> <p>Services do not include a significant amount of analysis or evaluation that involve substantial discretionary judgement.</p> <p>Services are part of the vendor's regular business operations and are available to many different purchasers/customers at standard/fixed rated. Services are more routine in nature.</p>
Personnel	<p>Key personnel are identified.</p> <p>Qualifications are included in the proposal and considered during the peer evaluation.</p> <p>Change in personnel will require prior approval.</p>	<p>Vendor can only utilize the rate sheet without hourly labor rates.</p>
Technology Transfer	<p>Potential for patentable or copyrightable technology to be created through project; Caltrans has the right to protect technology.</p>	<p>No potential for patentable or copyrightable technology to be created through project.</p>
Compliance to Federal Regulations	<p>Compliance requirements of prime are passed through to the subconsultant.</p>	<p>Provides a service outside program compliance requirements. Services might be in a lab or on-site.</p>
Compliance to State Regulations	<p>Services might be subject to California's Prevailing Wage Law.</p>	<p>Services might be subjected to Prevailing Wage Law.</p>

III. REQUIREMENTS FOR STATEMENTS OF QUALIFICATIONS (SOQS)

- A. If a SOQ does not meet all the requirements, it may be considered non-responsive and eliminated from further consideration. To be responsive, the consulting firm shall comply with all minimum proposal requirements set forth in this document and the RFQ Notice. Caltrans may waive immaterial deviations and the SOQ may be evaluated based on the information provided when considered to be in the best interest of the State. Waiver of an immaterial deviation shall in no way modify the RFQ requirements or excuse the consulting firm from full compliance with the Agreement requirements. After the final filing date and time for submission of SOQ, each SOQ will be opened and examined to determine compliance with the submittal requirements
- B. SOQs shall be in the following format:
 - SOQs to be bound on the 11" side – binding style to be determined by submitter.
 - 1. Paper size to be 8-1/2" x 11" (except the organizational chart). Font size used for all documents (except the organizational chart) to be a minimum of 8 point.
- C. SOQs are to be tabbed and labeled into seven (7) sections and shall contain the following information:

Section 1 – Transmittal Letters/Goal Documentation

- A. Prime Consultant Transmittal Letter. List all firms (prime consultant and subconsultants, and vendor services); the services they will provide with the percentage (best estimate) of utilization for each firm and vendor services. Each firm shall indicate whether or not the firm is subject to prevailing wage requirements by the California Department of Industrial Relations (DIR). An individual authorized to obligate the firm or joint venture shall sign the prime's transmittal letter. The prime consultant transmittal letter is limited to three (3) pages.
- B. Subconsultant Transmittal Letter. The subconsultant shall state their commitment to the prime consultant, indicating the specific portion of the work to be performed by their firm. The person signing the transmittal letter shall be authorized to obligate the firm. Each subconsultant transmittal letter is limited to one (1) page.

- C. The signatures affixed to and dated on the prime and subconsultant transmittal letters shall constitute a certification under penalty of perjury under the laws of the State of California that the proposer has, unless exempted, complied with the State nondiscrimination program requirements (see Americans with Disabilities Act under Section VII. MISCELLANEOUS (page 23 of 27 of this document)). The prime consultant shall provide a contact name, mailing address, email address, and phone number to which correspondence can be sent.
- D. Provide the following information for any former State of California, Department of Transportation (Caltrans) employee(s) listed on the organizational chart by the prime, and/or subconsultants, and/or vendor services providers:
1. The individual's full legal name
 2. Separation date from Caltrans starting on the later date of when the official permanently leaves the state service, they are no longer authorized to perform the duties of their job, and they stop performing the duties of the job, even if the official is still receiving compensation for accrued leave credits, and
 3. Functional responsibility while with Caltrans (within the last 24 months of employment). Further information concerning conflict of interest issues can be found in this document under Section IV Post-Government Employment Restrictions and Section V. Conflict of Interest Concerning Consultants.
- E. The prime consultant's signature affixed on the transmittal letter certifies that neither the prime consultant, or its subconsultants, or its vendors providing testing services, will engage in any construction services for the same project for which the prime consultant and/or subconsultant previously performed Project Construction Support services. List any former and/or current projects that would be directly related to the construction services requested
- F. Provide the following goal documentation: (See RFQ Notice for participation goal requirements)
1. Disadvantaged Business Enterprise Goals
 - a) Copy of printout from [Disadvantaged Business Enterprise \(DBE\) database](#) for proof of firm's certification.
 - b) DBE Participation Forms – will consist of the following pursuant to the instructions in Section III Participation Goals, subsection A.:
 - (1) Disadvantaged Business Enterprise (DBE) Information, ADM-0227F A&E
 - (2) Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation, ADM-0312F

- c) Form ADM-0312F should be submitted with the ADM-0227F A&E to demonstrate good faith efforts (GFE) and to protect consultant's eligibility for contract award in the event Caltrans determines the consultant failed to meet the DBE goal.
- d) Failure to complete and submit the required DBE information and forms will be grounds for finding the consultant non-responsive and cause for rejection of the SOQ (also refer to the RFQ Notice, Section I, General Information, subsection H for information regarding DBE participation requirements).
- e) Requirement in compliance with 49 CFR 29.37 revised on February 28, 2011: The consultant awarded the Agreement shall complete and submit a Disadvantaged Business enterprise Utilization Report (ADM-3069) with each invoice as required in Agreement, Exhibit B, "Budget Detail and Payment Provisions" and Exhibit D, "Special Terms."

OR

2. Disabled Veteran Business Enterprise Goals

- a) Disabled Veteran Business Enterprise (DVBE) certification letter(s) issued by the certifying entity.
- b) DVBE Participation Package – will consist of the following:
 - (1) California Disabled Veteran Business Enterprise Requirements form (DGS PD 843)
 - (2) Bidder Declaration Form (GSPD-05-105)

Failure to complete and submit the required DVBE information and forms will be grounds for finding the consultant non-responsive and cause for rejection of the SOQ (also refer to the RFQ Notice, Section I, General Information, subsection H for information regarding DVBE participation requirements).

The following Section is applicable to contracts containing public work elements and therefore are subject to prevailing wage requirements by the California Department of Industrial Relations (DIR).

G. Consultant/Contractor Registration Program

- 1. The prime consultant is responsible to determine which components of the advertised scope of work, if any, are subject to prevailing wage requirements.
- 2. The prime consultant shall indicate in the SOQ transmittal letter whether or not each firm is subject to prevailing wage requirements.

3. If the advertised scope of work contains components that are subject to prevailing wage requirements by DIR, the prime consultant shall be registered. Pursuant to Labor Code (LC) section 1725.5, no prime consultant may be awarded a contract containing work subject to prevailing wage requirements unless registered with DIR.
4. No subconsultant or vendor may be listed on a SOQ to provide services subject to prevailing wage requirements, unless registered with DIR, pursuant to LC section 1725.5 [with limited exceptions from this requirement for competitive purposes only under LC section 1771.1(a)].
5. An SOQ shall not be accepted, nor any agreement or sub-agreement entered into without proof of the prime consultant, subconsultant(s), or vendor current registration to perform work subject to prevailing wage requirements pursuant to LC section 1725.5 [LC 1771.1(b)].
6. Caltrans will verify each of the registration numbers provided by the consultant prior to contract award. A copy of printout from the DIR database for the prime consultant and each subconsultant firm or vendor that will be performing work subject to prevailing wage requirements shall be included in the SOQ as proof of registration.
7. Consultants that do not possess the required registration at the contract award will be deemed nonresponsive and rejected from further consideration in the solicitation process.

Section 2 – General Services Administration Standard Form 330 (SF330)

Additional information for completing the SF330 may be obtained at the [GSA Forms Library SF330](#) shall be completed in accordance with the instructions contained in the form and shall conform to the following:

- A. PART ONE-CONTRACT-SPECIFIC QUALIFICATIONS - Sections D-H to be divided by colored sheets.
 1. Section A – Contract Information
 2. Section B – Architect-Engineer Point of Contact – Prime Information
 3. Section C – Proposed Team – Firm Name, Address, and Role in Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime consultant or joint venture partners first.
 4. Section D – Organizational Chart – limited to one (1) page folded to 8-1/2" x 11', not to exceed 11" x 17". The consultant is required to identify the key personnel in their organization chart with a symbol (i.e. such as a star or a key).

5. Section E – Resumes of all Proposed Key Personnel listed on organizational chart and expected to be utilized on this contract – List no more than five (5) projects per resume, not to exceed 2 pages. For each example project listed in the resumes, include the length of time spent on each project (month/year to month/year) in the Brief Description section.

All proposed personnel to be utilized shall be grouped by firm. Personnel resumes shall be arranged by classification and numbered for each individual firm.

Each consultant shall include a letter certifying that proposed personnel meet the requirements specified in the RFQ for their corresponding classification, including but not limited to: education, licensing, certifications and experience.

6. Section F – Example Projects – Ten (10) example projects shall be submitted in order to be deemed responsive to the solicitation requirements. Limit each example project to on (1) page. The example projects which best illustrate the proposed team's qualifications for the contract shall represent services performed by individuals from the prime consultant or subconsultant firm(s) available to do work on the contract and listed on the Organizational Chart in Section 2, Part One, Section D. relevant projects performed by key personnel, not included in the 10 example projects, and not performed by the current team, may be added in Section H of SF330 with a brief description of the project and relevance to the required services. Section G – Key Personnel Participation in Example Projects.
 - a) The consultant would be required to identify the key personnel in their organization chart with a symbol (i.e. such as a star or a key).
 - b) Consultant is required to use the standard resume SF330 as a template for key personnel. For Non-Key Personnel this standard template causes confusion as it is titled Resumes of Key Personnel. Consultants will provide forms of their choice that meet requirements for content and length.
7. Section G – Key Personnel Participation in Example Projects.
8. Section H – Additional Information – Prime consultant is limited to four (4) pages and each subconsultant to two (2) pages. Subconsultants who have not previously worked with the prime may include additional project examples in this section; projects performed by key personnel that were not included in the 10 example projects may also be included in this section; however, page limits still apply. SF330 Section H is not required for vendors.

9. Section I – Authorized Representative – Prime consultant's authorized representative shall sign and date the completed form. Signing certifies that the information provided is current and factual, and that all firms on the proposed team agree to work on the project.

B. SF330 PART TWO – GENERAL QUALIFICATIONS – NOT APPLICABLE

Section 3 – Staff Availability

- A. The prime consultant shall provide a table or graph (i.e. bar chart, pie chart) showing the percentage of staff availability of the team proposed to work on the contract.
- B. The prime consultant shall implement a personnel retention strategy and shall submit the written plan. The Personnel Retention Plan shall be inserted in Section 3 of the Statement of Qualifications (SOQ), immediately after the staff availability graph or chart. The absence of the Personnel Retention Plan may affect the score of the SOQ

Section 4 – Communication Plan

The prime consultant shall show the accessibility of the team by providing a communication plan that outlines the chain of command including after hours and emergency situations that may arise during the term of the contract.

Section 5 – Work Force Analysis Chart

Each firm (prime and subconsultant) with 50 or more employees shall provide a Work Force Analysis (example below) showing the total number and percentage of employees working in California.

Each firm (prime and subconsultant) with fewer than 50 employees shall provide a statement indicating that the firm has fewer than 50 employees and is therefore exempt from the Work Force Analysis requirement. A statement by the prime consultant on behalf of the subconsultant(s) is not acceptable.

A Work Force Analysis Chart and/or exemption statement is not required for vendors.

Work Force Analysis

	Caucasian	African American	Hispanic	Asian/ Pacific Islander	Native American/ Native	Total Calif. Work Force
	M F	M F	M F	M F	M F	M F
Executives/Managers						
Licensed Professional Engineers/Surveyors/ Architects						
Other Technical Professional						
Office/Clerical						
TOTAL						
PERCENT OF TOTAL						

Section 6 – Nondiscrimination Plan

- A. Contracts solicited by the State will be awarded without discrimination. To comply with State and Federal nondiscrimination program requirements, prime, subconsultant or vendor firms with fifty (50) or more employees shall provide a description of the firm's nondiscrimination program designed to eliminate discrimination based on race, color, religion, age, sex, sexual orientation, disability, or national origin.
- B. Each firm (prime, subconsultant or vendor) with fewer than 50 employees shall provide a statement indicating that the firm has fewer than 50 employees and is therefore exempt from the Nondiscrimination Plan requirement. A statement by the prime consultant on the behalf of the subconsultant(s) or vendors is not acceptable.
- C. State nondiscrimination program requirements include Workforce Analysis Chart and Nondiscrimination Plan are found in Government Code Section 12990 and Title 2, California Code of Regulations, Division 4, Chapter 5, Subchapter 1, Sections 11102, 11103, and 11109 (unless exempted pursuant to Section 11111). For federally funded projects, nondiscrimination compliance requirements are found in Title VI of the Civil Rights Act of 1964, and the Code of Federal Regulations, 49 CFR Section 21.9.

Section 7 – California Civil Rights Laws

Any prime consultant that submits a SOQ to, or otherwise proposes to enter into or amend a contract with, a state agency with respect to any contract in the amount of one hundred thousand dollars (\$100,000) or more shall certify, under penalty of perjury, at the time the SOQ is submitted or the contract is amended, that they satisfy all of the conditions set forth in California Public Contract Code Section 2010 and they shall execute the Certification. A blank form can be found at the [A&E Contract Information website](#) under “Forms Required with SOQ”.

IV. PARTICIPATION GOALS

In accordance with the RFQ Notice, the following will apply:

The following Section A is applicable to ALL Federally funded Agreements

- A. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION GOAL Caltrans has set an overall annual DBE goal to ensure equal participation of DBE groups specified in 49 Code of Federal Regulations (CFR), Part 26 (49 CFR 26). Incompliance with 49 CFR 26, Caltrans set a contract goal for DBEs participating in a solicitation expressed as a percentage of the total dollar value of the total resultant agreement. See RFQ Notice for the DBE goals for a specific solicitation.
1. Authority and Responsibility
 - a) The solicitation is subject to 49 CFR 26 entitled Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Consulting firms and vendors shall be fully informed of the requirements of the regulations and Caltrans' DBE Program developed pursuant to the regulations.
 - b) Pursuant to 49 CFR 26.13, the consultant, subconsultants, and vendors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the agreement. The consultants and vendors shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT -assisted agreements. Failure by the consultants and vendors to carry out these requirements is a material breach of the agreement, which may result in the termination of the agreement or such other remedy as Caltrans deems appropriate, which may include, but is not limited to:
 - (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the consultant or vendor from future competition as non-responsible.

- c) It is Caltrans' policy to encourage the participation of DBEs in the performance of agreements financed wholly or in part with federal funds. The prime consultant should ensure that DBE firms have an opportunity to participate in the performance of the solicitation and shall take all necessary and reasonable steps for this assurance.
- d) It is the prime consultant's responsibility to make work available to DBEs and select portions of work, services, or materiel needed from the RFQ, Attachment 1, Scope of Work. The required work, services, and/or materiel shall be relevant to the work codes of the DBEs consistent with available DBEs, to meet the contract goal for DBE participation in this solicitation or to provide information to establish that, prior to SOQ submittal, the prime consultant made adequate good faith efforts (GFE) to meet the goal.
- e) To be eligible for award of the agreement, the prime consultant shall demonstrate that the contract goal for DBE participation will be met or that, prior to SOQ submittal, adequate GFE to meet the goal was made. Final determination of goal attainment of GFE by the prime consultant will be at Caltrans' discretion.
- f) The prime consultant is cautioned that even though its submittal indicated it will meet the stated DBE goal, its submittal should also include its GFE documentation along with DBE goal information to protect its eligibility for award of the agreement in the event Caltrans, in its review, finds that the goal has not been met.

2. Submission of DBE Participation Information:

The required DBE goal information shall be submitted on the Disadvantaged Business Enterprise (DBE) Information form, ADM-0227F A&E, and described herein. Use the Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation form, ADM-0312F, to document any good faith efforts (GFE). Both ADM-0227 A&E and ADM-0312F are available on the [A&E Contract Information website](#). The prime consultant is responsible for carefully reviewing and following all instructions for the ADM-0227F A&E and/or ADM-0312F.

- a) DBE GOAL INFORMATION: On page 1 of the ADM-0227F A&E, the proposer shall provide the required information and documentation and instructed on page 2 of the ADM-0227F A&E. The Proposer is responsible to ensure all information on the ADM-0227F A&E is complete and accurate.

- (1) The percentage of DVE goal commitment documented by the proposer in the ADM-0227F A&E is the percentage that will be documented in the Agreement language. After the highest qualified consultant has been selected, the highest qualified consultant will be asked to convert the percentage of commitment to dollar amount for each DBE listed on form ADM-0227F A&E in the column identified for that purpose and resubmit their form ADM-0227F A&E to the contract analyst within five (5) working days after notification of final results.
 - (2) The final/revised ADM-0227F A&E will be attached to and incorporated as part of the Agreement.
- b) GOOD FAITH EFFORTS: Using ADM-0312F, the proposer shall provide sufficient documentation to demonstrate adequate GFEs were made as instructed in the ADM-0312F. The Proposer is responsible for ensuring all information in the ADM-0312F is complete and accurate. For disqualification examples, refer to the instructions to Bidder/Proposer in page 1 of the ADM-0312F.

3. DBE Certification Requirements

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR 26 and Caltrans' DBE Program developed pursuant to the regulations. Particular attention is directed to the following:

- a) A DBE shall be certified through the California Unified Certification Program (CUCP).
 - (1) In accordance with 49 CFR 26, The DBE shall be certified by the SOQ submittal due date as stated in the RFQ Notice and possess the work codes applicable to the type of work the DBE will perform on the Agreement in order to count toward meeting the DBE goal.
 - (2) It is the proposer's responsibility to verify that DBEs are certified by accessing the CUCP database.
 - (3) The CUCP database includes DBEs certified from all certifying agencies participating in the CUCP. If a firm is certified and cannot be located in the database, the prime consultant is responsible for complying with all provisions of this Agreement, and the prime consultant should contact the Caltrans Office of Civil Rights Certification Branch at (916) 324-1700 to ensure that the firm in question is certified with the appropriate work code to perform services required.
- b) Access the CUCP database from the Caltrans [Office of Civil Rights](#) website.

- (1) Click on the link button "DBE Search Click here"
 - (2) Click on "Click Here to Access DBE Query Form"
 - (3) Searches can be performed by one or more criteria
 - (4) Follow instructions on the screen
- c) A proposer (prime consultant), who is not a certified DBE, is required to document one or a combination of the following:
- (1) Meet the contract goal for DBE participation through work performed by DBE subconsultants, vendors, suppliers, or trucking companies.
 - (2) Make an adequate GFE to meet the contract goal for DBE participation prior to SOQ submittal.
- d) A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company. The prime consultant is responsible for meeting the DBE goal even though vendor services require a minimum of three bids.
- e) A certified DBE proposer not proposing as a joint venture with a non-DBE is required to document one or more of the following:
- (1) The DBE proposer will meet the goal by performing work with its own forces.
 - (2) The proposer will meet the contract goal for DBE participation through work performed by DBE subconsultants, vendors, suppliers, or trucking companies.
 - (3) Prior to SOQ submittal, the proposer made adequate GFEs to meet the contract goal for DBE participation.
- f) A DBE joint venture partner shall be responsible for specific Agreement items of work, or portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces.
- g) The DBE joint venture partner shall share in the capital contributions, control, management, risks, and profits of the joint venture. The DBE joint venture shall attach and submit the joint venture Agreement with the ADM-0227F A&E as instructed in page 2 of the form.

- h) A DBE shall perform a Commercially Useful Function (CUF), pursuant to 49 CFR 26 (i.e.: shall be responsible for the execution of a distinct element of the work and shall carry out its responsibility by actually performing, managing, and supervising the work involved). To perform a CUF, the DBE shall also be responsible for materials and supplies to be used on the Agreement for negotiation price, determining quality, and quantity, installing (where applicable) and paying for the material itself.
 - i) Any dollar amount of work, service, or supplies proposed for DBE participation can be counted only once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.
 - j) A prime consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the goal except that portion of the work to be performed by non-DBE consultants.
 - k) If the prime consultant performs and documents an adequate GFE to meet the goal, the award cannot be denied on the basis that the prime consultant failed to meet the goal.
 - l) Caltrans considers the DBE commitments of other proposers in determining whether a proposer made a GFE to meet the goal.
4. Credit: Materials, Supplies, and Trucking Companies:
- a) Credit for materials and/or supplies purchased from DBEs will be as follows:
 - (1) If the materials or supplies are obtained from a DE manufacturer, 100 percent (100%) of the costs of the materials or supplies will count toward the DBE goal.
 - (2) A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the Agreement.
 - (3) If the materials or supplies are purchased from a DBE regular dealer, 60 percent (60%) of the costs of the materials or supplies will count toward the DBE goal.
 - (4) A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock and regularly sold or leased to the public in the usual course of business.

- (5) To be a DBE regular dealer, the firm shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum, products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products.
 - (6) Any supplementing of regular dealers' own distribution equipment shall be a long-term lease Agreement and not on an ad-hoc or Agreement by Agreement basis.
 - (7) Packagers, brokers, manufacturers' representatives or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
 - (8) Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commission charged for assistance in the procurement for the materials and supplies or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services.
- b) Credit for DBE trucking companies will be as follows:
- (1) The DBE shall manage and supervise the entire trucking operation for which it is responsible on a particular Agreement and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
 - (3) The DBE will receive credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified a DBE. The DBE who leases trucks from another DBE received credit for the total value of the transportation services the lessee DBE provides on the Agreement.
 - (5) If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit only for the total value of these hauling services.

- (6) A lease shall indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from being used by others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck.
- (7) Leased trucks shall display the name and identification number of the DBE.

5. Use of Proposed DBEs:

- a) If awarded the Agreement, the successful prime consultant shall use the DBE/subconsultants(s), vendor(s) proposed in its SOQ.
- b) The consultant may not substitute, add, or terminate a subconsultant, vendor, supplier or, if applicable, a trucking company, listed in the original SOQ without the prior written approval of the Contract Manager.

The consultant shall make an adequate GFE to find another certified DBE subconsultant to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal; for the DBE participation.

The consultant's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE.

The requirement that DBEs shall be certified by the SOQ due date does not apply to DBE substitutions after award of the Agreement. Substitutions of DBEs after award shall be certified at the time of the substitution or addition.

Authorization to sue other subconsultants, vendors, or suppliers may be requested for the following reasons:

- (1) Listed DBE fails or refuses to execute a written Agreement based upon the terms and conditions for the Agreement.
- (2) The consultant stipulated that a bond was a condition of executing a subcontract and the listed DBE subconsultant failed or refuses to meet the bond requirements of the consultant.
- (3) Work requires a professional engineering license and the listed DBE does not have a valid license under the Professional Engineers Act (Business and Professions Code Section 6700).
- (4) Listed DBE fails or refuses to perform subcontract or furnish listed materials.

- (5) Work performed by listed subconsultant is unsatisfactory and not in compliance with the scope of work to be performed.
 - (6) Listed DBE is ineligible to work on the project because of suspension or debarment.
 - (7) Listed DBE becomes bankrupt or solvent.
 - (8) Listed DBE voluntarily withdraws written notice from the Agreement.
 - (9) Listed DBE is ineligible to receive credit for the type of work required.
 - (10) Listed DBE owner dies or becomes disabled resulting in the inability to perform the work of the Agreement.
 - (11) Caltrans determines other documented good cause pursuant to 49 CFR 26.53.
- c) Consultant's DBE substitution request to the Caltrans Contract Manager shall include:
- (1) Written explanation of the substitution reason and, if applicable, consultant shall also include the reason a non-DBE subconsultant is proposed for use.
 - (2) Written description of the substitute business enterprise, including its business status, DBE certification number and status as a sole proprietorship, partnership corporation, or other entity.
 - (3) Written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall Agreement that the substitute firm will perform.
 - (4) Consultant shall provide to the Caltrans Contract Manager within seven (7) working days of the substitution request documentation of GFE to find a replacement DBE. This period may be extended for an additional seven (7) working days, if necessary, at the request of the consultant.
- d) Prior to the approval of the consultant's substitution request the Caltrans Contract Manager shall give written notice to the subconsultant being substituted by the consultant.

A copy of the notice sent by the Caltrans Contract Manager shall be sent to the Caltrans Division of Procurement and Contracts (DPAC). The notice shall do all of the following:

- (1) Give the reason the consultant is requesting substitution of the listed subconsultant.

- (2) Give the listed subconsultant five (5) working days within which to submit written objections to DPAC and copies to the Caltrans Contract Manager.
 - (3) Notify the subconsultant that if a written objection is not received or received past the due date, such failure will constitute consent to the substitution.
 - (4) Be served by certified or registered mail to the last known address of the listed subconsultant.
- e) The listed subconsultant, who has been so notified, shall have five (5) working days within which to submit written objections of the substitution to the Caltrans Contract Manager. Failure to submit a written objection shall constitute the listed subconsultant's consent to the substitution.

If written objections are filed by the listed subconsultant, DPAC will render a written decision. DPAC shall give written notice of at least five (5) working days to the listed subconsultant of a hearing by Caltrans on the consultant's request for substitution.

6. Forms:

Caltrans forms that are referenced in this section and can be found on Caltrans' [A&E Contract Information website](#).

ADM-0227F A&E Disadvantaged Business Enterprise (DBE) Information form

ADM-0312F Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation form

The forms can also be obtained by contacting the analyst listed in the solicitation.

7. Questions:

Questions concerning DBE certification requirements and good faith effort documentation shall be addressed to:

State of California
Department of Transportation
Office of Civil Rights
1823 14th Street
Sacramento CA 95814-7189

Or you may call (916) 324-1700. Information regarding DBE firms certified by Caltrans is available via the Internet at the [Office of Civil Rights](#) website.

The following Section B is applicable to ALL State-funded Agreements.

B. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOAL

1. Prime consultants are required to attain the required Disabled Veteran Business Enterprise (DVBE) goal. See RFQ Notice for the DVBE goals for a specific solicitation. The following DVBE participation goal forms shall accompany the consultants SOQ:
 - a) California Disabled Veteran Enterprise Requirements form (DGS PD 843)
 - b) Bidder Declaration Form (GSPD-05-105)
2. Failure to complete and submit the required DVBE information and forms will be grounds for ding the consultant non-responsive and cause for rejection of the SOQ (also refer to the RFQ Notice, Section 1, General Information, subsection H for information regarding DVBE participation requirements).
3. The Documentation of Disabled Veteran Business Enterprise Program Requirements form (STD 840) can be downloaded from the [A&E Contract Information website](#) or may be obtained by contacting the contract analyst named in the RFQ Notice.
4. When completing the STD 840, the anticipated goal percentage for each firm listed shall be inserted in the box labeled "Estimated \$ and/or %" and the submitting firm name and the solicitation number shall be inserted on the top of each page.
5. The [Department of General Services, Office of Small Business and DVBE Services](#) Certification and Resource's provides information on the Internet regarding how to become a certified DVBE firm and also lists all certified DVBE firms

The following Section C is applicable to ALL State-funded Agreements.

C. SMALL BUSINESS PARTICIPATION GOAL

Pursuant to Governor's Executive Order S-02-06, Caltrans may establish a small business participation goal for the contract (see RQF Notice). Consultants may provide, at the time of the award, the Small Business Questionnaire ADM-2046 form identifying all the certified small businesses to be utilized in meeting this goal. The form is available on the [Division of Procurement and Contracts website](#) or may be obtained by contacting the contract analyst names in the RFQ Notice.

V. POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

A. Former Caltrans employees, including former retired annuitants, designated in a Conflict of Interest Code are subject to post employment restrictions under Government Code Section 87406. Former designated Caltrans employees that have not been separated from the State for more than one (1) year starting on the later date of when the official permanently leaves state service, they are no longer authorized to perform the duties of their job, and they stop performing the duties of the job even if the official is still receiving compensation for accrued leave credits are prohibited from:

1. Entering into a contract with Caltrans as an individual.
2. Making any formal or informal appearances or oral or written communications to Caltrans or to any of its officers or employees. This includes attendance or participation in:
 - a) Selection interviews.
 - b) Scoping meetings
 - c) Contract and task order negotiations.
 - d) Direct involvement in cost proposal and audit activities.

B. Former Caltrans employees, including former retired annuitants, may be subject to a lifetime postemployment ban under Government Code Sections 87400-87403.

Violation by consultant(s) of any provisions found in the paragraphs above shall render every contract or other transaction entered into void unless the violation is technical or non-substantive.

C. Information regarding post-employment ban as stated in above-referenced Government Codes may be viewed by visiting the [California Fair Political Practices Commission](#).

VI. CONFLICT OF INTEREST CONCERNING CONSULTANT(S)

Prospective consultants shall disclose any financial, business or other relationship with the State of California, Caltrans, the California Transportation Commission, local government agencies, and/or contractors that may have an impact upon the outcome of the contract. Prospective consultants shall also list current clients who may have a financial interest in the outcome of the contract. Failure to disclose relevant conflict of interest information is likely to result in the consultant being deemed non-responsive.

VII. PROTEST PROCEDURES

A. This section sets forth the protest remedies available with respect to the RFQ process. Each prospective consultant by submitting its SOQ, expressly recognizes the limitation on its rights to protest contained herein, and expressly waives all other rights and remedies. Each prospective consultant agrees that the decisions on any protest, as provided herein, will be final and binding on the protestant.

B. All protests and related statements described in this section shall be submitted for filing to one of the following addresses:

1. Submittal via hand delivery or U.S. Mail:

State of California
 Department of Transportation
 Division of Procurement and Contracts
 1727 30th Street, 4th Floor, MS 65
 Sacramento, CA 95816-7006
 Attention: Bid, Protest, and Dispute Branch

2. Submitted via Email to DPAC.Protest.Disputes.Terminations@dot.ca.gov.

C. Protests Regarding RFQ Requirements

1. If any attempts to resolve prospective consultant concerns during the question and answer (Q&A) period were unsuccessful, protests regarding the RFQ requirements shall be filed only after the Q&A period ends, but no later than indicated on the time line under section C.3.

2. Prospective consultants may protest the RFQ requirements on the grounds that

- a) A material provision in the RFQ notice is ambiguous, or
- b) Any aspect of the RFQ requirements described herein violates applicable State or Federal law.

Timeline	# of Calendar Days After Advertisement (All Other Ad Periods)
Question & Answer (Q&A) Period Ends, Unless Modified by Addenda	10
RFQ Requirements Protest Deadline*, Unless Modified by Addenda	15

* Shall be received in DPAC office by this day.

- c) Protests regarding the RFQ requirements shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protestant shall have the burden of proving its protest by preponderance of the evidence. The outcome of the RFQ requirements protest shall be decided on the basis of the written submissions by Caltrans Division of Procurement and Contracts (DPAC), whose decision shall be final and binding on the prospective consultant. DPAC will issue a written decision regarding any protests to each prospective consultant.
- d) Notwithstanding the existence of a protest Caltrans may continue the procurement process. The failure of a prospective consultant to file a basis for a protest regarding the RFQ requirements within the applicable period shall preclude consideration of that ground in any future protest in connection with Caltrans' selection of the Most Highly Qualified firm decision.
- e) This is the only time a prospective consultant can file a protest over RFQ requirements.
- f) Caltrans may issue addenda or extend the SOQ due date to address the issues raised in a requirement protest.

D. Protests Regarding Selection of the Most Highly Qualified Team

1. Caltrans will only consider protest by prospective consultants that submitted SOQs.
2. Prospective consultants may protest the selection of the Most Highly Qualified firm only on the grounds that Caltrans did not comply with RFQ procedures.
3. Any protests regarding the Caltrans decision of Selection of the Most Highly Qualified firm shall be filed within seven (7) business days after the selection of the Most Highly Qualified firm. Caltrans will not accept protests filed after this time period.
4. Caltrans will not entertain protests of RFQ requirement during this stage in the process.
5. The protestant shall file a detailed written statement on the grounds, legal authority and facts, including all documents and evidentiary statements in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protestant shall have the burden of proving its protests by a preponderance of the evidence. Failure to file a protest within the applicable period shall constitute a waiver of the right to protest the selection of the Most Highly Qualified firm.

6. DPAC shall issue a written decision regarding the protest within 30 calendar days after the filing of the detailed statement of protest. The decision shall be final and binding on the protestant.
 7. Caltrans reserves the right to request information and/or documentation from the selected Most Highly Qualified firm to respond to issues raised in a protest.
- E. Under no circumstances shall Caltrans be held liable for payment of the protestant's costs or attorneys' fees. Caltrans shall not be liable for any damages to the protestant filing the protest or to any participant in the protest, on any basis, express or implied.

VIII. MISCELLANEOUS

A. Modification of Withdrawal of Submittals

Any SOQ received may be withdrawn prior to the SOQ submittal date by written request to Caltrans by the prime consultant. The prime consultant may elect to resubmit no later than the published due date and time.

B. Property Rights

SOQs received become the property of the State of California, Department of Transportation.

C. Addendum to Request for Qualifications Proposal

Caltrans reserves the right to amend the RFQ Notice by addendum before the final SOQ submittal date and time.

D. Non-Commitment of Caltrans

1. The RFQ Notice does not commit Caltrans to award a contract, to pay any costs incurred in the preparation of a SOQ for the request, or to procure or contract for services.
2. All products used or developed in the execution of any contract resulting from the RFQ will remain in the public domain at the completion of the project.

E. Americans with Disabilities Act

The consultant shall assure Caltrans that it will comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of a disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. Section 12101 et seq.).

F. Standard Title VI/Nondiscrimination Assurances (DOT Order No. 1050.2A)

The California Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all proposers that it will affirmatively ensure that disadvantaged business enterprises will be afforded full opportunity to submit SOQs in response to an advertised RFQ and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

IX. CONSULTATION SELECTION PROCESS INFORMATION

The consultant will be selected by a means of a dual selection process (evaluation of SOQs followed by an interview of those short-listed firm(s)).

A. Initial Evaluation:

The Consultant Selection Committee members (Panel) will review and evaluate each SOQ, document the strengths and weaknesses, and score each SOQ independently. The criteria on the ADM-2027 forms are the basis for the initial evaluation, scoring and ranking of consultant's SOQs to establish a short-list of firms to be interviewed. The Panel will evaluate key personnel identified on the organizational chart to ensure the team meets the advertised personnel requirements.

The ADM-2027 forms are available on the [A&E Contract Information website](#) or by contacting the contract analyst named in the RFQ Notice. Short-listed firms will receive an invitation to interview with an Example Task Order to be completed and presented at the interview. Short-listed firms will be required to present the approach, challenges, alternate solutions, key staff's availability and ability to deliver the Example Task Order at the interview.

B. Final Evaluation:

The Panel will use the criteria in forms ADM-2028a, ADM-2028b, and ADM-2028c as the basis for the evaluation, scoring and ranking of consultants interviewed. Forms ADM-2028a, ADM-2028b, and ADM-2028c are available on the [A&E Contract Information website](#) or by contacting the contract analyst named in the RFQ Notice. The final evaluation will include the following:

The Panel will use the criteria in forms ADM-2028a, ADM-2028b, and ADM-2028c as the basis for the evaluation, scoring and ranking of consultants interviewed. Forms ADM-2028a, ADM-2028b, and ADM-2028c are available on the [A&E Contract Information website](#) or by contacting the contract analyst named in the RFQ Notice. The final evaluation will include the following:

1. Example Task Order Presentation:

Short-listed firms will be required to demonstrate their approach to performing the work, challenges, alternate solutions, and key staff's availability and ability to deliver the services.

2. Oral Response to Technical Scenario Questions:

Short-listed firms will be provided 20 to 30 minutes to review the Technical Scenario Interview Questions prior to oral presentations.

3. Closing Statement:

Short-listed firms will be allowed two (2) minutes to add only to their Technical Scenario Questions.

4. Initial Evaluation Score:

Will account for 25 percent of the final score.

The Panel will evaluate the short-listed firms independently. The Panel will then collectively document the strengths and weaknesses to select the Most Highly Qualified firm. Finally, the Final Consensus Ranking (ADM-2028c Consensus) form will be prepared and the Final Evaluation will be certified by the Panel.

C. All prime consultants that participate in the consultation selection process will be notified of the final selection.

X. NEGOTIATIONS

The contract negotiation process includes assessment of the Financial Document Package(s) provided by the prime consultant in support of the proposed costs and the parties reach agreement on proposed contract costs. The Financial Document Packages due dates will be specified in the Request for Financial Documents letter sent to the Most Highly Qualified firm. The final agreed upon costs are fixed for the entire term of the Agreement.

A. Key to Successful Negotiations:

1. The contract fee and escalation rates are advertised.
2. A negotiation meeting with the Most Highly Qualified firm will occur after the submission of complete Financial Document Packages. Incomplete packages will not be accepted.
3. If agreement cannot be reached with the Most Highly Qualified firm, negotiations will be terminated, and negotiations will start with the next Most Highly Qualified firm for the contract

B. For A&E contracts whose total value equals or exceeds \$3,500,000, prime consultant firms are required to submit an Indirect Cost Rate (ICR)(s) audited by an independent CPA firm in accordance with the following criteria and acceptable indirect cost rate schedule formats:

1. Government Auditing Standards (GAS) issued by the United States Government Accountability Office.
2. 23 Code of Federal Regulations (CFR), Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts.
3. 48 CFR, Chapter 1, Part 31 – Contract Cost Principles and Procedures.
4. 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900
5. American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit & Accounting Guide, available at AASHTO Store.
6. Sample indirect cost rate schedules are on pages 42 to 44 of the 2016 AASHTO Uniform Audit & Accounting Guide.

If the prime consultant does not have an ICR audited by an independent CPA, the negotiation will be discontinued.

Caltrans reserves the right to negotiate a firm-fixed-price, lump sum contract or a combination of specific rates of compensation for a specific phase of the project and firm-fixed price, lump-sum amount for another phase. Caltrans also reserves the right to entertain firm-fixed-price, lump-sum task orders or fixed rates of compensation (i.e. actual costs plus other direct costs) for any contract when the Caltrans Contract Manager deems appropriate. Firm-fixed-price, lump-sum task orders may be negotiated for work resulting from the solicitation.

XI. CHANGES TO TEAM COMPOSITION

- A. Except as provided in subsection B below, any material changes in a proposer's team [e.g. any change of key personnel and/or sub-consultants] prior to the execution of the Agreement will be considered a material change in the SOQ, and therefore the SOQ will be automatically rejected.
- B. A proposer may change a SOQ after its submission and before the SOQ submittal due date and time by:
 1. first withdrawing the original SOQ, and
 2. submitting a new SOQ prior to the SOQ submittal deadline.

The SOQ may not be changed in any other manner.

XII. CONTRACT EXECUTION

- A. Consultant firms are not required to obtain a business license until the time of contract signing.

- B. If the consultant is a corporation, the consultant shall certify that the corporation is in good standing to do business in California. Pursuant to Revenue and Taxation Code 23101, "Doing business means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit."
- C. If the consultant is selected for the contract and found to have an invalid corporate status with the California Secretary of State's Office, the contract will be voided unless the consultant can provide validity of corporate status within five (5) business days of notification of intent to cancel.
- D. The selected consultant shall comply with Government Code Section 8355 in matters relating to providing a drug-free work place.
- E. All work shall be done in accordance with State standards, policies, procedures, regulations, and laws.
- F. All deliverables submitted by the prime consultant shall be Americans with Disabilities Act (ADA) compliant in accordance with Section 508 of the federal Rehabilitation Act.

XIII. CONSULTANT CODE OF BUSINESS ETHICS AND CONDUCT

A. Definition

Unites States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

B. Code of Business Ethics and Conduct

- 1. Within 30 days after contract award, the consultant shall:
 - a) Have a written code of business ethics and conduct; and
 - b) Provide a copy of the code to each employee engaged in performance of the contract.
- 2. The consultant shall promote compliance with its code of business ethics and conduct.

C. Awareness Program and Internal Control System for Other Than Small Businesses

This paragraph does not apply if the consultant has represented itself as a small business concern pursuant to the award of the contract. The consultant shall establish within 90 days after contract award:

- 1. An ongoing business ethics and business conduct awareness program; and
- 2. An internal control system.
 - a) The consultant's internal control system shall:

- (1) Facilitate timely discovery of improper conduct in connection with Government contracts; and
 - (2) Ensure corrective measures are promptly instituted and carried out.
- b) For example, the consultant's internal control system should provide for:
- (1) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the consultant's code of business ethics and conduct and the special requirement of Government contracting.
 - (2) An internal reporting mechanism, such as a hotline, by which employees may report suspect instances of improper conduct, and instructions that encourage employees to make such reports;
 - (3) Internal and/or external audits, as appropriate; and
 - (4) Disciplinary action for improper conduct.

D. Subcontracts

The consultant shall include this Section XII, including this subsection D, in any subcontracts, except when the subcontract:

1. Is for the acquisition of a commercial item; or
2. Is performed entirely outside the United States.