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# Procurement Policy & Procedures Manual



SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS

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# SCAG Procurement Policy & Procedures Manual

## Foreword

SCAG procurement policies and practices aim to promote maximum value and economy for the agency's constituents through fair and competitive processes. The goal underlying such policies is to select vendors and service providers using processes in ways that minimize opportunities for favoritism and that provide for competitive pricing. For service providers, the task also involves assessing whether the provider's skills best meet the agency's needs. Care must be taken to avoid the intent and appearance of unethical practice in relationships, actions, and communications.

All procurement activities conducted by SCAG, or SCAG subrecipients, must be compliant with the applicable federal, state, and local laws and regulations. The procedures outlined in this manual provide guidance on completing procurements in compliance with federal, state, and local laws and regulations. Regulatory requirements may be different for different sources of funds and will be defined in the procurement documentation. These procedures may be modified for specific procurements, with the explicit written approval of the Chief Financial Officer (CFO), so long as all applicable federal, state, and local laws and regulatory requirements are met.

It is the responsibility of each SCAG employee, and subrecipient, to ensure that they do not knowingly enter into any purchase commitment that could result in a conflict of interest. This may require individuals involved in supplier proposal evaluations or contract activities to sign confidentiality agreements and/or conflict of interest disclosures. An open and competitive purchasing environment requires that information pertinent to the bidding process be kept confidential until the conclusion of the process.

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## 1. Introduction

- A. This Procurement Policy and Procedures Manual (“Manual”) sets forth the rules and process of the SCAG’s procurement activities. As a recipient of federal and state funds, SCAG has the responsibility for ensuring that its procurement process complies with all applicable federal, state and agency legal requirements, is based on sound business practices, is conducted in a manner that ethically serves the best interest of SCAG and the public, and ensures fair and open competition.

This Manual is intended to govern procurements utilizing federal, state and SCAG agency funds. The following federal and state statutes and regulations, as well as SCAG agency policies, and successors there to, are incorporated by reference in this Manual to the extent required by law. In addition, SCAG adopts the provisions of Chapter 10 of the State of California Department of Transportation (Caltrans) Local Assistance Procedures Manual (LAPM) in this Manual. This is not an exhaustive list of the statutes and regulations:

1. 2 CFR Part 200 (also referred to as the “Super Circular,” which replaced and supersedes the Federal Transit Administration’s (FTA) Common Grant Rules found at 49 CFR Part 18.
  2. FTA Circular 4220.1F (Third Party Contracting Requirements).
  3. Part 3 of the 2017 Compliance Supplement.
  4. Applicable provisions of the State of California Public Contract Code (PCC), including PCC Sections 10335 - 10381.
  5. Applicable provisions of the State of California Labor Code.
  6. Federal and State Non Discrimination and Disadvantaged Business Enterprise (DBE) Requirements.
  7. Master Fund Transfer Agreement between SCAG and Caltrans.
  8. Caltrans Local Assistance Procedures Manual, updated January 2019 (including Chapters 5 & 10)
  9. Caltrans Regional Planning Handbook.
  10. SCAG Regional Council Policy Manual.
  11. SCAG Ethics Policy.
  12. SCAG Conflict of Interest Policy.
- B. The Manual is intended to provide policies and procedures to comply with the applicable legal requirements listed above in Section 1A above. Non-compliance with the laws, regulations and policies required may result in loss of project funding. SCAG staff is expected to know and follow the provisions of this Manual and exercise professional judgment in implementing such policies and procedures, and shall consult with the Contracts Department who will consult with the Legal Division for guidance as necessary.
- C. The SCAG Chief Financial Officer (or designee) in coordination with SCAG Legal Counsel, shall resolve any issues regarding interpretation of the policies and procedures contained in this Manual. The final decision on any procurement matter rests with the Chief Financial Officer.
- D. The Manager of Contracts is responsible for reviewing this Manual (around January when Caltrans Local Assistance Procedures Manual is updated) and revising it as necessary.

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## 2. Standards of Conduct

- A. Transactions relating to the expenditure of public funds require the highest degree of public trust and impeccable standards of conduct. SCAG contracting activity shall be conducted in a manner above reproach, with the highest of ethical standards and, except as authorized by law, with complete impartiality and without preferential treatment. It is SCAG's policy to strictly avoid any conflict of interest or even the appearance of a conflict of interest in all of its procurement and contracting practices. In accordance with Government Code 1090 and the Regional Council (RC) Policy Manual, Article IV (Conflict of Interest Policy), Section 2.6.3 current RC members and any firms they work for as well as SCAG staff are precluded from proposing on SCAG solicitations (RFP's, bids...) if they have a financial interest in the contract (as determined by SCAG's Legal Counsel). The RC Policy Manual Article IV, Section 2.7.2 also precludes a RC member from proposing on SCAG contracts for one year from the time the member's term expires.
- B. All staff shall comply with all applicable laws regarding conflicts of interest, including, but not limited to, the California Political Reform Act, and the provisions of the California Government Code regarding Prohibited Interests in Contracts, as these laws may be amended from time to time.
- C. All staff shall also specifically comply with both SCAG's Conflict of Interest Policy and SCAG's Ethics Policy (available on SCAGhub).
- D. The Contracts Department shall have adequate internal controls to ensure all contracts are processed in accordance with the policies specified in this Manual and that:
  - 1. Unauthorized persons are prohibited from accessing Procurement's Systems.
  - 2. All requisitions contain proper approvals before being converted into a Purchase Order.
  - 3. Staff have a mechanism to report unauthorized activities as well as any suspicions of fraud, waste or abuse.
- E. Any violation of these standards may be cause for disciplinary action, including dismissal, if appropriate

### 2.1. Full and Open Competition

- A. In accordance with 2 CFR 200.319 ([https://www.govregs.com/regulations/expand/title2\\_chapterII\\_part200\\_subpartD\\_subjrp31\\_secmicrotion200.323](https://www.govregs.com/regulations/expand/title2_chapterII_part200_subpartD_subjrp31_secmicrotion200.323)) as well as other federal and state laws, SCAG and any of its subrecipients shall conduct all procurement transactions in an ethical manner that provides for full and open competition and does not unduly restrict competition in its procurement process. "Full and Open Competition" means that all responsible sources are permitted to compete. SCAG will constantly seek to permit and encourage meaningful interest and offers from all qualified entities and limit or rule out offerors only for business reasons that generally include cost, quality, and delivery. Because it is often easier to deal with fewer familiar firms than potential new firms, it is SCAG's principle to vigilantly cultivate ways to increase competition at reasonable expense.

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- B. –All procurements by SCAG will be conducted providing for full and open competition consistent with this Manual. Some of the situations considered to be restrictive of competition include but are not limited to:
1. Placing unreasonable requirements on firms in order for them to qualify to do business;
  2. Requiring unnecessary experience and excessive bonding;
  3. Noncompetitive pricing practices between firms or between affiliated companies;
  4. Noncompetitive awards to consultants that are on retainer contracts;
  5. Organizational conflicts of interest;
  6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement,
  7. Any arbitrary action in the procurement process; and
  8. Unfair competitive advantages (see Section 7.11.1 below).
- C. SCAG staff will adhere to the following principles of competition:
1. Fundamental to the use of any procurement method is the principle of full and open competition. The availability of suppliers who are willing to compete for a procurement is essential use of small purchase procedures, formally advertised procurements (Invitation For Bids [IFB]) or negotiated procurements (Request For Proposals [RFPs] and Request For Qualifications [RFQs]).
  2. Competition in procurement is defined as a condition where at least three sources are able to compete for a requirement, both in price and technical skill.
  3. An attempt to get at least three quotes or bids is requirement for SCAG’s competition procurements.
  4. SCAG will not fund procurements that restrict competition by utilizing exclusionary or discriminatory specifications. These include:
    - Placing unreasonable requirements on firms by specifying technical features, conditions, or other factors for which there is insufficient justification of legitimate need;
    - Allowing noncompetitive practices between firms (collusion, price fixing);
    - Conflicts of interest within SCAG; and
    - Requiring unnecessary experience and bonding.
  5. By working throughout the procurement process to encourage full and open competition among potential contractors, SCAG will assure that both its interests and those of the state and federal government are protected and that SCAG is getting a fair return on the expenditure of federal, state and local tax dollars.
  6. Less than full and open competition is not justified based on failure to plan or limited availability of federal assistance to support the procurement. When less than full and fair competition is available to SCAG on federal or state funded procurements, the common grant rule requires SCAG to:
    - Solicit offers from as many potential sources as is practicable under the circumstances;
    - Provide a sole source or limited competition justification. If SCAG decides to solicit an offer from only one source or use a limited competition procurement, it must justify its decision adequately and in writing with such justification to be maintained in the procurement records;

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- Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data and the evaluation of the costs and profits; and
- Submit the proposed procurement for pre-award review when requested.

D. SCAG will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

### 2.2. **Other than Full and Open Competition.**

Per 2 CFR 200.320, SCAG may conduct procurements by noncompetitive methods only when one or more of the following circumstances apply: (1) The item is available only from a single source; (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or (4) After solicitation of a number of sources, competition is determined inadequate. All agreements (contract, PO's etc.) funded with federal and state funds must be competitively procured or procured with a sole source written justification if the purchase exceeds the federal micro purchase threshold, currently \$10,000. Agreements funded by all other funding sources shall be procured in accordance with the requirements of that funding source.

### 2.3. **Geographic Restrictions**

In accordance with 2 CFR 200.319(b), SCAG (and any of its subrecipients) will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E - 7.9 below) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### 2.4. **Pre-qualification**

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SCAG (and any of its subrecipients) will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, SCAG and any of its subrecipients will not preclude potential bidders from qualifying during the solicitation period.

### **3. Approval Authority**

#### **3.1. Regional Council Contract Approval Threshold**

- A. Any SCAG consultant agreement valued at or above \$200,000 must be approved in advance (prior to execution of the contract) by the SCAG Executive Administration Committee and the SCAG Regional Council<sup>1</sup>, in accordance with the Regional Council's (RC) action taken on April 2, 2009 as codified in RC Policy Manual, Article VIII, Section 1.1.
- B. The threshold for Executive/Administration and Regional Council approval of contract amendments is \$75,000, in accordance with the Regional Council Policy Manual, Article VIII, Section 1.3.

#### **3.2. The Executive Director and Chief Financial Officer's Approval Authorities**

- A. In accordance with the Regional Council Policy Manual, Article VIII, Section 1.2 (available on SCAGhub PM Resources Folder) the Regional Council delegates authority to the Executive Director or his designee (the Chief Financial Officer) to approve and sign purchase orders, consultant contracts and agreements that are less than \$200,000.
- B. Only the Executive Director (or designee) is authorized to sign contracts and agreements binding upon SCAG. Contracts and agreements also require the approval as to form of contracts and agreements by the Chief Counsel or Deputy Legal Counsel
- C. In the event that the responsible party is absent or unavailable to sign the contract, the authorized designee shall sign on that person's behalf.

##### **3.2.1. The Chief Financial Officer's Delegation of Approval Authority for Purchase Orders (PO's)**

- A. PO's that are less than \$10,000 only require the Manager of Contracts' approval.
- B. PO's that are \$10,000 or greater requires the Manager of Contracts' and Chief Financial Officer's approval.
- C. In the event that the Contracts Administrator, Manager of Contracts, or CFO is absent or unavailable to sign the PO, the authorized designee shall sign on that person's behalf.

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<sup>1</sup> Includes purchase orders, leases for SCAG's HQ or regional offices, banking or financial service agreements as well as retirement, health and employee benefits related contracts. Also, per a 4/2/09 the RC Agenda Item 6.2.3, the RC reduced its approval threshold from \$250K to \$200K.

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### 3.3. Approval Authority Thresholds and Processing Time

A. Table 1 below provides SCAG’s approval authority thresholds and average processing time for each Procurement Method, and for all funding sources excluding the General Fund (see Table 2 below for General Fund).

<b>Table 1 - Approval Authority Thresholds and Average Processing Time</b>			
<b>Procurement Method</b>	<b>Threshold</b>	<b>Approval Authority</b>	<b>Processing Time (in weeks)</b>
Formal – 1	\$200,000 or greater (subject to Audit if \$250K or greater)	Regional Council	15 (from receipt of final Scope of work to Notice-to-Proceed)
Formal – 2	\$50,000 but < \$200,000	CFO (or designee)	11 <sup>2</sup>
Informal	>\$10,000 but < \$50,000	CFO (or designee)	2 – 7
Micro/Non-Competitive	\$1 - \$10,000	Contracts Manager	2
Sole Source - 1	\$200,000 or greater (subject to Audit if \$250K or greater)	CFO/Regional Council	2 – 6
Sole Source - 2	> \$10,000 but < \$200,000	CFO (or designee)	2
Amendment - 1	\$75,000 or greater (subject to Audit if the amendment increases the contract’s value to \$250K or greater)	Regional Council	2 – 6
Amendment - 2	\$1 but < \$75,000 (subject to Audit if the amendment increases the contract’s value to \$250K or greater)	CFO (or designee) If the amendment is 30% or greater of the contract’s original value, or increases the contract’s value to \$200,000 or greater, then	2

<sup>2</sup> Note: The 11 weeks typically consists of the following major activities:

- 1.5 weeks for RFP creation and issuance;
  - 4.0 weeks for RFP posting;
  - 3.0 weeks for evaluating proposals and conducting any interviews;
  - 2.5 weeks for negotiating and executing the final contract.
- 11 weeks total anticipated processing time

Add 4 more weeks for contracts \$200K or greater (for Regional Council Approval)

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<b>Table 1 - Approval Authority Thresholds and Average Processing Time</b>			
<b>Procurement Method</b>	<b>Threshold</b>	<b>Approval Authority</b>	<b>Processing Time (in weeks)</b>
		the RC must approve this amendment.	

- B. Agreements (including contracts and purchase orders for goods and services) and related amendments are reported to the SCAG Regional Council. Agreements and amendments not subject to pre-approval by the RC are reported to the RC for informational purposes.
- C. Further, while contract amendments are limited to no more than thirty (30) percent of the original total amount of the contract, any amendment(s) with an individual or aggregate amount of \$75,000 or greater requires Regional Council approval prior to the amendment.
- D. Table 2 below provides SCAG’s approval authority thresholds and processing time for each Procurement Method, for purchases funded from the General Fund (see Table 1 above for all other funds).

<b>Table 2 Approval Authority Thresholds &amp; Average Processing Time Processing for <u>General Fund</u> Contracts</b>			
<b>Procurement Method</b>	<b>Threshold</b>	<b>Approval Authority</b>	<b>Processing Time (in weeks)</b>
Formal	\$50,000 or greater (subject to Audit if \$250K or greater)	Regional Council	11
Sole Source - 1	Contracts \$10,000 or less (Micro Purchases regardless of funding source)	Chief Financial Officer	1 - 4
Sole Source - 2	Contracts > 10,000 < \$200,000	Executive Director (any amendment that increases the contract’s value to \$200,000 or greater must be approved by the RC)	2 - 11
Sole Source - 3	\$200,000 or greater (subject to Audit if \$250K or greater)	Regional Council	2 – 15
Amendment	\$1 but < \$75,000 If the amendment is 30% or greater of the contract’s original value, or increases the contract’s value to \$200,000 or greater, then the RC must approve this amendment. The amendment is also	Regional Council	2 – 6

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<b>Table 2</b>			
<b>Approval Authority Thresholds &amp; Average Processing Time Processing for <u>General Fund</u> Contracts</b>			
<b>Procurement Method</b>	<b>Threshold</b>	<b>Approval Authority</b>	<b>Processing Time (in weeks)</b>
	subject to Audit if it increases the contract's value to \$250K or greater.		

- E. Consistent with the Federal Acquisition Regulation each acquisition of supplies or services that has an anticipated dollar value of \$10,000 or less does not require a competitive selection process (or a sole source justification), but does require the purchaser to document what he/she is purchasing and why (e-mail is acceptable), as well as to document the price paid for the good(s) or service(s) is fair and reasonable (see Section 7.11.1 J – and Micro Purchase Section 7.2 below).
- F. Purchases greater than \$10,000 but less than \$50,000 require an Informal Solicitation (see Section 7.11)
- G. In accordance with a March 6, 2008 Regional Council agenda item 5.2.2, a Formal Solicitation (See Section 7.12) is required for procurements \$50,000 or greater.
- H. Splitting of purchases (“fragmenting”) in order to avoid competitive procurement requirements is prohibited.

### **4. Roles and Responsibilities**

In accordance with the Caltrans Local Assistance Procedures Manual (<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch10.pdf> and SCAGhub PM Resources Folder), Identifying and Defining a Need for Consultants, the appropriate SGAG staff must first determine the need for using a consultant by assessing SGAG staff’s capabilities, resources and availability to perform the required work. This assessment is made documented in SCAG’s annual budgeting process. This includes notifying the Caltrans District Local Assistance Engineer (DLAE) if federal-aid funds are to be requested for the project segment to be contracted out.

#### **4.1. Role of the Project Manager (PM)**

- A. The SCAG PM’s duties include but are not limited to:
  - 1. Developing the Scope of Work which must include:
    - Background
    - Objective/Purpose
    - Clearly defined Statement of Work to be performed
    - Deliverables
    - Schedule by task and fiscal year

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2. Providing Contracts with an Independent Cost Estimate (ICE) for the project as required by the Caltrans Local Procedures Manual (<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch10.pdf> and SCAGhub PM Resources Folder) and 2 CFR 200 or successors there to (see section 6.1 below) for further details). In accordance with a policy approved on March 5, 2009 by the Regional Council (agenda item 3.1.3), this document must be kept confidential. Staff cannot disclose the project's budget to anyone outside of the Proposal Evaluation Committee.
  3. Verifying funding source/amount of funds.
  4. Entering the requisition into SCAG's Requisitioning System (see SCAGhub, PM Resources folder)
  5. Providing Sole-Source Justification, if applicable.
  6. Reviewing and signing off on the Scope of Work that goes into the Request For Proposal
  7. Recommending staff for the Proposal Review Committee (PRC), as approved by the Contracts Administrator.
  8. Scoring proposals and any consultant interviews.
  9. Providing the Contracts Administrator information for the Cost/Price Analysis and Fair and Reasonable Determination.
  10. Assisting with any negotiations with the selected consultant.
  11. Providing Regional Council Agenda write-up (for contracts \$25,000 or greater - includes sole source contracts) within established time frames
  12. Reviewing and signing off on the contract, as to accuracy of the description of the project and consultant services (including the scope of work), budget, and schedule.
  13. Monitoring and being cognizant of project costs to ensure project remains within the allocated budget and is completed on schedule.
  14. Monitoring consultant's work, progress, and expenditures.
  15. Reviewing and approving consultant's invoices for payment, including the Line Item Budget or Price Sheet.
  16. Requesting all contract amendments within established timeframes, including, but not limited to: Scope of Work, Schedule changes, Cost, etc.
  17. Receiving all deliverables
  18. Completing Project & Contract Close Out Form.
  19. Providing the following for the master contract file, if required by the Caltrans Local Assistance Procedures Manual:
    - Log of verbal communication with the consultant to include: the date, time, name of the person contacted, and a brief description of the conversation.
    - Any written information or correspondence considered pertinent to the consultant contract
    - Copies of deliverables.
- B. To verify that the necessary steps have been completed for a project, the PM may use the Responsibilities Matrix (available on SCAGhub) as a guide.
- C. The PM is not authorized to:

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1. Direct the consultant to start work prior to issuance of a Notice-to-Proceed by the Contracts Administrator.
2. Direct the consultant to perform work not included in Scope of Work.
3. Direct the consultant to proceed with a change to the contract prior to an executed amendment.
4. Sign the contract or any binding documents requested by the consultant. However, the PM may sign appropriate forms, such as non-disclosure statements and meeting minutes.
5. Extend the time-period of the contract without an amendment to the contract.
6. Allow the consultant to exceed the rate ceiling of any Direct Labor position classification, or allow the consultant to incur costs funded contract amount.
7. Allow the consultant to incur costs that do not conform with the California's State Department of Personnel Administration rules, or any successors there to (see SCAG's Travel Guidelines - for meals, lodging, mileage, expenses, etc. available on SCAGhub).

### 4.2. Role of the Contracts Administrator (CA)

- A. In accordance with the Local Assistance Procedures Manual the Contract Administrator (CA) is responsible for ensuring the quality of consultant contract products or services. The CA is appointed as soon as the need for consultant services is identified. The CA is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The CA must be a qualified Contracts staff member that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract.
- B. On federal-aid contracts, the Contract Administrator or staff members must be a full-time employee and familiar with the work to be contracted out and the standards to be used. The CA must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.
- C. The CA's duties are listed in 23 CFR 172.9(d)(1) <https://www.govinfo.gov/content/pkg/CFR-2017-title23-vol1/xml/CFR-2017-title23-vol1-part172.xml> and include but are not limited to:
  1. Conducting contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
  2. Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
  3. Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
  4. Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
  5. Documenting contract monitoring activities and maintaining supporting contract records as specified in [2 CFR 200.333](#);
  6. Providing direction to ensure the proposed work is advertised properly;

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7. Preparing and distributing the solicitation document such as Request for Qualification (RFQ), description of work, and Request for Proposal (RFP), Invitation For Bid (IFB)...;
  8. Preparing the draft contract;
  9. Arranging for preparation before an independent estimate of the value of the work to be contracted out prior to receipt of offers;
  10. Ensuring that the selection procedures are followed;
  11. Analyzing the selected/best-qualified consultant's cost proposal;
  12. Ensuring contract audit and review procedures are followed;
  13. Ensuring that fee/profit negotiation is conducted and keeps records;
  14. Serving as the primary contact person for the successful consultant;
  15. Monitoring the consultant's progress and provides direction (conducting post award administration);
  16. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
  17. Identifying other SCAG staff for the consultant to contact, if needed;
  18. Closing out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports (as applicable). See section 9.4 below for further detail on Close out Procedures.
  19. Checking the California State Department of Industrial Relations website for prevailing wage rates for construction contracts, as applicable, and retaining this documentation in the contract file. If prevailing wages apply, the CA also must document that the offeror's submittal includes a statement that their offer is based on prevailing wage rates.
  20. Coordinating placement of the Board Report (RC Write up) on applicable Regional Council Agenda and completing the Procurement Summary section of the report.
- D. The CA is responsible for maintaining a file for each contract with the following documents, if applicable:
1. Independent Cost Estimate (ICE). See Section 6.1 below for further detail about the ICE. The CA must retain documentation of how the cost estimate was developed in the contract file. In accordance with a March 5, 2009 Regional Council agenda item 3.1.3, the ICE or project's budget must be kept confidential. Staff should not disclose the ICE or project's budget to anyone outside of the Proposal Evaluation Committee (PRC) or authorized staff.
  2. RFP, RFP Addendum(s) & RFP Mailing List.
  3. Copy of Questions and Answers from the Pre-Bid Conference.
  4. Original of all proposals (identify the winning proposal).
  5. Proposal Summary Memo.
  6. Debarment & Suspension Certification(s).
  7. Conflict of Interest Certification(s).
  8. Non-Disclosure Form for each PRC Member.
  9. List of Questions for Consultant Interviews.
  10. Original Evaluation Sheets (Proposal and Interview – each should be signed and dated - electronic/scanned files are acceptable).
  11. PRC Memorandum of Selection.

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12. Original Winning Proposal.
13. Sole-Source Justification (if applicable).
14. Cost Price Analysis and Fair & Reasonable Determination.
15. Pre-Award Review and Post-Award Audits (if applicable).
16. Contract Approval Routing.
17. PO (generated in SCAG's Financial Management Information System for encumbrance purposes).
18. Certificate of Insurance with endorsement.
19. Original Contract.
20. Notice-to-Proceed Letter(s).
21. Correspondences (Letters, Emails, Faxes).
22. Amendment(s).
23. Other supporting documents.

### 4.3. **Responsibilities Matrix**

Contracts shall meet with SCAG PM's semi-annually to review and update as necessary the Responsibilities Matrix (available on SCAGhub). Further, to facilitate execution of each year's Overall Work Program (OWP) projects, Contracts may establish and maintain a quarterly meeting with SCAG staff to review project schedules.

## 5. **Types of Agreements**

The Contracts Department uses various types of agreements to procure goods and services based on the type of good or service to be procured. All agreements (contract, PO, etc.) funded with Consolidated Planning Grant (CPG) funds must be competitively procured or procured with a sole source justification if the purchase exceeds the federal micro purchase threshold, currently \$10,000. Each agreement type is described in turn below:

### 5.1. **Purchase Order (PO) Agreement**

There are two (2) types of PO's, Standard and Blanket. A PO should be issued to a vendor prior to any order being placed with a vendor.

#### 5.1.1. **Standard PO Agreement**

- A. A Standard PO is an agreement containing the terms and conditions for SCAG to procure off-the-shelf purchases of goods or services. A Standard PO is ideal for an infrequent purchase that requires a single purchase transaction. This means that once the good or service has been received by SCAG, the Accounting Department processes the invoice for payment and the PO is closed in SCAG's Financial Management Information System.
- B. See Purchase Requisition Instructions (available on SCAGhub, PM Resources folder) for further instruction on creating requisitions.

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### **5.1.1.1. Purchasing Computer Hardware, Software, and Peripherals Using a PO**

- A. All computer hardware, software, peripherals, and related network/devices must be reviewed and approved by SCAG IT regardless of funding source. Submit plans/proposals for these purchases or inclusion of them in any scope of work to the Chief Information Officer for review and approval prior to an RFP or PO being issued.
- B. When estimating software licensing costs, the PM must consider the full life cycle cost. For software required indefinitely, the PM must consider a minimum of 5-years of cost. It is also highly recommended that negotiations focus on a 3-5 year software license with associated pricing guarantees and annual increases included in the terms.
- C. SCAG IT will be responsible for entering any requisition for orders that will be charged to the IT Division budget.

### **5.1.1.2. Purchasing Graphic/Printing Services Using a PO**

- A. SCAG staff must submit all printing jobs that require external printing resources directly to the Graphics Department. Depending on the technical aspects of the request, and the Department's/Division's workload, the Manager of Media and Public Affairs will determine whether the job can be printed in-house or if it needs to be outsourced.
- B. If the Manager of Media and Public Affairs determines that the job must be outsourced, the Graphics Department must enter a Purchase Requisition in SCAG's Requisition System (see SCAGhub, PM Resources folder).
- C. If the cost of the printing job is estimated to be below \$50,000 and the job will require an outside printer, in accordance with the Caltrans Local Assistance Procedures Manual, *Consultant Selection Using The One-Step RFP Method*, the Contracts Department must attempt to receive and evaluate a minimum of three offers to establish adequate price competition. If Contracts receives 2 offers or less, a justification must be documented to proceed with the procurement.

For all contracts that contain funds administered by Caltrans (i.e., Regional Planning or Local Assistance), if only one proposal is received, Contract staff must create and transmit a Public Interest Finding (PIF - written justification to document a non-competitive contract award – see sample on SCAGhub, PM Resources folder) to Caltrans District 7, Office of Regional Planning or Office of Local Assistance, depending on the funding source (see Section 7.3 below).

For all other funding sources, the Project Manager must create a written justification to document a Non-Competitive process and obtain written authorization to proceed from the grantor or the SCAG Chief Operating Officer (for Transportation Development Act [TDA] or General Funds).

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In case of any of the previously mentioned scenarios, the re-advertisement of the RFP may be considered as an option.

- D. All vendors must submit their quote directly to the Contracts Department or staff designated by Contracts using the specifications from the RFQ via fax or email by the deadline stated. No offers will be accepted after the deadline. It is unlawful for any person engaged in business within this state to sell or use any article as a "loss leader" as defined in Sec. 17030 of the Business and Professions Code.
- E. Contracts and Graphics personnel will evaluate the offers and make an award recommendation.
- F. If the cost of the job is estimated at \$50,000 or above, Formal Solicitation is required and must be requested in accordance with Section 7.12.

### **5.1.1.3.Fixed Assets and Controlled Items**

- A. A Fixed/Capital asset is defined as a purchased asset with an expected life of more than one (1) year and a total acquisition cost of \$5,000 or more, which is capitalized. Fixed assets are tagged and inventoried by the Information Technology (IT) Division.
- B. Items which cost under \$5,000 are categorized as controlled items and are not capitalized but treated as an expense. They are also tagged and inventoried by Facilities. A controlled item is any equipment or asset, such as for example:
  - 1. Computer Hardware and Software, including laptop computer
  - 2. Tablet
  - 3. Printer
  - 4. Facsimile Machine
  - 5. Calculator (over \$100)
  - 6. Furniture
- C. Capital asset purchases must be coordinated with the IT Division. Property records for Fixed/Capital assets must include the following:
  - 1. Description of the property
  - 2. A serial number or other identification number
  - 3. The source of property and who holds title
  - 4. The acquisition date
  - 5. Cost of the property
  - 6. The location, use and condition of the property
  - 7. Disposition data including the date of disposal and sale price of the property.

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- D. In the event that the asset is no longer needed, it must be disposed of according to the grant requirements of the respective funding agency (see Budget and Grant staff for a copy of the grant). Equipment purchased with federal funds must comply with disposition requirements set forth in 2 CFR 200 or successors there to. Arrangements should be made with the IT Division for appropriate disposition of the asset.

### 5.1.1.4. Ordering Office Supplies

- A. Ordering office supplies is done through the Contracts Department. Inventory items are available on the 16th floor of the Los Angeles Office from the Reprographics staff. The procedures are as follows:
1. Inventory Items
    - a). Inventory items are available through Reprographics;
    - b). Regional offices may obtain inventory supplies by submitting a Purchase Requisition Form. Inventory items will be ordered through the supply vendor and shipped directly to the Regional offices.
  2. Non-Inventory Items
    - a). Non-Inventory Items may be viewed online at [www.officedepot.com](http://www.officedepot.com)
    - b). A Purchase Requisition Form (available on SCAGhub, PM Resources Folder and it must be completed by staff for all orders and submitted to Contracts;
    - c). Regional Offices must also submit a Purchase Requisition Form for all orders;
    - d). Contracts staff will verify that the items being ordered are not inventory items;
    - e). Orders are typically placed once per week, or more frequently, depending on the urgency;
    - f). Orders will be grouped to meet the minimum total of \$50 to avoid delivery charges;
    - g). Contracts staff will place orders using the supply vendor's ordering system; or may choose to obtain additional quotes depending on the cost of the item(s) being purchased and urgency of the order;
    - h). Orders for RUSH non-inventory items must typically be received no later than 4:00 PM in order to obtain next day delivery;
    - i). For Los Angeles office orders, Reprographics staff will coordinate receipt/delivery of the order, and orders for Regional office will be shipped directly to the Regional offices;
    - j). Requester will sign-off on the packing slip documenting that the order is complete, or note any discrepancies;
    - k). Contracts will resolve any noted discrepancies with the supply vendor; and

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- l). Packing slips will be given to Contracts, and will be matched against the invoice for payment processing.

### **5.1.1.5. Other Miscellaneous Purchase Goods and Services Using a PO**

- A. Other types of goods or services that are not mentioned above that require a requisition and PO may include, but are not limited to the following:
  1. Advertisements/Public Notices
  2. Awards/Plaques (note these items cannot be purchased with CPG funds, and are normally funded from the General Fund).
  3. Books (over \$100, including tax and shipping)
  4. Building/Maintenance Services
  5. Building Rent/Lease
  6. Catering
  7. Cellular Phones
  8. Conference Facilities
  9. Courier Services
  10. Equipment Rental (Audio/Visual)
  11. Furniture
  12. Internet Access Accounts
  13. Memberships
  14. Office/Reprographics Equipment (other than fixed assets or controlled items)
  15. Office Supplies (that are not available through Reprographics)
  16. Promotional Items
  17. Sponsorships - SCAG's Chief Operating Officer or designee can approve sponsorship up to \$5,000 (per the SCAG Bylaws, Article V, Section (3) Duties, bullet (a). If more than \$5,000, then the sponsorship requires prior approval by the Legislative and Communications Committee and/or Regional Council)
  18. Subscriptions (\$500 and over for magazines, periodical, newspapers, journals, etc.)
  19. Telephone Hardware/Software
  20. System Maintenance and Upgrades
  21. Temporary Staffing
  22. Video Conference System (Lease and Maintenance)

### **5.1.2. Blanket PO Agreement**

- A. A Blanket PO is a type of agreement designed to consolidate repetitive and frequent purchases from qualified vendors. It is designed to give staff flexibility in ordering like or similar supplies and services that have multiple deliveries over an extended period of time.
- B. In most cases, Blanket PO's are established at the beginning of each fiscal year for a specific time period, usually for the entire fiscal year. A Requisition is used to initiate a Blanket PO. Once the order has been established in SCAG's

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Financial Management Information System, staff may request delivery releases on an “as needed” basis, unless there is a predetermined delivery schedule set-up with the vendor.

- C. For example, a Blanket PO is ideal for the purchase of office supplies. Office supplies are procured frequently and a Blanket PO eliminates the need for entering a requisition in SCAG’s System each time that a small dollar amount item is needed. The user enters a not-to-exceed dollar value, for example \$40,000, to the Blanket PO for the entire fiscal year, and draws against the \$40,000 as invoices are received and processed for payment.
- D. Once the Blanket PO number has been established, the requester must have the vendor reference the PO number on the packing slip for all vendor shipments and invoices to ensure timely delivery and uninterrupted service. The Project Manager should track expenditures against the Blanket PO, which can be done through SCAG’s Financial Management Information System (See SCAG’s Financial Management Information System Manual for PO set up, updating and close out instructions available on SCAGhub, PM Resources folder).
- E. For catering services (i.e., Regional Council and Policy Committee meals...), only the requester or authorized persons listed on the PO are authorized to use it.
- F. A Blanket Purchase Requisition cannot be used to purchase fixed asset equipment.

### 5.1.3 **Guidance on use of Purchase Order (PO) versus the Standard Contract Template**

The following provides guidance on when to use a PO versus SCAG’s standard contract template when procuring various goods and services.

#### **A. Use a PO if:**

- 1. The purchase (typically low bid) is for off the shelf goods (such as data) or services that are characterized as:
  - Fixed Priced - Payment is typically lump sum, that is, the vendor completes all the work/tasks and then gets paid in full if quality and quantity is acceptable to the SCAG PM (FYI – any other contract type would require us to provide specific as to how we would pay and as such requires using the contract template).
  - Small/short SOW (1 – 2 pages);
  - Few deliverables (typically 1);
  - Only 1 technical approach vs. multiple technical approaches
  - To fund License Agreements (the License Agreement is the “contract” we will also typically give the License Agreement a contract number).

#### **B. Use the Contract Template if:**

Use Contract Template if:

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1. The purchase requires more terms and conditions than what is on the back of the PO, or if the funding source requires it, or if the technical approach necessitates it.
2. It is a planning project in the SCAG Overall Work Program (OWP) funded with: Consolidated Planning Grants (FHWA PL, FTA 5303, FHWA SPR, FTA 5304); Sustainable Transportation Planning Grants (SHA, SB-1); ATP Grants; MSRC Grants; OTS Grants. Data purchases with no other services like analysis, collection at different points are not required to use Contract Template. The Contract Template includes the following clauses required by Caltrans:
  - 12. Agreement Completion Retainer
  - 14. Penalty
  - 15. Quarterly Progress Reports
  - 17. Written and Electronic Versions of Work Products and Related Work Materials
  - 18. Ownership, Confidentiality, and Use of Work Products
  - 27. Non Discrimination
  - 28. DBE
  - 29. Record Retention and Audit
  - 30. Federal Lobbying
  - 31. Certifications and Assurances
  - 32. Contract award
  - 33. Cost Principles
  - 35. Flow downs

### 5.2. **Software Development and License Agreements**

A. A software license agreement provides the terms and conditions by which SCAG agrees to use (license) software products and the quantity/cost for the duration of the license. Most software license agreements at SCAG are for proprietary software but may also include open source software which is freely available and may be redistributed and/or modified by SCAG. All software procurements and agreements must be reviewed by the Chief Information Officer prior to RFP and contract execution. Documentation should include:

- Description of the software to be licensed and terms and conditions of use.
- Duration of the license agreement.
- Cost (note, when estimating the software's cost, or the cost of a software subscription, the PM must consider the entire life cycle cost. For software that will be required for ongoing business functions, the Project Manager must consider a minimum of 5-years).

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- B. SCAG may also engage in contracts that result in custom software development which is software specific to a SCAG need or business activity. Such software development contracts should include specific provisions transfer sole ownership from the developer to SCAG. Other shared ownership agreements between SCAG and the contract developer may be considered. Every procurement that results in custom software code (web, mobile, GIS, application, etc.) will be reviewed by the Chief Information Officer prior to RFP and contract execution.
- C. Software development services and/or software license agreements are contracts and are subject to review and approval by the Chief Information Officer (or designee), Chief Financial Officer (or designee), and Chief Counsel (or designee) prior to executing the agreement.

### 5.3. Maintenance Agreement

- A. SCAG establishes a maintenance agreement with a vendor to provide uninterrupted preventative and/or remedial maintenance for all types of equipment. A maintenance agreement can be for a fixed price, time & material, or at a predetermined cost.
- E. A requisition is required to initiate all maintenance agreements. The location of the equipment must be specified on the requisition, in addition to the standard information requirements.
- B. The following minimum information must be stated on the maintenance agreement:
  - 1. List of equipment to be covered (include brand, model, and serial number)
  - 2. Quantity of the equipment to be covered
  - 3. Period of coverage
  - 4. What the maintenance agreement covers (parts, supplies, and/or labor)
- C. Maintenance agreements are contracts, and are subject to review and approval by the Chief Financial Officer (or designee), and Chief Counsel.

### 5.4. Equipment Lease or Rental Agreement

- A. When considering an equipment lease or rental agreement, it is imperative to do a lease versus buy analysis to determine the most cost-effective option. The factors to consider include, but are not limited to the following:
  - 1. Advantages of owning the equipment or personal property from the start.
  - 2. Options at the end of the lease (fair market value, \$1 buyout, etc.)
  - 3. The application of any lease/rental credits toward a purchase at the end of the agreement period.
  - 4. The right to cancel prior to the end of the term and any penalties.
  - 5. Insurance requirements during the term of the agreement.
  - 6. Whether maintenance and supplies are included in the lease, and if not, the associated costs.
  - 7. All the possible costs associated with the lease, such as property tax.

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8. Take into consideration future trends in technology to determine buy versus lease options.
- B. Leases and rental agreements are initiated from staff with a properly authorized Purchase Requisition in SCAG's Requisitioning System (see SCAGhub, PM Resources folder).
- C. Staff leasing or renting equipment are responsible for ensuring that they have enough funds in their account to cover all the lease/rental payments for each fiscal year.
- D. Leases and rental agreements are contracts and are subject to review and approval by the Chief Financial Officer (or designee), and Chief Counsel prior to executing the agreement.

### 5.5. **Real Property<sup>3</sup> Agreements**

Only the Executive Director (or designee) is authorized to enter into and execute a real property agreement.

### 5.6. **Legal Services Contracts Authorized by the Chief Counsel**

- A. Pursuant to a Regional Council Policy adopted on October 7, 2004, the Chief Counsel is authorized to enter into contracts of less than \$20,000 for legal services in consultation with the Executive Director.
- B. The procurement requirements of this Manual apply to the procurement of legal and associated services, such as investigators, litigation services, etc. Such services are to be procured competitively. There may be cases where the situation might be jeopardized by advertising the procurement beforehand. In such cases, the recipient may have valid grounds for limiting the competition or proceeding with a sole source procurement if warranted. All legal services contracts \$20,000 and greater administered by the Chief Counsel must be approved by the Regional Council and competitively awarded or contain a sole source justification regardless of funding source. If determines a sole source procurement is warranted, the standards for sole source awards stated herein, including documentation, apply. Such sole source justification may rely on authorization for non-competitive proposals for legal services, pursuant to the State Contracting Manual.
- C. In accordance with the Public Contract Code section 10353.5 ([https://california.public.law/codes/ca\\_pub\\_cont\\_code\\_section\\_10353](https://california.public.law/codes/ca_pub_cont_code_section_10353)) any contract for legal services shall contain the following provisions:
  1. The contractor shall agree to adhere to legal cost and billing guidelines designated by SCAG.
  2. The contractor shall adhere to litigation plans designated by SCAG.

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<sup>3</sup> Real Property is defined as all land, structures, firmly attached and integrated and all "interests" in the property which may be the right to future ownership (remainder), right to occupy for a period of time (tenancy or life estate), the right to get the property back (a reversion) if it is no longer used for its current purpose or an easement across another's property. Real property should be thought of as a group of rights which can be divided. It is distinguished from the other type of property, personal property, which is made up of movable items.

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3. The contractor shall adhere to case phasing of activities designated by the state agency.
4. The contractor shall submit and adhere to legal budgets as designated by SCAG.
5. The contractor shall maintain legal malpractice insurance in an amount not less than the amount designated by SCAG.
6. The contractor shall submit to legal bill audits and law firm audits if requested by SCAG. The audits may be conducted by employees or designees of SCAG, or by any legal cost control providers retained by SCAG for that purpose.

### 5.7. **Professional Service Consultant Agreement (Contract)**

SCAG uses outside consultants to help accomplish the Agency's overall mission and objectives. This includes but is not limited to consultants that provide Transportation Planning, Transportation Financing, Modeling, Information Technology, Real Brokerage, Human Resources Brokerage (Non PERS related) Catering...

### 5.8. **Sub-recipient Agreements**

- A. Subrecipient means a non-Federal entity that expends Federal awards received from SCAG to carry out a Federal program or project, but does not include an individual that is a beneficiary of such a program/project. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. See the Subrecipient Monitoring Policies and Procedures in the Budget and Grants Manual available on SCAGhub.
- B. When SCAG passes funds to a subrecipient, SCAG will enforce all applicable flow-down provisions of the grantor. If there are no flow-down provisions, Manger of Contracts shall require the subrecipient to provide a written statement that the subrecipient has followed all applicable procurement rules and regulations.

## 6. **Cost or Price Analysis**

- A. In accordance with 2 CFR 200.323, SCAG requires a cost or price analysis with every procurement action, including proposed contract amendments or modifications. The method and degree of analysis depends on the facts and circumstances of the procurement, but as a starting point, SCAG must make independent estimates before receiving bids or proposals.
- B. In general, the purpose of a cost or price analysis (performed by the Contracts Administrator) is to ensure SCAG does not pay unreasonably high prices to third party consultants. Prices, however, that are unreasonably low can also be detrimental to SCAG if they prove to be an indication that the offeror has made a mistake or does not understand the work to be performed. It is important for SCAG to do a cost analysis or price analysis for every procurement action in order to determine how realistic the costs are, and for SCAG not to permit a "buy in" (an unrealistically low estimated contract cost and fee) that will eventually result in a substantial cost overrun.
- C. Prior to developing a cost or price analysis, the respective SCAG Project Manager (PM) must develop a pre- solicitation independent cost estimate (ICE). Once bids or offers are received

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and prior to award, the CA must then develop a cost or price analysis. Use of a cost or price analysis form is intended to help SCAG conduct consistent and sufficiently documented procurements. For examples of Cost or Price Analyses see SCAGhub.

### 6.1. Independent Cost Estimate (ICE)

- A. Before receiving offers and preferably before issuing a solicitation, the Project Manager must develop an independent cost estimate or ICE of the proper price and cost levels for the products or services to be purchased. An ICE is required for all consultant contracts, excluding Micro Purchases when price is set by law or regulation; or there is an established catalog prices for the item (actual catalogue or internet webpages should be retained to documentation).
- B. The ICE is essentially the Project Manager's best educated estimate of what the item or service "should cost." Available resources for completion of an ICE include: (1) the use of published price lists, (2) historical pricing information from contracts awarded by SCAG (3) comparable purchases by other agencies, (4) engineering estimates, and (5) independent third party estimates (e.g., an A/E construction cost estimate). For sample ICE forms used by SCAG, see SCAGhub.

### 6.2. Price Analysis

- A. The *FTA Pricing Guide for FTA Grantees* (<https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees>) is a valuable tool for SCAG in performance of cost and price analysis to determine the reasonableness and the realism of prices offered by consultants. The Guide describes six price analysis techniques that SCAG might use depending on the circumstances of the particular procurement. The accepted forms of price analysis techniques include:
  - Adequate price competition;
  - Prices set by law or regulation;
  - Established catalog prices and market prices;
  - Comparison to previous purchases;
  - Comparison to a valid recipient independent estimate; and
  - Value analysis.
- B. The Guide can be found at Federal Transit Administration website Third Party Procurement Pricing Guide. Some of the questions that SCAG should ask in evaluating whether a price analysis is appropriate include:
  - Can a determination that a price is fair and reasonable be made without having to analyze the cost elements that make up the total price?
  - Are any of the six criteria above available to make a determination concerning the reasonableness of the price being offered?

#### 6.2.1. Adequate Price Competition

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- A. In order to have adequate price competition, the following conditions must be present:
1. At least three responsible offerors respond to a solicitation.
  2. Each offeror is able to satisfy the requirements of the solicitation.
  3. The offerors independently contend for the contract that is to be awarded to the responsive and responsible offeror submitting the lowest evaluated price.
  4. Each offeror must submit priced offers responsive to the express requirements of the solicitation.
  5. If the four conditions above are met, price competition is adequate unless one of the following is present:
    - The solicitation was made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete.
    - The low competitor has such an advantage over other competitors that it is practically immune to the stimulus of competition.
    - The lowest final price is not reasonable and this finding can be supported by facts.

### **6.2.2. Prices Set by Law or Regulation are Fair and Reasonable.**

Contracts should acquire a copy of the rate schedules set by the applicable law or regulation. Once these schedules are obtained, Contracts needs to verify that the schedules apply to the situation and that it is being charged the correct price. For utility contracts, this policy applies only to prices prescribed by an effective, independent regulatory body.

### **6.2.3. Established Catalog Prices**

- A. The idea behind catalog prices is that a commercial demand exists and suppliers have been developed to meet that demand. SCAG's goal is to ensure it is getting at least the same price as other buyers in the market for these items. Contracts needs to be sure that the catalog is not simply an internal pricing document, and should request a copy of the document or at least the page on which the price appears. Established catalog prices require the following conditions to be present:
1. Established catalog prices exist.
  2. The items are commercial in nature.
  3. They are sold in substantial quantities.
  4. They are sold to the general public.

### **6.2.4. Established Market Prices**

Established market prices are based on the same principle as catalog prices except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the offeror. If Contracts does not know the names of other commercial buyers and sellers, it may obtain this information from the offeror.

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### **6.2.5. Comparison to Previous Purchases**

Changes in quantity, quality, delivery schedules, the economy, and inclusion of non-recurring costs such as design, capital equipment, etc. can cause price variations. Each differing situation must be analyzed, and Contracts should also ensure that the previous price was fair and reasonable. This determination will be based upon a physical review of the documentation contained in the previous files.

### **6.2.6. Comparison to a Valid Recipient Independent Cost Estimate (ICE)**

Verify the facts, assumptions, and judgments used by the estimator. Have the estimator provide the method and data used in developing the ICE. For example, did prices come from current catalogs or industry standards? Contracts staff must review the ICE for reasonableness before relying on it as a basis for determining a price to be fair and reasonable.

### **6.2.7. Value Analysis**

This method requires a recipient to look at the item and the function it performs so Contracts can determine its worth. The decision of price reasonableness remains with the contracting officer; however, parties requiring value-added activity should be consulted for their expertise, and they should participate in making the decision.

### **6.2.8. Cost Analysis**

- A. Cost analysis is the review and evaluation of the separate cost elements (direct labor, overhead, fringe, other direct cost, subconsultants...) and profit in an offeror's proposal and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be assuming reasonable economy and efficiency. The FTA Pricing Guide also discusses the steps that must be taken to perform a cost analysis and gives guidance as to when Contracts should use a cost versus price analysis method.
- B. The Cost Analysis is more complex and time-consuming than Price Analysis. As such, it should be used when Price Analysis alone is not sufficient in determining the price to be fair and reasonable.
- C. The Cost Analysis can either serve as a basis for negotiation or a determination that the price is fair and reasonable.

## **7. Procurement Methods**

### **7.1. Emergency Procurement**

- A. An emergency exists when life or property is in immediate danger of substantive damage or loss and normal competitive procurement procedures cannot be followed. Given the nature of SCAG's work, an emergency procurement should be extremely rare.

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- B. The total cost of the purchase should be less than the federal micro purchase threshold including tax, shipping/handling charge, or any other applicable charges), unless the Executive Director (or designee) or the CFO (or designee) authorizes a higher amount. Purchases below \$100 may also be made through Petty Cash.

### **7.1.1. Procedures for an Emergency Procurement**

- A. The staff making the purchase must document (e-mail or memo) the specific reasons for the purchase.
- B. The staff making the purchase must obtain approval from the Executive Director or Chief Financial Officer (or their authorized designee).
- C. The use of the emergency purchase policy must not be considered a substitute for regular purchasing procedures or a method of circumventing established purchasing controls.
- D. Staff may request expenditure reimbursements by submitting an Expense Reimbursement Claim Form. Original receipts are required as proof of purchase and must be attached to the expense reimbursement claim form and submitted to the Accounting Department.
- E. Emergency procurements shall be reported in accordance with Section 8.12.

### **7.2. Micro-Purchases**

A Micro Purchase refers the dollar threshold established by the Federal government under which contract funded with federal money does not need to be competitively procured. The threshold is \$10,000 as of June 2018 (i.e., purchase that are \$10,000 or less do not have to be competitively procured).

#### **7.2.1. Procedures for Making a Micro Purchase**

- A. Purchase under the Micro Purchase threshold may be made without obtaining competitive quotes if Contracts staff (CA) in consultation with the Project Manager (PM) requesting the purchase can determine the price is fair and reasonable before making the purchase. The PM will use the Micro Purchase Justification Form (available on SCAGhub) to make this determination.
- B. If the CA and PM cannot determine the price is fair and reasonable, Contracts staff shall seek at least three written offers from source Contracts deems qualified in accordance with Section 7.11.1 below
- C. Splitting of purchases (“fragmenting”) in order to avoid competitive procurement requirements is prohibited.

### **7.3. Noncompetitive Procurement (Noncompetitive Negotiated Contracts/Sole Source)**

- A. A Noncompetitive Procurement (Sole Source) is defined as any procurement that has a requirement for competition because the purchase exceeds the federal micro purchase

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threshold, currently \$10,000 , but was not competed because of at least one of the circumstances cited in part C. below exist.

- B. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals (23 CFR 172.7(a)(3)).
- C. In accordance with the Caltrans Local Assistance Procedures Manual, *Noncompetitive Negotiated Contracts (Sole Source)*, and 2 CFR Part 200 or successors there to, an award may be made without a formal solicitation when the good or service is available from only one source and/or the good or service does not lend itself to substitution.
- D. Contracts staff in conjunction with the Project Manager shall create A Public Interest Finding for funds administered by Caltrans for approval before making the purchase (23 CFR 172.7(a)(3); also see [\*Exhibit 12-F: Cost-Effectiveness/Public Interest Finding in the Local Assistance Procedures Manual for a sample.\*](#))
- E. Sole-Source requests shall be used only in very limited circumstances and must clearly demonstrate ***one*** of the following and be processed in accordance with the Sole Source procedures in Section 7.3.1 below:
- Only one organization is qualified to do the work;
  - The item is available only from a single source;
  - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation due to the magnitude of the problem;
  - The awarding agency authorizes noncompetitive proposals;
  - After solicitation of a number of sources, competition is determined inadequate;
  - The existence of limited rights in data, patent rights, copyrights or secret processes makes the supplies or services available from only one source; and
  - The procurement using federal or state funds is less than the federal micro purchase threshold, currently \$10,000 or the procurement is less than \$200,000 using SCAG agency/ General Funds authorized by the Executive Director.
- F. SCAG must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding for contract that contain funds that are administered by Caltrans (only) and retain all documents in the contract for future federal or state agency review. The staff requesting the Sole Source shall submit a written sole source justification to the Chief Financial Officer or Executive Director for approval using SCAG's Sole Source Justification Form. The determination as to whether sole-source procurement has been adequately justified by the requester shall be made by the Chief Financial Officer. Approval of sole source contracts shall be made in accordance with the thresholds in Section 3.3 (see section 5.6 for thresholds for Legal Service Contracts).

### **7.3.1. Procedures for a Sole Source Contract**

(Includes Commercial Items e.g. computers, hardware and off the shelf software, office supplies, food, promotional items...)

- A. The PM must provide the information necessary to create a Public Interest Finding.

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- B. The CA shall obtain the approval of Caltrans District 7 Office of Regional Planning or Office of Local Assistance, depending on the funding on the Public Interest Finding.
- C. The PM provides the Contracts Department the following:
1. Sole Source Justification Memo - For General Fund contracts, the justification for the purchase can be established by the Executive Director making a determination that the purchase was in the best interest of the agency.
  2. A completed Purchase Requisition stating what is being purchased and why
  3. A detailed Specification or Scope of Work
  4. Independent Cost Estimate. An ICE is needed for all consultant contracts, excluding Micro Purchases when price is set by law or regulation; or there is an established catalog prices for the item (actual catalogue or internet webpages should be retained to documentation). It must be prepared by the SCAG Project Manager (or designee) with no consultant assistance), in advance of receiving any cost proposals (preferable before issuing the solicitation); should include any assumptions the Project Manager used to create it; be signed and dated or emailed by the preparer; and typically include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee (see SCAGhub for sample). The CA must retain documentation of how the cost estimate was developed in the contract file. In accordance with a March 5, 2009 Regional Council agenda item 3.1.3, this document must be kept confidential. Staff cannot disclose the project's budget to anyone outside of the Proposal Review Committee.
  5. Evaluation factor used to assess the consultant's offer.
  6. Acquisition Schedule.
- D. The CA obtains the consultant's cost proposal. To help expedite the procurement process, PM can provide Contracts staff their market research, the websites or catalogues containing the goods/services they wish to procure, as well as any vendor contact information for consideration. However, Contracts may choose to purchase from a source(s) other than the source(s) staff provides. Unless authorized by Contracts staff, regardless of source of funds for the sole source contract, vendors should give official pricing quotes, whether verbally or written/electronically to Contracts staff.
- E. The CA must conduct a cost or price analysis and Responsibility Determination to determine if the consultant's proposed price is fair and reasonable (see 7.12.1 below).

For Commercial Items – the CA working with the PM can establish fair and reasonableness using the following justification:

1. The consultant quoted SCAG an internet or paper copy catalogue price that they charge the public (catalog or market prices offered in substantial quantities to the general public);

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2. SCAG or another governmental entity has audited the consultant's rates in the past 12 months, and another public entity accepted the rates;
  3. The consultant recently (within the last 12 months) charged us a similar price/rate for similar goods and services on a contract that was competed; or
  4. The price is regulated by a governmental entity.
- F. The CA, using the information obtained in the Cost/Price Analysis, with the PM negotiates (as necessary - see 7.12.1 below for negotiations) the final contract price, and document the negotiation results.
- G. The CA will create and route the contract for execution. Contract preparation includes incorporating the scope of work in the selected consultant proposal, with any changes the PM requests (after discussion with the consultant) into the contract.
- H. If applicable, the CA obtains proof of insurance from the selected consultant and validates it with SCAG's Risk Manager.
- I. The PM provides the CA the required information for Board Report (RC write up), if the contract price is \$25,000 or greater (in accordance with the May 5, 2005 Regional Council agenda item 6.1.4). Contracts requires this information prior to issuing the Notice-to-Proceed.
- J. The CA issues Notice-to-Proceed with a Contract or PO (for Commercial Items). Contracts does not issue a Notice-to-Proceed for Commercial Items. The executed PO serves as the Notice-to-Proceed for Commercial Items
- K. The consultant provides the goods or services and the PM and CA monitors the work or receives the goods.
- L. PM should anticipate a 5 to 10-business day turnaround time for sole source contracts (from receipt of all items in 7.3.1 A to issuing Notice-to-Proceed or PO).
- M. Any amendment to a sole source contract is also a sole source contract, and must be processed in accordance with the procedures in this section (7.3 and 7.3.1).

### 7.4. **Purchase Using a State and Local Intergovernmental Agreement (Master Service Agreement- MSA – also known as Leveraged Purchase Agreements - LPA's)**

- A. In accordance with 2 CRF 200.318 (e), to foster greater economy and efficiency, SCAG is authorized to procure goods and services by using an Intergovernmental Agreement (Master Service Agreements – MSA's). The goods and services procured under an MSA were previously competitively procured by another governmental entity. SCAG is essentially "piggy backing" on the agreement. Some examples these agreements include, but are not limited to, the Western States Contract Alliance, Calnet, and US Communities.... Such purchases shall be processed in accordance with the applicable parts of Sections 7.11 as well as 7.12 below, and approved in accordance with Section 3.3

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above. An MSA only needs to be effective at the time SCAG executed its contract, and the MSA can end prior to the end date of SCAG's contract. Contracts emanating from an MSA should be re-solicited prior to a total of thirty-six (36) consecutive months with the same consultant including any amendment to extend the contract's term, unless SCAG's Chief Financial Officer provides written authorization for a longer period for the initial contract or an amendment to an existing contract.

- B. Contracts staff must document in the contract file:
  - 1. The validity of a MSA used in the procurement (i.e., ensure that the agreement is in fact an MSA);
  - 2. The fact that SCAG is eligible to use the MSA. This includes reviewing the MSA's terms and conditions to determine if it has any requirements SCAG must adhere to; and
  - 3. The MSA's duration.
- C. Goods and services valued at \$200,000 or greater procured via an MSA require Regional Council approval (must also adhere to the amendment policy described in Section 9.3), and are subject to SCAG's Audit requirements if the purchase is \$250,000 or greater. Goods and services valued at \$25,000 but less than \$200,000 procured via MSA must be submitted by the SCAG PM to Contracts as an "information item" on the Regional Council agenda.

### 7.5. Agreements with Other Governmental Agencies

In accordance with the Caltrans Local Assistance Procedures Manual, Agreements with Other Governmental Agencies, intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed. See 2 CFR 200 and CA Government Codes 10340 and 11256.

### 7.6. Purchases Using a Purchase Card

- A. SCAG uses a variety of methods for the purchase of goods and services, including petty cash, purchase orders, and emergency purchase orders. Processing purchase orders may not be cost effective for low dollar value goods, and occasionally suppliers refuse to accept a purchase order. Accordingly, in January 2011, the Finance Division implemented a procurement credit card program to streamline the procurement process and allow designated staff to quickly and easily make approved purchases typically under the federal micro purchase threshold, currently \$10,000.
- B. SCAG will use the State of California Department of General Services (DGS) Leveraged Purchase Agreement (LPA) for a VISA purchase card program through U.S. Bank. This purchase card system is known as the CAL-Card Program. Authorized contracts staff can use the CAL-Card credit card to obtain the immediate or urgent need for supplies and services, which are not restricted or prohibited. **The card should primarily be used when the vendor will not take a SCAG purchase order or check or time sensitive purchases.**

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C. Refer to Purchase Card Manual for further instructions (available on SCAGhub).

### 7.7. Procurement by Sealed Bids

A. Consistent with 2 CFR 200.320 a sealed bid is an offer enclosed in a sealed envelope and is submitted in response to solicitation known as an Invitation to Bid (IFB). Sealed bids received up to deadline date are generally opened at a stated time and place usually in the presence of anyone who may wish to be present and evaluated for award of a contract. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. The sealed bid method is the preferred method for procuring construction and some goods with detailed specifications, if the following conditions apply:

1. In order for sealed bidding to be feasible, the following conditions should be present:
  - A complete, adequate, and realistic specification or purchase description is available;
  - Three or more responsible bidders are willing and able to compete effectively for the business; and
  - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

B. If sealed bids are used, the following requirements apply:

1. The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
2. The Invitation for Bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected if there is a sound documented reason.

Refer to 2 CFR 200.320 for more details on sealed bids.

### 7.8. Procurement by Competitive Proposals (Request for Proposal)

A. Consistent with 2 CFR 200.320 a competitive solicitation process is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type (see Section 7.13 below). This solicitation method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

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1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  2. Proposals must be solicited from an adequate number of qualified sources(three); and
  3. There must be a written method for conducting technical evaluations of the proposals received and for selecting recipients; and
  4. Award must be made to the responsible firm whose proposal is most advantageous to SCAG, with price and other factors considered.
  5. The procurement schedule that SCAG will follow in reviewing and evaluating the proposals.
- B. In accordance with the Caltrans Local Assistance Procedures Manual, there are two general types of Requests for Proposal for consulting service contract solicitations:
1. Request for Proposal using Cost only
  2. Request for Proposal using Cost and Qualifications
- C. The Request for Proposal must include the following:
1. A clear, precise description of the work to be performed or services to be provided;
  2. Description of the format that proposals shall follow and the elements they shall contain;
  3. The standards SCAG will use in evaluating proposals. This includes qualifications and certifications if applicable;
  4. The date the proposals are due; and
  5. The procurement schedule that the local agency will follow in reviewing and evaluating the proposals.

### 7.8.1. Additional Requirements and Evaluation Criteria

- A. Additional Requirements for Request for Proposal using Cost only:
1. Contracts must require consultants to submit their proposals and cost in a separate, sealed envelope or separate electronic file.
  2. Contracts shall determine those that meet the format requirements and the standards specified in the request for proposal.
  3. The sealed envelopes or separate electronic file containing the price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.
  4. Contract must be awarded to the lowest responsible consultant meeting the standards. (Public Contract Code - PCC 10344(b))
- B. Additional Requirements for Request for Proposal using Cost and Qualifications:
1. Contracts must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized shall be given to the cost amount proposed by the consultant.

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2. Contracts shall determine those that meet the format requirements specified in the RFP.
3. Contract's evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets shall be available for public inspection after the committee scoring process. Evaluation committee members shall not have a conflict of interest as defined in PCC 10410.
4. The non-Architectural & Engineering (A&E) contract shall be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

### 7.9. Architectural and Engineering (A&E) Procurement

- A. The procedures outlined in this section relate to contracts with firms to perform architectural and engineering related work. It is used on the Brooks Act when federal funding is utilized and on the California mini-Brooks law whether or not federal funds are used. Rather than selection based on price, the Act provides for selection based on professional qualifications and experience, followed by negotiation with the most qualified firm on a price that is fair and reasonable to SCAG. The Caltrans Local Assistance Procedures Manual, Chapter 10, shall be used in conjunction with this section, and said LAPM Chapter 10 is adopted herein by this reference.
- B. 23 Code of Federal Regulations §172 and California State Law further defines A&E services and includes those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management services are termed Architectural and Engineering Consultants. Contracts staff can contact [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for help determining if the project is A&E.

#### 7.9.1. Architectural and Engineering Consultants

- A. The Brooks Act (40 USC Section 1104 - <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172 <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>), at a fair and reasonable price (48 CFR 31.201-3 - <https://www.govinfo.gov/content/pkg/CFR-2015-title48-vol1/pdf/CFR-2015-title48-vol1-sec31-201-2.pdf>).
- B. Cost proposals submitted to SCAG must be sealed and shall not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only that consultant's cost proposal will be opened. Should negotiations fail or result in a price that SCAG does not consider fair and reasonable, negotiations must be formally terminated and SCAG must then undertake negotiations with the second most qualified consultant.
- C. If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and SCAG must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by SCAG.

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- D. In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

### 7.9.2. Prevailing Wages.

- A. Under 49 U.S.C. §5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on federally funded construction, alteration, and repair projects. Third party contracts for construction, alteration, or repair at any contract tier exceeding \$2,000 must include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and implementing DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction,” 29 C.F.R. part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis- Bacon Act also requires contractors to pay wages not less than once a week.
- B. SCAG must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. In addition, depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts).
- C. Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations (DIR) websites below:
- [http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - [DIR Wage Determination](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website - [http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - Caltrans Prevailing Wage Interpretive Guidance - <http://www.dot.ca.gov/hq/audits/documents/prevailing-wage-interpretive-guidance.pdf>
- D. Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.
- E. Refer to Caltrans Local Assistance Procedures Manual Chapter 10, for additional information detail about A&E procurements.

### 7.10. Consultant Selection Methods

- A. There are three methods normally used in selecting a consultant. They are:

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- One-Step Request For Proposals (RFP);
  - One-Step Request For Qualifications (RFQ);
  - Two-Step RFQ/RFP.
- B. The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant. Regardless of the method used, Contracts staff shall retain all consultant selection documentation in the project files as required by 23 CFR Part 172.

### **7.10.1. One-Step RFP**

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

### **7.10.2. One-Step RFQ**

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. A RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

### **7.10.3. Two-Step (RFQ Followed by RFP)**

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in the Caltrans Local Assistance Procedures Manual, *Identifying & Defining a Need for Consultants*. This method requires substantially more work and time than the other two methods described above.

### **7.10.4. Request for Qualification (RFQ) 1 or 2-Step Process**

- A. In accordance with the Caltrans Local Assistance Procedures Manual, *Consultant Selection Using The One-Step RFQ Method*, SCAG can elect to use the Request for Qualification process to establish an on call bench of consultants for contracting up to a maximum five (5) year period. This method is typically for Architectural and Engineering procurements (see Local Assistance Procedures

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Manual Chapter 10, which is uncommon for SCAG as a Transportation Planning Organization) however it is allowable for non-A&E procurements.

- B. The Two-Step RFQ/RFP method may also be used to establish a bench of consultants to contract with when the scope of work is more complex or unusual (as determined by Contacts) than the One-Step method.
- C. All Task Orders (including on-call services) must be executed in writing and at a minimum specify the:
  - Scope of work
  - Deliverables (if any)
  - Start date
  - Delivery date (if any)
  - Budget (if applicable)
- D. Refer to the Caltrans Local Assistance Procedures Manual, for additional guidance on 1-Step and 2-Step procurement methods.

### 7.11. **Informal Solicitations (Small Purchases)**

The informal solicitation method is mainly used for procurement of goods and services under \$50,000. In most cases, an informal solicitation may be solicited via fax or email and the respondent may submit their offer via fax or email. Informal solicitations shall be used when economies of scale can be achieved and when there are equal and competitive products or services. All documentation regarding information solicitations shall be maintained by the Contract Administrator. Note – Any purchase that was procured informally (i.e., originally valued at less than \$50,000), can only be increased up to \$64,999.99 or 30% of the Contract's original value, whichever is less (e.g. if the original contract is \$49,999, it can on be increased up to 30% or \$15,000, with the revised value totaling \$64,999). You cannot request the Regional Council to amend such contracts any further. Such amendments must still be processed in accordance with this Procurement Manual.

#### 7.11.1. **Steps in the Informal Solicitation Process for Purchase Orders (PO's) and Contracts:**

(Includes Commercial Items e.g. computers, hardware and off the shelf software, office supplies, food, promotional items... per 48 CFR Chapter 1)

- A. The PM provides the Contracts Department the following:
  - 1. A completed Purchase Requisition stating the funding source, what is being purchased and why, (if the RFP is being advertised via Planet Bids (see Section 7.12.1F below) include the Material Code, (i.e., what group of consultants to notify about the solicitation). For Commercial Items, include 3 - 5 potential vendors (Contracts must receive and evaluate a minimum of three offers - see Section 7.11.1B below) to send the solicitation to.
  - 2. A detailed Specification or Scope of Work – CA reviews the work scope to among other things ensure that no unfair competitive advantage exists. In

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accordance with Federal Acquisition Regulations (FAR) Subpart 9.505 General rules, generally an unfair competitive advantage exists where a consultant competing for award of a contract possesses:

- Proprietary information that was obtained from a Government official without proper authorization; or
- Source selection information (as defined in FAR Subpart [2.101](#)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

This means an unfair competitive advantage may exist if:

- The work under Phase 1 has not been completed and all the report, data, related work materials are not available to all potential proposers.
- If the work under Phase 1 has been completed, but the consultant made recommendation(s) in the Phase 1 report and if awarded Phase 2 would be implementing the recommendations they made in the Phase 1 report. Because in performing the work they could create products or services that work to their advantage.

Notwithstanding the above information, per PCC 10365.5 a consultant who performs Phase 1 can also perform Phase 2 but only if Phase 2 is no more than 10% of the value of the contract.

3. Independent Cost Estimate (ICE). An ICE is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. An ICE is needed for all consultant contracts. It must be prepared by the SCAG PM (or designee) with no consultant assistance), in advance of receiving any cost proposals (preferable before issuing the solicitation); should include any assumptions the PM used to create it; be signed and dated or emailed by the preparer; and typically include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee (see SCAGhub\_for sample). The CA must retain documentation of how the cost estimate was developed in the contract file. In accordance with a March 5, 2009 Regional Council agenda item 3.1.3, this document must be kept confidential. Staff cannot disclose the project's budget to anyone outside of the Proposal Evaluation Committee.

When estimating the software's cost, the PM must consider its life cycle cost. For software required indefinitely, the PM must consider a minimum of 5-years.

4. Evaluation Criteria - For Commercial Items, awarding to the lowest responsive and responsible offeror should be used as the Evaluation Criteria. If price is not the sole criteria, the criteria and relative weights must be included in the solicitation (typically using a 100 total/maximum point system for both the evaluation and any interview phase), and the same criteria and relative weights must be used in the evaluation sheets. Cost must be weighted at no less than 30% for Caltrans administered grants. In the event of a tie

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score, award shall be made to the offeror with the lowest cost. If cost is the same, then the award should be made to the offeror providing the most direct labor hours. If the direct labor hours are the same, the award should be made to the offeror with the most favorable schedule. If the schedule is the same the evaluation team may accept the offer it chooses and document their reason for selection.

5. Proposal Review Committee (PRC) members - a minimum of 3, including Caltrans if CPG funds will be used. If Caltrans waives its participation, the PM must provide Contracts with file documentation and the CA shall include it in the contract file (under Miscellaneous e-mail is acceptable). If any PRC member is unable to independently score offers after the solicitation is issued, the Project Manager shall recommend and the CA shall approve another person (including the CA) to replace that person. The replacement must independently score offers. If no replacement is available the solicitation should be cancelled. A PRC is not required for purchase of Commercial Items.

Note - PM may conduct market research and analysis to determine his/her individual needs and requirements (especially for commercial items). However, in order to maintain integrity of the procurement process, excluding confidential Human Resources and Legal matters, all pricing quotes whether verbal or in writing/electronically must be verified by Contracts staff.

To help expedite the procurement process, PM can provide Contracts staff their market research, the websites or catalogues containing the goods/services they wish to procure, as well as any vendor contact information for consideration. However, Contracts may choose to purchase from a source(s) other than the source(s) staff provides.

- B. The CA contacts a minimum of three (3), but preferably five (5) vendors (to establish adequate price competition). In accordance with the Caltrans Local Assistance Procedures Manual, *Consultant Selection Using The One-Step RFP Method*, the Contracts Department must attempt to receive and evaluate a minimum of three offers. If Contract receives two (2) offers or less, a justification must be documented to proceed with the procurement.

For all contracts that contain funds that are administered by Caltrans (i.e., Regional Planning or Local Assistance), if only one proposal is received, Contract staff must create and transmit a Public Interest Finding (PIF - written justification to document a non-competitive contract award) to Caltrans District 7 Office of Regional Planning or Office of Local Assistance, depending on the funding source (see Section 7.3 above).

For all other funding sources, Contracts must create a written justification to document a Non-Competitive process and obtain written authorization to proceed from the grantor or the SCAG Chief Operating Officer (for Transportation Development Act [TDA] or General Funds).

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In case of any of the previously mentioned scenarios, the re-advertisement of the RFP may be considered as an option.

- C. Disadvantaged Business Enterprise (DBE) vendors should be included in the process, for applicable funding sources (refer to Regional Planning Handbook and updates to it – or the agreement that funds the solicitation/contract):
  - Federal Highway Administration, Metropolitan Planning (FHWA PL)
  - FTA Metropolitan Planning, Section 5303 (FTA § 5303)
  - FHWA State Planning & Research - Part 1, Strategic Partnerships Grants
  - FTA § 5304 Sustainable Communities Grants
- D. The CA will determine if there are any certified DBE vendors and will contact them to request a bid for the selected items or project.
- E. To broaden exposure of the solicitation to a wider potential pool of vendors, the PM can request that the CA post the solicitation in Planet Bids (see Section 7.12.1 F below). However, this is not normally done. Also, SCAG shall not release information to external parties (excludes Proposal Review Committee – PRC members) about an incumbent contract/consultant once the new Bid/RFP to replace the existing contract is released.
- F. Vendors/consultants must submit their proposal or quote in writing to the CA, prior to the date and time the quote/proposal is due, as determined by SCAG's time clock. There are no exceptions, unless the CA can document that one of SCAG's systems (i.e., PlanetBids...) malfunctioned or otherwise prevented offerors from submitting offers on time, or there as a natural disaster (as determined by SCAG). At the CA's discretion vendors/consultants are given a minimum of two (2) business days to respond to a solicitation but, are typically given up 14 to 28 calendar days. The CA reviews the Conflict of Interest Form if it was required (i.e., the purchase is estimated to be \$200,000 or greater). If the CA identifies a potential conflict of interest/ethics issue, the CA in consultation with SCAG Legal Counsel, shall address such issue in accordance with SCAG's Conflict of Interest Policy (available on SCAGhub - also see Section 2 above). It is unlawful for any person engaged in business within this state to sell or use any article as a "loss leader" as defined in Sec. 17030 of the Business and Professions Code.
- G. The PRC reviews and evaluates offers. The CA in consultation with the PM and SCAG Legal Counsel, as necessary, reviews the Conflict of Interest Form that a proposer may be required to submit with their proposal. If Contracts identifies a potential conflict of interest/ethics issue, Contracts in consultation with SCAG Legal Counsel, shall address such issue in accordance with SCAG's Conflict of Interest Ethics Policy (available on SCAGhub).
- H. Interviews will be conducted if necessary but are not required (as determined by Contracts). As a courtesy, Contracts may notify consultants who are not selected for interview. If interviews are required, each should not be scheduled for less

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than 45-minutes, preferably one hour, to allow sufficient time for questions and answers. Other than SCAG staff, only those persons (PRC members) scoring the proposals will be allowed in the proposal evaluation meetings, or any interview of firms or post interview discussions.

Consistent with FAR Subpart 15.206, the PRC can establish a shortlist (Competitive Range) and if necessary reduce the existing work scope (i.e., go from tasks 1 to 10, down to just task 1 to 4 – or reduce or increase the level of effort of an existing task); and only make this offer to those firms in the Competitive Range as follows:

1. When, either before or after receipt of proposals, if SCAG changes its requirements or terms and conditions, Contract staff shall amend the solicitation.
  2. Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.
  3. Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.
  4. If a proposal of interest to SCAG involves a departure from the stated requirements, Contract staff shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see FAR 15.207(b) and 15.306(e)).
  5. If, in the judgment of Contract staff, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, Contract staff shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.
  6. Oral notices may be used when time is of the essence. Contract staff shall document the contract file and formalize the notice with an amendment.
  7. At a minimum, the following information should be included in each amendment:
    - (a) Name and address of issuing activity.
    - (b) Solicitation number and date.
    - (c) Amendment number and date.
    - (d) Number of pages.
    - (e) Description of the change being made.
- I. After any interview the CA tabulates scores from both the evaluation and interview (selection is based on the combined evaluation and interview scores). SCAG does not reimburse consultants for parking, travel, or any expenses associated with participation in the solicitation process. The PRC will document its consultant selection on the PRC Memorandum of Selection. The CA approves recommended consultant selection.

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- J. The CA must conduct a cost or price analysis and Responsibility Determination to determine if the consultant's proposed price is fair and reasonable (see Section 7.12.1 N below).

For Commercial Items – the CA working with the PM can establish fairness and reasonableness using the following justification:

1. The consultant quoted SCAG an internet or paper copy catalogue price that they charge the public (catalog or market prices offered in substantial quantities to the general public);
  2. SCAG or another governmental entity has audited the consultant's rates in the past year, and another public entity accepted the rates;
  3. The rates the consultant charges are similar to rates that other consultants in the market would charge or the consultant recently charged us a similar price/rate for similar goods and services on a contract that was competed; or
  4. The price is regulated by a governmental entity.
- K. The CA using the information obtained in the Cost/Price Analysis, with the PM negotiates as necessary a fair and reasonable final contract price, and documents the negotiation results (see Section 7.12.1 below. for negotiations). Note - SCAG does not allow the Prime Consultant a markup on any of its subconsultant costs. Also, to help ensure SCAG pays a fair and reasonable price for its consultant services, Contracts should request the Internal Auditor review a consultant's Overhead and Fringe rate if either individually or combined exceeds 150%.
- L. Within 24-48 hours after evaluation are conducted, the CA will typically post the Notice of Intent to Award. Consistent with the Public Utilities Code Section (PUC) 5103, and FTA Circular 4220.1E this allows unsuccessful consultants five (5) days from the Notice's issuance (24-hours for Commercial Items) to protest the award (see Section 8.9 below, if applicable). The CA will only post the Notice on SCAG's website if the RFP was advertised via Planet Bids (see Section 7.10.3 above). This step can be done concurrently with step K above.
- M. If applicable, the CA obtains proof of insurance from the selected consultant and validates it with SCAG's Risk Manager.
- N. The CA will create and route the contract for execution. Contract preparation includes incorporating the scope of work in the selected consultant proposal, with any changes the PM requests (after discussion with the consultant) into the contract. The contract cannot be fully executed until after the five (5) day protest period (including for Commercial Items) expires or until any protest is resolved. In accordance with the Caltrans Local Assistance Procedures Manual, Completing The Project the CA routes the contract to the consultant for signature first (i.e., the consultant signs before SCAG).
- O. The PM provides the CA the required information for Board Report (RC write up) within established timeframes, if the contract price is \$25,000 or greater (in

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accordance with the May 5, 2005 Regional Council agenda item 6.1.4,). Contract requires this information prior to issuing the Notice-to-Proceed.

- P. The CA issues Notice-to-Proceed with a Contract or PO (for Commercial Items) to the selected vendor after the protest period expires. Contracts staff do not issue a Notice-to-Proceed for Commercial Items. The executed PO serves as the Notice-to-Proceed for Commercial Items.
- Q. The consultant begins work and the PM and CA monitor the work.
- R. The CA is also responsible for conducting post award administration (see Section 9 below).
- S. PO's for Commercial Items are typically issued within five (5)-business days of receipt of the complete documents identified in bullet 7.11.1, A1 to 5 above; and 10-business days if Contracts staff has to solicit quotes from vendors. For non-commercial items, a 2 – 7 week turn-around time is typical.

### 7.12. **Formal Solicitations (Purchases)**

- A. In accordance with a March 6, 2008 Regional Council agenda item 5.2.2 a Formal Solicitation is required for procurements \$50,000 or greater. A Formal Solicitation is a written solicitation which must be submitted by the specified date and time by the offeror. Formal Solicitations are used when economies of scale can be achieved and when there are equal and competitive products or services.
- B. Before a RFP is released, the CA and the PM may conduct a Pre-RFP meeting to review RFP documents and develop a contract timeline. Other attendees at this meeting may include a representative from the Budget & Grants Department, the Internal Auditor (for \$250,000 or greater), and others as necessary.
- C. The CA prepares the RFP for release after receiving the PM's Solicitation Intake Form which provides:
  - 1. **Purchase Requisition**, including the funding source, and Material Code (i.e., what group of consultants to notify about the solicitation)
  - 2. **Funding Source Verification**, the CA verifies the funding source to confirm requirements are included in the solicitation and the resulting contract.
  - 3. **Scope of Work** (sample available on SCAGhub).
  - 4. **Independent Cost Estimate (ICE)** - An ICE is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. An ICE is needed for all consultant contracts. It must be prepared by the SCAG Project Manager (or designee) with no consultant assistance, in advance of receiving any cost proposals (preferable before issuing the solicitation); it should include any assumptions the Project Manager used to create it; be signed and dated or emailed by the preparer; and typically include, hours/detailed work, direct labor costs,

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indirect labor costs, other direct costs, and profit/fee (sample available on SCAGhub). The CA must retain documentation of how the cost estimate was developed in the contract file. In accordance with a March 5, 2009 Regional Council agenda item 3.1.3, this document must be kept confidential. Staff cannot disclose the project's budget to anyone outside of the Proposal Evaluation Committee.

5. **Evaluation Criteria** - The Contract Administrator is responsible for approving the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. The total possible score for the evaluation criteria is typically one hundred (100) points. For Caltrans administered grants funding a solicitation the proposed cost must be at least thirty percent (30%) of total points in evaluation criteria.
  6. **Proposal Evaluators** (a minimum of 3 - per Caltrans Local Assistance Procedures Manual, Appoint Consultant Selection Committee). Staff can invite Caltrans to participate on any funds administered by Caltrans (including all projects funded from the Indirect Cost Budget) and must make the offer to any grantor to participate (see Budget and Grants staff or grantor information as necessary). If the grantor declines to participate, the PM (or CA) must receive written documentation from the grantor's representative and the CA shall include it in the contract file (under Miscellaneous). Also, if any PRC member is unable to independently score offers after the solicitation is issued, the PM shall recommend and the CA shall approve another person (including the CA) to replace that person. The replacement must independently score offers. If no replacement is available the solicitation should be cancelled.
  7. **Acquisition Schedule**. Contracts requires a schedule in order to establish the timeline for releasing the RFP and awarding the contract. It represents the PM's forecast of when he/she prefer the different events to occur (e.g., RFP released 7/1/20 Pre-proposal Conference 7/15/20...). After the PM completes this document, Contracts assigns the RFP and if Contracts cannot accommodate the PM's requested schedule, Contracts works with the PM to finalize schedule prior to releasing the RFP.
- D. In accordance with the March 5, 2009 Regional Council agenda item 3.1.3, Contracts shall **not** include the project's budget in the RFP (nor reveal this information to anyone outside of the PRC).
- E. The RFP is comprised of the following parts:
1. Proposal Information, Organization, and Content
  2. Scope of Work (**detailed** description of the work to be accomplished, including methodology, schedule, and deliverable(s), where appropriate)
  3. Proposal Evaluation Form
  4. Interview Evaluation Form
  5. Contract Budget Explanatory Information and Sample Line Item Budget (For consultant projects)
  6. Consultant Debarment and Suspension Certification (For consultant projects)

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7. SCAG Conflict of Interest Form
8. Disadvantaged Business Enterprise (DBE) Availability Advisory
9. W-9 Form and Attachment to W-9 Form (SCAG Vendor/Consultant Application)

### 7.12.1. Steps in the Formal Solicitation Process:

- A. A Purchase Requisition along with detailed Specifications and/or Scope of Work is entered in SCAG's Requisitioning System by the PM (see SCAGhub, PM Resources folder). In anticipation of future funding, a requisition may be entered into SCAG's Requisitioning System to begin the RFP process. However, a contract will not be awarded until sufficient funding is secured.
- B. To help ensure the integrity of the procurement process the PM recommends staff for the PRC (including Caltrans for all CPG funded projects), and the CA approves the PRC team. The CA reviews the scope of work to ensure it is eligible for reimbursement in accordance with its funding source and to determine if any unfair competitive advantage exists. In accordance with Federal Acquisition Regulations (FAR) Subpart 9.505 General rules, generally an **unfair** competitive advantage exists where a consultant competing for award of a contract possesses:
  1. Proprietary information that was obtained from a Government official without proper authorization; or
  2. Source selection information (as defined in FAR Subpart [2.101](#)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

This means an unfair competitive advantage may exist if:

- The work under Phase 1 has not been completed and all the report, data, related work materials are not available to all potential proposers.
- If the work under Phase 1 has been completed, but the consultant made recommendation(s) in the Phase 1 report and if awarded Phase 2 would be implementing the recommendations they made in the Phase 1 report. Because in performing the work they could create products or services that work to their advantage.

Also see, [https://acquisition.gov/far/current/html/Subpart%209\\_5.html](https://acquisition.gov/far/current/html/Subpart%209_5.html)

Notwithstanding the previous information, per PCC 10365.5(b), a consultant who performed Phase 1 can serve as a subconsultant of Phase 2 if no more than 10% of the value of the contract.

- C. In accordance with the Caltrans Local Assistance Procedures Manual, *Appoint Consultant Selection Committee*, the PRC must consist of a minimum of three (3) persons and may include the CA. The members should be familiar with the project to be contracted and the SCAG standards that will be used in the contract. Participation by a Caltrans district representative is at the option of SCAG and subject to the availability of the Caltrans staff. Caltrans participation on the committee does not relieve SCAG of its responsibility to ensure proper procurement procedures are followed and all requirements are met. If any PRC member is unable to independently score offers after the solicitation is issued, the

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Project Manger shall recommend and the CA shall approve another person (including the CA) to replace that person. The replacement must independently score offers. If no replacement is available the solicitation will be cancelled.

- D. In accordance with the Caltrans Local Assistance Procedures Manual, *Prepare RFP*, a minimum of fourteen (14) days is required between the time the RFP is published and the time that proposals must be submitted. If the contract does not require the Regional Council's approval, the Contracts Manager may authorize a shorter advertising period (depending on the complexity of the project's scope of work). SCAG shall not release information to external parties (excludes PRC members) about an incumbent contract/consultant once the new solicitation to replace the existing contract is released.
- E. A Pre-proposal/bid meeting is held (if applicable). SCAG does not reimburse consultants for parking, travel, or any expenses associated with participation in the solicitation process.
- F. The CA prepares RFP and an email notification is sent to selected consultants through SCAG's third party vendor (currently PlanetBids.com), and advertised in other professional trade publications as necessary announcing the release of the RFP. Vendors must register to download RFPs at SCAG's webpage.
- G. Consultants must submit their proposal in writing to the CA, prior to the date and time the proposal is due. There are no exceptions, unless the CA can document that one of SCAG's systems (i.e., PlanetBids...) malfunctioned or otherwise prevented offerors from submitting offers on time, or there as a natural disaster (as determined by SCAG), and the time is to be determined by SCAG's time clock.
- After the RFP is closed, the CA receives proposals and distributes copies of the proposals and Proposal Summary Memo to the PRC.
  - In accordance with the Caltrans Local Assistance Procedures Manual, Section, *Consultant Selection Using The One-Step RFP Method*, the Contracts staff must attempt to receive and evaluate a minimum of three offers to establish adequate price competition. If Contracts receives two (2) offers or less, a justification must be documented to proceed with the procurement.
  - For all contracts using funds administered by Caltrans (i.e., Regional Planning or Local Assistance), if only one proposal is received, Contract staff must create and transmit a Public Interest Finding (PIF - written justification to document a non-competitive contract award) to Caltrans District 7 Office of Regional Planning or Office of Local Assistance, depending on the funding source (see Section 7.3 above).
  - For all other funding sources, Contracts must create a written justification to document a Non-Competitive process and obtain written authorization to proceed from the grantor or the SCAG Chief Financial Officer (for Transportation Development Act [TDA] or General Funds).
  - In case of any of the previously mentioned scenarios, the re-advertisement of the RFP may be considered as an option.

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- The CA reviews the Conflict of Interest Form that each proposer must submit with their proposal. If the CA identifies a potential conflict of interest/ethics issue, the CA in consultation with SCAG Legal Counsel, shall address such issue in accordance with SCAG's Conflict of Interest Policy (available on SCAGhub) also see Sections 2 above).

It is unlawful for any person engaged in business within this state to sell or use any article as a "loss leader" as defined in Sec. 17030 of the Business and Professions Code.

- H. Each PRC member must independently review and evaluate/score each proposal (typically using a 100 total/maximum point system). The CA will confirm and arrange the PRC meeting to tabulate scoring of written proposals.
- I. The PRC determines which consultants are to be interviewed, and as a courtesy may notify firms not selected for interview (e-mail is acceptable).
- J. Consistent with FAR Subpart 15.206, the PRC can establish a shortlist (Competitive Range) and if necessary reduce the existing work scope (i.e., go from tasks 1 to 10, down to just task 1 to 4 – or reduce or increase the level of effort of an existing task); and only make this offer to those firms in the Competitive Range as follows:
  1. When, either before or after receipt of proposals, if SCAG changes its requirements or terms and conditions, Contract staff shall amend the solicitation.
  2. Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.
  3. Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.
  4. If a proposal of interest to SCAG involves a departure from the stated requirements, Contract staff shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see FAR 15.207(b) and 15.306(e)).
  5. If, in the judgment of Contract staff, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, Contract staff shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.
  6. Oral notices may be used when time is of the essence. Contract staff shall document the contract file and formalize the notice with an addendum.
  7. At a minimum, the following information should be included in each addendum:

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- Name and address of issuing activity.
- Solicitation number and date.
- Addendum number and date.
- Number of pages.
- Description of the change being made.

K. The PRC conducts consultant interviews using the evaluation criteria stated in the RFP typically using a 100 total/maximum point system. Other than SCAG staff, only those persons scoring the proposals (PRC members) will be allowed in the proposal evaluation meetings, interview of firms or post interview discussions.

L. After the interviews are completed the CA tabulates scores from both the evaluation and interview (selection is based on the combined evaluation and interview scores, typically using a combined total/maximum of 200 points, 100 from the evaluation and 100 from any interview), and selects the highest ranked firm for contract award recommendation. This is subject to reference checks, which the CA can conduct prior to (preferably) or after the interview - particularly for firms SCAG has no prior business dealings with.

In the event of a tie score, award shall be made to the offeror with the lowest cost. If cost is the same, then the award should be made to the offeror providing the most direct labor hours. If the direct labor hours are the same, the award should be made to the offeror with the most favorable schedule. If the schedule is the same RRC may award to the offeror it chooses and document their reason for selection.

M. The PRC documents its consultant selection on the PRC Memorandum of Selection. The CA approves the recommended selection.

N. The CA uses the Cost Estimate (in 7.12.C.**Error! Reference source not found.**) to prepare a Cost/Price Analysis and Responsibility Determination and arranges for an audit if consultant's proposal is \$250,000 or greater, and then uses this information to negotiate a fair and reasonable final contract price (within the project's budget). To be deemed responsible, a prospective consultant must: (1) Have the financial resources adequate to perform the contract or the ability to obtain them; (2) Have the ability to meet the required delivery or performance schedule, taking into consideration all existing commitments; (3) Be neither debarred nor suspended from Federal programs under DOT regulations, "Nonprocurement Suspension and Debarment, "2 C.F.R. parts 180 and 1200, or under the FAR at 48 C.F.R. part 9, subpart 9.4, etc.

O. In addition to cost, typical items also negotiated include: profit (will be negotiated as a separate cost item), the work plan, the schedule, deadlines, products to be delivered, as well as terms and conditions (Caltrans Local Assistance Procedures Manual, Negotiate Contract With Top-Ranked Consultant). To help ensure SCAG pays a fair and reasonable price for its consultant services, Contracts will request Audit to review a consultant's overhead and fringe rate if the overhead rate (by itself) is 150% or greater, or if the fringe rate (by itself) is 50% or greater.

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- P. In accordance with 2 CRF Part 200, the CA will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- Q. At no time shall staff disclose the project's budget. Staff should ensure the consultant places the capital and human resources where SCAG requires each and that SCAG receives the maximum value for the contracted price (not just award the contract to the consultant because they are within budget).
- R. The following provides general guidance on negotiating a fair and reasonable offer:
1. The CA will request the PM to use the Cost Estimate and analyze the consultant's cost proposal to determine if the consultant's proposed rates, hours and labor mix are fair and reasonable. For Fixed Price contracts, it is important to highly scrutinize Other Direct Cost (ODC's), specifically travel, must conform to SCAG's guidelines.
  2. The CA will also use the Cost Estimate and analyze the consultant's cost proposal to determine if the consultant's proposed rates are fair and reasonable. SCAG does not allow the Prime Consultant a markup on any of its subconsultant costs. If the CA does not believe the rates are fair and reasonable, the CA must be able to validate/document why, and negotiate fair and reasonable rates or a final contract price.
  3. If the consultant's cost proposal is already within budget, and is the lowest of the prices proposed, then the CA can establish fair/reasonableness of the cost on this basis. Negotiations are only required when the CA and or PM identify any costs that are not fair and reasonable. If so, the CA and or PM shall negotiate a fair and reasonable price for these specific costs.
  4. If the consultant's cost proposal is:
    - neither within budget, nor is it the lowest offer;
    - within budget but not the lowest offer; or
    - not within the budget but the lowest offer;

Then the CA will lead efforts to negotiate a fair and reasonable price using the information obtained in Section 6.6.3.N above. If agreement cannot be reached, then negotiations proceed with the next most qualified (highest ranked) consultant, using the procedures described above, until all qualified proposers are exhausted or the solicitation is terminated.

Note –PM's are required to confirm sufficient budget for the final contract price via consultation with the Budget & Grants Department. Contract staff

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cannot post Notice of Intent or award the contract without budget confirmation.

5. Further, if the highest ranked consultant's cost proposal is not the lowest offer, the PM must document how and why the awarding the contract to the selected consultant represents the best value to SCAG, and is fair and reasonable.
  6. The CA documents the negotiation results.
- S. Typically no sooner than 24-hours after concluding any evaluation/interview or negotiation the CA issues (mail or e-mail) the Notice of Intent to Award and posts it on SCAG's website via Planet Bids (see Section 7.12.1 F). Consistent with the Public Utilities Code Section (PUC) 5103, and FTA Circular 4220.1E this allows unsuccessful consultants 5-days from the Notice's issuance to protest the award (see Section 8.9 below, Protests, if applicable).

The CA may request the consultant to provide a Microsoft Word redlined version or PDF, or plain text version of the consultant's proposal. The CA will remove any marketing material the consultant may have included as part of their RFP. With the PM's assistance the CA will only include minor adjustments to clarify the scope of work that resulted from interviews or any negotiations/discussions.

- T. In accordance with the Caltrans Local Assistance Procedures Manual, section 10.8 Completing The Project the CA prepares and routes the contract to the consultant for signature first (i.e., the consultant signs before SCAG). Contract preparation includes incorporating the scope of work in the selected consultant's proposal, with any changes the PM requests (after discussions with the consultant) into the contract. The contract cannot be fully executed until after the 5-day protest period expires or until any protest is resolved. No new scope can be added.
- U. The CA obtains proof of insurance from the selected consultant and validates it with SCAG's Risk Manager.
- V. Prior to issuing the Notice-to-Proceed, the PM provides the CA the required information for the RC Board Report within established timeframes (see RC write up), if the contract price is \$25,000 or greater (in accordance with RC Policy Manual Article VIII Section 1.1 and the May 5, 2005 SCAG Regional Council agenda item 6.1.4). The Board Report is a joint responsibility that is led by the CA. The CA is responsible for coordinating with the PM to ensure deadlines are met. The PM is responsible for completing all required information within established timeframes. If the selected consultant did not propose the lowest price, the Board Report must justify why the PRC made the selection. The larger the variance, the greater the justification required.
- W. The CA issues the Notice-to-Proceed with the executed contract to the selected consultant after the protest period expires. Caltrans will not reimburse any expense incurred by the consultant prior to receiving a Notice-to-Proceed from SCAG.

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- X. The consultant begins work and the PM and CA monitor the work.
- Y. The CA is also responsible for conducting Post Award Administration (see Section 9), and maintaining the official contract file (see Section 4.2,D).
- Z. Project Managers should anticipate an 11-week turn-around time on average to process Formal Solicitations, and 15-weeks if the Formal Solicitation is \$200,000 or greater (after Contracts receives the items in 7.11.1 A).
- AA. Contracts staff uses the RFP/Contract Processing Checklist (available on SCAGhub) to ensure all the required procedures are accomplished in a timely manner.

### 7.13. Determine Method of Payment

- A. The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed (23 CFR 172.9(b):
  - 1. Actual Cost-Plus-Fixed Fee (see LAPM *Exhibit 10-H: Sample Cost Proposal*, Example #1);
  - 2. Cost Per Unit of Work (see LAPM Exhibit 10-H, Example #3);
  - 3. Specific Rates of Compensation (see LAPM Exhibit 10-H, Example #2); and
  - 4. Lump Sum or Firm Fixed Price (see LAPM *Exhibit 10-H*, Example #1).
- B. The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work.
- C. The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used. Both of these methods are explicitly prohibited by Federal Regulations.

#### 7.13.1. Actual Cost-Plus-Fixed Fee

- A. The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.
- B. This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see LAPM *Exhibit 10-H: Sample Cost Proposal Example #1* and *Exhibit 10-R: A&E Sample Contract Language*, Article V, Option). The contract cost proposal must identify all key employees and/or classifications to be billed.

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New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

### 7.13.2. Cost Per Unit of Work

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see LAPM Exhibit 10-H, Example #3 and Exhibit 10-R, Article V Option 2).

### 7.13.3. Specific Rates of Compensation

- A. The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.
- B. This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method should not be used for project specific contracts and is recommended for on-call contracts for specialized or support type services, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of the consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see LAPM Exhibit 10-H, Example #2 and Exhibit 10-R, Article V Option 3).

### 7.13.4. Lump Sum or Firm Fixed Price

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see LAPM Exhibit 10-H: Sample Cost Proposal, Example #1 and Exhibit 10-R: A&E Sample Contract Language, Article V, Option 4). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

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## **8. Other Informal/Formal Solicitation Process Requirements**

### **8.1. Documenting the Rationale for the Procurement Method**

To comply with 2CFR 200.320 the CA for each solicitation must indicate his/her rationale for the procurement method, as well as the type of professional service consultant contract used (see RFP Routing Form available on SCAGhub).

### **8.2. Assigning Request for Proposal (RFP) Numbers**

- A. The Contracts Manager shall assign an RFP number to all projects specifically identified in the OWP, regardless of dollar value and funding source (including I/C projects), as well as all sole source contracts that exceed the federal micro purchase threshold, currently \$10,000. If Contracts staff assigns the solicitation an RFP number, then Contract staff will typically use a full contract agreement, not a PO, unless the purchase is for goods (in which case a PO is typically used). If the acquisition is a service, and the standard PO Terms and Conditions don't adequately mitigate all risks to SCAG (as determined by the CA in consultation with SCAG Legal Counsel and the Risk Manager), then Contracts should use a full contract agreement regardless of the contract's value.
- B. All Formal Procurements (any acquisition \$50,000 or greater) will be assigned an RFP number. This includes any acquisitions that procure goods and services through a Leveraged Purchase Agreement (LPA – see Section 7.4 above). LPA acquisitions are not subject to SCAG's competitive RFP process, because they have already undergone another competitive process. LPA purchases can be made using:
  - 1. A PO with its terms and conditions, and/or any terms and conditions from the LPA.
  - 2. A formal boilerplate contract if the standard PO Terms and Conditions don't adequately mitigate all risks to SCAG (as determined by the CA in consultation with SCAG Legal Counsel and the Risk Manager). Any terms and conditions from the LPA can also be attached.
- C. Lastly, acquisitions made with Indirect Funds (I/C) estimated to be less than \$50K will be assigned an RFP number if the required contract terms and conditions in SCAG's standard PO are insufficient to cover the risks associated with that acquisition (i.e., in instances where the terms and conditions in SCAG's formal boilerplate contract are required - there should be very few instance of these). If the terms and conditions in SCAG's standard PO are sufficient (as determined by the CA in consultation with SCAG Legal Counsel and the Risk Manager), only the PO will be required for this acquisition and no RFP number will be assigned.

#### **8.2.1. RFP Naming Convention - Legend**

When a solicitation process begins Contracts staff creates an RFP number in the Finance Management System (FMS), which consists of five characters, for example, 20-001 (20 represents the SCAG fiscal year, and 001 represents the sequential solicitation number. Once the contract is awarded, FMS assigns three additional

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characters to the solicitation number (20-001-C01) representing the contract number; and if multiple contracts result from the solicitation, then FMS assigns a sequential number (i.e., 20-001-C02, 20-001-C03...)

### **8.2.2. Electronic Contract File Library - Naming Convention**

- A. Contract staff maintains an electronic library of all of its consultant contract files. There are separate folders for each fiscal year (i.e., FY20 and FY21 Contracts). The naming convention for each subfolder within each folder starting with the FY08 folder is:

RFP # (Brief Title 60 characters including spaces max) Contract Staff's initials in all CAPS.

For Example: 20-001 (Tri-cities Corridor Project) LGM.

- B. Only certain staff (Finance, Audit, SCAG Project Managers, and Caltrans District 7) have access to this library, as it may contain confidential or proprietary information. SCAG staff requiring any documents from the library must request the document from Contracts staff, who will only release documents that shall be made available (depending on where in the procurement process they are and/or which staff is making the request). SCAG shall not release information to external parties (excludes Proposal Review Committee – PRC members) about an incumbent contract/consultant once the new RFP to replace the existing contract is released.

### **8.3. Solicitation Cancellation**

If a solicitation needs to be cancelled, it is the Project Manager's responsibility to inform the respective CA in writing as soon as possible. The CA will create and post an addendum to the RFP on SCAG's website. This will notify all prospective vendors of the cancellation of the RFP.

### **8.4. Proposal Review Committee (PRC)**

- A. The PRC should be approved by the CA prior to the release of the RFP. The PRC must be composed of three (3) people, typically SCAG staff, Caltrans person(s), and an external person(s), with the expertise needed to objectively evaluate any offers SCAG receives (external person is not mandatory). Contracts normally does not allow a Regional Council member to participate on a PRC unless the project is funded from the General Fund and participation is pre-approved by the Executive Director or his designee. Similarly, Contracts typically does not allow SCAG executive management at the director level and above to participate on a PRC, unless the Director is the Project Manager. The CFO shall make the final determination, if required.
- B. The PRC members must be comprised of the same individuals for both the proposal evaluation and the consultant interviews. See bullets D & E below for exceptions.

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- C. Regarding evaluating consultant proposals, a PRC member shall participate either in person or by phone, video or web conference.
- D. With respect to interviewing consultants, PRC members should participate in person. However, if a PRC member is unavailable in person (especially if it is known far enough in advance), the CA can offer the PRC member video or web conferencing, if any is available at the interview location. The CA can also authorize the PRC member to participate by phone, but this should normally only be allowed in an emergency (i.e., PRC member's car malfunctions or public transportation is unavailable on the way to the interview, illness...).
- E. If a PRC member that scores the written proposal is unavailable to score the interview, the CA will either have to reschedule the interview when the PRC member is available, or not consider his/her proposal score in the selection process (a three (3) person panel is still required and if it cannot be maintained the procurement will be cancelled).
- F. Other than SCAG staff, only those persons scoring the proposals (PRC members) will be allowed in the proposal evaluation meetings, interview of firms or post interview discussions.
- G. If the Caltrans representative declines to participate, it is necessary for the PM (or CA) to receive written documentation from the Caltrans representative and include it in the contract file (under Miscellaneous).
- H. Each panel member shall independently score each proposal based on the evaluation criteria set forth in the RFP (see Proposal Evaluation Requirements and the Non-Disclosure form for PRC Members).
- I. In most cases, consultant interviews are held at SCAG. However, the consultant interviews may be held at a different location.
- J. The CA (or the CA's designee) is responsible for the following:
- Approving the PRC members.
  - Notifying the PRC of the date and time of the proposal evaluations and consultant interview meetings.
  - Contacting the qualified vendors to schedule their interviews.
  - Determining if a Pre-proposal conference and or interviews are necessary, as well as, approving the location(s) used.
- K. If the PRC contains at least one external party the CA may arrange for and provide lunch to PRC members. This is typically limited to the amount in the current SCAG Accounting Manual.). Further, SCAG will validate external PRC member's parking at SCAG headquarters if requested.

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## 8.5. Pre-Bid/Pre-Proposal Conference

- A. A pre-bid/proposal conference is held to brief prospective vendors of certain aspects of the RFP, such as specifications of the Scope of Work. This meeting also allows prospective vendors to ask questions regarding the RFP documents. While the conference is not mandatory, it is highly recommended for solicitations of a complex nature as determined by the Contracts Administrator, regardless of the dollar amount. The meeting is held after the RFP has been released and before the proposals are due. The RFP will state the date, time and location of the conference. Attendance by the prospective vendors is not mandatory, unless stated in the RFP. SCAG does not reimburse consultants for parking, travel, or any expenses associated with participation in the solicitation process.
- B. If prospective vendors have any questions regarding the RFP prior to the conference, the CA will take note of the question(s) and either address the question(s) at the conference or in the Questions and Answers posted on the SCAG website. All questions must be directed to the CA throughout the RFP process. The PM is not to respond directly to prospective vendors during the procurement process. The deadline for submitting questions is specified in the RFP and must be adhered to.
- C. During the conference, it is the PM's responsibility to:
- Provide answers to technical questions and submit them to the CA for posting on SCAG's website
  - Request an addendum to the RFP, if necessary
- D. During and after the conference, it is the CA's responsibility to:
1. Create a sign-in sheet
  2. Conduct and lead the conference
  3. Answer any administrative/contractual questions regarding the RFP
  4. Coordinate answers to technical questions with the PM
  5. Post questions and answers from the conference on SCAG's website and Planet Bids.
  6. Ensure that all procedures are followed to allow for fair and impartial procurement
  7. Prepare an addendum to the RFP, if necessary.
  8. Contracts may audio/video record the pre-proposal conference and transmit/post it to SCAG's Bid management system to be electronically transmitted and shared with prospective proposers.

## 8.6. Proposal Submission

The successful consultant will be required to sign SCAG's standard consultant agreement in order to receive the contract award. Proposer must identify in the proposal itself any concerns or objections to any of the contract terms and conditions in SCAG's consultant agreement. SCAG will publish its Terms and Conditions on SCAG's website. If selected for contract award, consultant may propose alternative language for consideration. If SCAG is unable to negotiate final contract Terms and Conditions that are acceptable to SCAG, SCAG reserves the right to award the contract to another proposer.

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### 8.7. Pre-Award Review

- A. In accordance with Caltrans Local Assistance Procedures Manual, Section 10.3, *Audit and Review Process*, all contracts \$250,000 or greater (including sole source contracts and Leveraged Purchase Agreement – LPA contracts) can be audited by SCAG’s Internal Auditor at the request of Contracts staff to determine the adequacy of the consultant’s (prime and any sub-consultant) financial accounting and record system, and the accuracy of the costs the consultant identified in its RFP proposal response (Line Item Budget or cost data). The CA can also request a review/audit of contracts that are less than \$250,000 if the CA has reason to question the consultant’s financial accounting and record system. If Contract staff is amending a contract to add a sub-consultant that was not previously audited, Contracts staff shall request the Internal Auditor to review this sub-consultant’s costs in order to help Contracts staff assess the fairness and reasonableness of these costs.
- B. The CA will initiate the request prior to contract execution. In the event that SCAG’s Internal Auditor is unavailable to perform the pre-award review/audit, SCAG may use an independent CPA firm to perform the review/audit or refer the request to Caltrans Audits and Investigations.
- C. To help ensure SCAG pays a fair and reasonable price for its consultant services, Contracts has the discretion to use the following guidelines to request the Internal Auditor to review a consultant’s overhead and fringe rate if the overhead rate (by itself) is 150% or greater, or if the fringe rate (by itself) is 50% or greater.

### 8.8. Debriefing

- A. In accordance with the Caltrans Local Assistance Procedures Manual, Section, *Develop Final Ranking and Notify Consultants of the Results*, the CA with the assistance of the PM may debrief consultants either not selected for interview or not selected for contract award. The purpose of a debriefing is to explain to the respondent why their proposal was not selected. The CA arranges and conducts the debriefing.
- B. Contracts staff will debrief consultants after issuing the Notice to Proceed.
- C. Upon reasonable request, SCAG will make a copy of the winning proposal available to the requestor, after the contract resulting from the solicitation has been issued. For additional guidance, refer to the Caltrans Local Assistance Procedures Manual, Section, *Develop Final Ranking and Notify Consultants of the Results*.

### 8.9. Protests

In accordance with 2 CFR Part 200, prospective vendors have the right to protest in accordance with SCAG’s Policy on Contract Award Protests, which can be viewed online at [www.scag.ca.gov](http://www.scag.ca.gov) under “Opportunities” then, “Doing Business with SCAG.” SCAG is responsible for resolving all contractual and administrative issues arising out of any procurement, including evaluation and selection, protest of awards, disputes and claims,

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using good administrative practices and sound business judgment. In order to maintain the integrity of the procurement process and maximize SCAG's negotiating position, SCAG shall not release any public record related to an active solicitation, including but not limited to, records regarding bid proposals, score sheets, evaluation information, and cost/price analysis until after SCAG has issued the Notice-to-Proceed for the subject solicitation or the procurement is cancelled.

### 8.10. Contract Specifications

A. SCAG consultant contracts must contain the following minimum information:

1. General terms and conditions
2. Scope of Work
3. Schedule
4. Line Item Budget/Price Sheet
5. Funding/Expenditure Summary
6. Copy of the Grant Agreement (if applicable)

B. In accordance with 2 CFR Part 200 in order to promote full and open competition, staff cannot contract for work in phases in such a manner that the successful consultant awarded a contract for any given phase of the work, has a competitive advantage in competing for any subsequent phase of the work. If Contracts in consultation with the PM and SCAG Legal Counsel determines that such a consultant has an unfair competitive advantage, Contracts will reject the consultant's proposal. Contracts shall return the consultants proposal (preferably unopened), without considering it.

C. In accordance with Federal Acquisition Regulations (FAR) Subpart 9.505 General rules, generally an unfair competitive advantage exists where a consultant competing for award of a contract possesses:

1. Proprietary information that was obtained from a Government official without proper authorization; or
2. Source selection information (as defined in FAR Subpart [2.101](#)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

This means an unfair competitive advantage may exist if:

- The work under Phase 1 has not been completed and all the report, data, related work materials are not available to all potential proposers.
- If the work under Phase 1 has been completed, but the consultant made recommendation(s) in the Phase 1 report and if awarded Phase 2 would be implementing the recommendations they made in the Phase 1 report. Because in performing the work they could create products or services that work to their advantage.

Notwithstanding the above information, Per PCC 10365.5 a consultant who performs Phase 1 can also perform Phase 2 but only if Phase 2 is no more than 10% of the value of the contract.

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Note, incumbency in and of itself doesn't create an unfair competitive advantage. There needs to be something more in the facts to demonstrate any unfairness.

The CA in consultation with SCAG Legal Counsel has the final authority to determine if an unfair competitive advantage exists (also see section 7.11.1 above).

- D. In accordance with the Caltrans Local Assistance Procedures Manual, *Identifying & Defining a Need for Consultants*, no consultant performing design, investigation or environmental service, nor any firm affiliated with the consultants, shall propose on a contract to provide subsequent work resulting from the consultant's contract.
- E. Contracts staff will add the appropriate clause(s) to any solicitation involving phasing of work to inform consultants about SCAG's policy in this regard. PM's are encouraged to consult with Contracts staff to develop strategies to assist them with facilitating these types of projects.
- F. Contracts that extend beyond a fiscal year are considered multi-year contracts. The PM must establish the project's Scope of Work for each fiscal year in accordance with the anticipated available budget for that year.
- G. No work shall be authorized prior to execution or paid for work will not be reimbursed that is started prior to execution SCAG does not authorize or reimburse consultants for any work that the consultant performs before the contract is executed.

### 8.11. Contract Term

Each consultant agreement should be re-solicited prior to a total of thirty-six (36) months with the same consultant including any amendment and options to extend the contract's term, unless SCAG's Chief Financial Officer provides written authorization for a longer period for the initial contract or an amendment to an existing contract. SCAG will use sound business judgment and be judicious in establishing, extending and documenting a contract's period of performance. Generally, SCAG's standard maximum contract length will not exceed three years, inclusive of options, unless the reason for a longer term is documented in the contract file. The period of performance generally shall not exceed the time necessary to accomplish the purpose of the contract.

### 8.12. Reporting Requirements

- A. In accordance Regional Council Policy Manual Article VIII Section 1.1, as well as with the May 5, 2005 Regional Council agenda item 6.1.4, all contracts \$25,000 or greater require a Board Report (RC Write-up) submitted for the Executive Administration Committee and Regional Council meeting agendas. Agreements (contract, PO's...) between \$5,000 and \$199,999 are placed on the RC Agenda as "Information Only" items. The Board Report is written by the PM. The CA is responsible for coordinating with the PM to ensure deadlines are met. The PM is responsible for completing all required information within established timeframes.

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- B. In accordance with the April 2, 2009 Regional Council agenda item 6.2.3, all agreements (Purchase Orders, contracts...) \$200,000 or greater require Regional Council (RC) approval.

### 9. Post Award Administration

#### 9.1. Post Award Administration Requirements

- A. In accordance with the Caltrans Local Assistance Procedures Manual, Section, *Administer the Contract*, the CA is responsible for conducting post award administration. This includes but is not limited to attending the kick-off meeting and other meetings, monitoring the project's progress, receiving, reviewing reports, and reviewing and approving invoices if requested by Accounting staff (e.g., if there is a discrepancy between the contract terms and conditions versus the consultant's invoice).
- B. In accordance with the Caltrans Local Assistance Procedures Manual, Section, *Project Records*, the CA is responsible for maintaining for a minimum of three (3) years the following file documents after a contract is executed (electronic copies are permitted):
1. Copies of RFPs and RFQs;
  2. Documentation of DBE participation;
  3. Solicitation/advertisement records;
  4. Identification of selection committee members;
  5. Record of receiving proposals, statement of qualifications;
  6. Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation;
  7. Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
  8. Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
  9. Pre-award audit, financial review letter and cognizant agency letter, when applicable;
  10. ICR Audit report or approved State DOT Cognizant Indirect Rate Letter, if any;
  11. A&E Consultant Audit Request Letter and Checklist for contracts over \$150,000 and all supporting documentation;
  12. Consultant Certification of Costs and Financial Management for contracts over \$150,000 or more;
  13. Executed consultant contracts, cost proposals and amendments;
  14. Contract oversight and progress meetings documents;
  15. Progress and final payments, and supporting documentation;
  16. Performance evaluation;
  17. Consultant contract checklists;
  18. Accounting records documenting compliance with state and federal administrative requirements; and
  19. Certification and Conflict of Interest forms.

#### 9.2. Contract Invoicing

- A. All Cost Plus Fixed Fee contracts require consultants to invoice SCAG using the format specified in the contract and in accordance with the following policy:

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1. There shall be no change in the budget allocated for the Direct Labor, Overhead & Fringe, Fee, subconsultants (subs individually or collectively) and Other Direct Costs categories, or the contracts overall value, without first obtaining a contract amendment executed by the SCAG Chief Financial Officer. Excludes final payment.
2. Invoices not received by SCAG within thirty (30) calendar days of the Invoice Due Date may be assessed a \$1,000 penalty per invoice (in accordance with a 02/04/10 Regional Council Agenda Item 6.1.5). This excludes universities and non-profits, as approved by the October 3, 2019 SCAG Regional Council (Item No. 5).
3. SCAG PM's have authority to approve, consultant budget reallocations for existing Direct Labor position classifications (e.g., reallocate budget from Sr. Planner to Midlevel Planner, Principal to Sr. Planner, Jr. Planner to Technician... - budget can be reallocated from any position classification listed in the Line Item Budget, not just within the classifications), provided the reallocation does not exceed the total budget for the Direct Labor cost category. The consultant must still produce the required deliverables to the SCAG PM's satisfaction/schedule. The consultant staff specifically identified in the contract under Key Personnel cannot be replaced without a contract amendment.
4. After an executed Contract Amendment, consultants may add additional Direct Labor position classifications not included on the original Line Item Budget if it does not cause the original contract price to increase. Unless amending the contract, then see contract amendment section.
5. In each Direct Labor position classification the consultant shall identify the highest rate each position will be paid during the life of the contract, inclusive of any type of increase (merit, cost-of-living raise, bonus, etc.)
6. The consultant's Overhead & Fringe rates shall be the highest rates the consultant will receive during the life of the contract.
7. There shall be no change of any subconsultant identified in the Line Item Budget without first obtaining a contract amendment. SCAG does not allow the Prime Consultant a markup on any of its subconsultant costs.
8. The SCAG PM's has the authority to approve a consultant reallocation in the budget amounts for Other Direct Costs (ODCs). For example, consultants may reallocate budget from Travel<sup>4</sup> to Printing or Parking or any combination of any item that would be classified as an ODC), provided the reallocation does not exceed the total budget for the ODC category. The consultant must still produce the required deliverables to the SCAG PM's satisfaction/schedule. Consultants will be reimbursed for all reasonable and allowable ODCs that are directly allocable to a project, even if there is no specific ODC sub-category for the item(s) in the Line Item Budget (e.g., Print and

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<sup>4</sup> Any travel and costs must be reasonable and are limited to those rates paid to non-represented/excluded State employees under California's State Department of Personnel Administration rules, subject to changes posted at: <https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>

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Postage are not on the Line Item Budget, but the consultant charges for these items, and the CA after consulting with the SCAG PM determines that each is reasonable and directly allocable to the project - then in this example, SCAG shall allow the charges). Reallocations of budget from ODCs to Direct Labor or to Subconsultants (or any combination thereof) requires a contract amendment prior to reallocating the budget.

9. If SCAG amends the contract to reallocate the budget from one cost category to another (e.g., from Other Direct Costs to Direct Labor, subconsultant(s) to Direct Labor...), there will be no increase in the Fixed Fee without written justification from the SCAG PM, approved by the CA. This policy is intended to disallow applying fees to the revised Direct Labor, unless the circumstances justify it - and this should be rare.
10. If a contract specifically prohibits a consultant from exceeding the Task Budget (i.e., applies to projects that in practice are managed by task), then Section 1.4.6 (A) applies by task. In summary, with the PM's approval, consultants may reallocate budget from one Direct Labor classification within a task, to another Direct Labor classification within the same task, or reallocate budget from one ODC within a task to another ODC within the same task, provided they do not exceed the budget for that task. Reallocating budget from one Direct Labor classification within a task to another within the same task, or reallocating budget from one ODC within a task to another within the same task does not require an amendment prior to doing so.
11. In order to maximize the SCAG PM's control and accounting of the project's budget/costs (so the consultants invoice can be properly paid), the SCAG PM must devise a means of tracking planned versus actual expenditures (the SCAG PM may choose to use the Cost Estimate Template). Tracking planned versus actual expenditures enables the PM to control the consultant's ability to reallocate budget within Direct Labor or ODCs, but only as directed by the Project Manager.
12. Reallocating budget from one task to another task requires an amendment prior to authorizing the work. Unless its the last invoice. Apples to 9.10 above and PM should update their project file.
13. For the projects that have a Subtask Budget written into the contract, with the PM's approval, consultants may reallocate budget from one Direct Labor classification in the subtask to another Direct Labor classification within the subtask or that specific task, or reallocate budget from one ODC in the subtask to another ODC within the subtask or that specific task, provided they do not exceed the budget for that specific task. Reallocating budget from one Direct Labor classification subtask to another Direct Labor classification within the subtask or that specific task, as well as reallocating budget from one ODC in a subtask to another within the subtask or that specific task does not require an amendment prior to making the change.
14. Regarding all other contract types other than the Cost Plus Fixed Fee (i.e., Fixed Price, Unit Rate, T&M, Retainer, etc.), consultants shall invoice SCAG in accordance with the payment schedule that SCAG and the consultant agree to in the contract.

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15. SCAG may disallow the cost associated with invoices that do not conform with this Section (i.e., any unauthorized changes to the Line Item Budget).

### 9.3. Amendments

#### 9.3.1. Contract or Purchase Order (PO) Amendments

- A. In accordance with the Caltrans Local Assistance Procedures Manual, *Contract Amendments*, an amendment is any change(s) that may be required to an executed agreement (contract or PO). Amendments must be within the original advertised scope of work shall be added by amendment to the contract (i.e., no new scope should be added). The addition of work outside the original advertised scope will make the work ineligible for federal or state reimbursement. For example:
  1. If the original contract's scope of work required traffic counts and the amended scope required additional traffic counts, this is acceptable. However, if the amended scope of work required a corridor analysis, then this new/unrelated work could not be amended into the contract; or for PO's.
  2. If the original PO's scope required purchasing computer servers and the amended scope required additional servers, this is acceptable. However, if the amended scope required printers, then this new/unrelated work could not be amended into the PO.
- B. Contract amendments are often required for refining the Scope of Work, scheduling delays or accelerations, change of subconsultant(s), changes to the cost of the project resulting from a revised Line Item Budget, or contract termination. PO amendments are often required to changes the price, quantity ordered, items, terms and conditions, delivery schedule, additions, deletions, and/or for cancellations.
- C. Amendments are usually made to a contract or PO by mutual, written agreement (i.e. a bilaterally executed amendment), but there may be circumstances in which minor modifications to the contract may be made without requiring a full, written amendment if such circumstances are clearly provided for in the original contract (e.g., minor direct labor budget changes that do not affect the total allocations in each budget category, for Contracts staff to correct minor typos, or to add fiscal year funding).
- D. The following administrative actions require a contract or PO amendment (this is not an all-inclusive list):
  1. Increasing or decreasing the contract's or PO's overall value.
  2. Reallocating budget from one contract cost category to another without changing the total contract amount (i.e., reallocating budget from Direct Labor to Other Direct Cost or Subconsultants, and vice versa, on Cost Plus Fixed Fee contracts).
  3. Changing any of the contract's or PO's terms and conditions.

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4. Time extensions. Each contract or PO should be re-solicited prior to a total of thirty-six (36) months with the same consultant including any amendment or options to extend the contract's term, unless SCAG's Chief Financial Officer provides written authorization for a longer period for the initial contract or an amendment to an existing contract.
  5. Changing incremental funding (on the Funding Exhibit).
- E. Contract or PO amendments may also be necessary at the beginning of each fiscal year, upon approval of the new fiscal year budget, to advise the consultant of the following:
1. To continue work
  2. Project Number
  3. Term of the contract
  4. Document any funding change
  5. Any other contractual change
- F. Excluding Micro Purchases which may be amended up to \$10,000 without regard to any percentage increase limits, contract or PO amendments are limited to no more than thirty (30) percent of the original contract amount. In general, amendments which increase the contract value more than 30% of the original amount are considered a sole source procurement and require sole source justification (see section 7.3 above). An amendment in excess of the 30% of the contract's original value, requires the Regional Council's Approval prior to executing the amendment. Note – Any purchase that was procured INFORMALLY (i.e., originally valued at less than \$50,000), can only be increased up to \$64,999.99 or 30% of the Contract's original value, whichever is less (e.g. if the original contract is \$49,999, it can on be increased up to 30% or \$15K, with the revised value totaling \$64,999). The Regional Council must approve amend such a contract beyond \$64,999. Such amendments must still be processed in accordance with this Policy Manual.
- G. In accordance with a June 14, 2006 Regional Council agenda item 3.1.17, and the Regional Council Policy Manual, Article VIII, Section 1.3 (updated September 2009, pg. 26) any amendment to incorporate additional (similar) scope with an individual or aggregate amount of \$75,000 or greater requires Regional Council approval, before the amendment can be executed. This excludes fiscal year funding amendments. Once the aggregate value of an amendment is \$75,000 or greater or 30% of the contract's original value, whichever is less, any further amendment to the contract's value requires Regional Council approval before it can be executed. Contracts will require the consultant to complete a new Conflict of Interest (COI) Form if the contract is more than 1 year old (as of the date the RC/EAC first went to the Regional Council for Approval or Information) and include this new COI in the Regional Council report. Further, amendments valued between \$5,000 and \$74,999 must be submitted as an **“information item”** on the Regional Council agenda.

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- H. Notwithstanding C and D above, in accordance with a June 14, 2006 Regional Council agenda item 3.1.17, any amendment for additional (similar) scope that increases the contract's value to \$200,000 or greater require the Regional Council's approval before Contracts can authorize the consultant to perform the additional scope of work. For example, if the contract's original value is \$190,000 and it is amended by \$15,000 (for a total of \$205,000), this amendment must be approved by the Regional Council before it can be executed, even though the amendment is less than \$75,000 or 30% of the contract's original value. Further, if this contract is amended again and the second (or 3<sup>rd</sup> or 4<sup>th</sup>...) amendment in aggregate with any previous amendment is \$75,000 or greater or 30% of the contract's original value, whichever is less, then such an amendment(s) requires the Regional Council's approval before it can be executed. For example, if the contract's original value is \$190,000 and the 2<sup>nd</sup> contract amendment increased the contract to \$205,000, then \$247,000 is the most the 3<sup>rd</sup> or any subsequent amendment can increase the contract value to, without requiring Regional Council approval (because 30% of the original \$190,000 contract is \$57,000, for a maximum total of \$247,000). If the amendment increased the contract's value over \$247,000 it (and any subsequent amendment increasing its value) would require Regional Council approval before it could be executed.
- I. Any amendment(s) that increases the contract's value to \$250,000 or greater, will necessitate Audit requirements as well. For these amendments the audit must be conducted before forwarding the amendment to the RC for approval, unless otherwise approved by SCAG's Chief Financial Officer. If Contracts staff is amending a contract to add a sub-consultant that was not previously audited, Contracts staff shall request the auditor to review this sub-consultant's costs in order to help Contracts staff assess the fairness and reasonableness of these costs.
- J. While all the following administrative actions require proper written justification from the PM before Contracts staff can process the amendment, each does **NOT** require Regional Council approval:
- Changes to the Line Item Budget without changing the total contract amount;
  - Reallocating budget between different cost categories (Direct Labor to ODCs or Subs, and vice versa on Cost Plus Fixed Fee contracts);
  - Changes to the terms and conditions, time extensions, or incremental funding.
- Nor does each need to be included on the agenda as an information item. Note – Subconsultants cannot be changed without prior written justification (Caltrans Local Assistance Procedures Manual, Contract Amendments – Substitution of Consultant Personnel and Subcontractors).
- K. Once the term of the contract has expired, no further amendments can be made (i.e., an amendment must be fully executed before the ending date of the contract – Caltrans Local Assistance Procedures Manual Contract Amendments).

### 9.3.2. Amendment Processing

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- A. Contracts staff should use the Contract Amendment Checklist (available on SCAGhub) ensure all the required amendment procedures are accomplished in a timely manner. The SCAG PM (nor any other staff) cannot ask the consultant to do work that is not in the contract and the PM cannot amend work into a contract without first obtaining the CA's authorization.
- B. The amendment process starts with the PM contacting the CA, not the consultant, regarding the desired change. The PM must use the Contract Amendment Request Form which the CA shall save in the contract's electronic file. The PM will prepare a Specification or Scope of Work (including the items added and or deleted) an Independent Cost Estimate for the amended work and forward both to the CA who shall save these documents in the contract's electronic file. The cost estimate is an internal document that the PM and CA will use to perform a cost analysis of the consultant's amendment offer. Contracts staff in turn will forward the Scope of Work to the Consultant for the consultant to propose a price on the scope and reply back to the CA, which the CA shall save in the contract's electronic file. Concurrently, the SCAG PM must also forward (e-mail is acceptable) the following to Contracts staff:
  - 1. Identification of current year funding via the Budget & Grants Department's approval (if increasing or decreasing the contract's value)
  - 2. A completed requisition
  - 3. Justification for the change (i.e., justify why the new work is within scope and/or cannot be competed)
  - 4. The amended schedule (if applicable)
  - 5. Sign-off from Risk Manager if insurance is impacted.
  - 6. Requested completion timeline. If Contracts staff cannot accommodate the PM's requested timeline, Contracts staff works with the PM to finalize schedule.
- C. After receiving the consultant's amendment offer which the CA shall save in the contract's electronic file, the SCAG PM and the CA will conduct a cost or price analysis and negotiate (as necessary) a fair and reasonable price for the amended work. The CA shall save both these documents in the contract's electronic file.
- D. The fee is negotiable (but must be negotiated as a separate cost item) depending on the consultant's risk involved in completing the project up to a maximum of 15%. The fee is only calculated using Direct Labor and Overhead/Fringe, does not vary with actual cost. There should be no increase in the Fixed Fee without written justification from the SCAG PM, approved by the CA (the policy is to disallow applying fee to the revised Direct Labor, unless the circumstance justify it - and this should be rare).
- E. The Amendment's effective date should be no earlier than the date SCAG was notified about the amendment via the Amendment Request Form.

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- F. Staff should plan for at least 10-business days to process amendments (after Contracts receives the items in 9.3.2. B above).

### 9.4. Contract Close-Outs

- A. In accordance with 2 CFR 200.318(i) and 200.333, SCAG is required to maintain and make available to federal and state agencies written records detailing the history of each procurement action for a period of three (3) years after SCAG has submitted a final expenditure report. See also SCAG's Record Retention Policy (available on SCAGhub). Note, different retention periods may apply such as in the event of litigation. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- B. A contract is considered ready for close-out after certification from the PM is received, stating 100% completion and acceptance of the final deliverable, and release of the final payment.
- C. In accordance with PCC 10367, each consultant under contracts value at \$5,000 or more shall be advised in writing on a standard contract form that his or her performance, or the firm's performance under the contract will be evaluated.
- D. Contracts staff shall use standardized evaluation forms to conduct the evaluation (see Contract-Close Out Form in the Forms Bank on SCAGhub). Contracts staff shall devise standards and criteria for the post-evaluation forms. These standardized post-evaluation forms shall consist of a form for assessing the need and value of the consulting services contract to SCAG, as well as assessing the usability and utility of the completed consulting services contract.
- E. The SCAG PM in consultation with Contracts staff shall conduct the actual evaluation and document it by complete and submit a project Contract Close-Out Form to Contracts staff, along with the contract deliverables (identified in the contract). The form includes a section in which the PM must evaluate the consultant's performance.
- F. The evaluation shall at a minimum report the following:
1. Whether the contracted work or services were completed as specified in the contract, and reasons for and amount of any cost overruns or delayed completions.
  2. Whether the contracted work or services met the quality standards specified in the contract.
  3. Whether the contractor fulfilled all the requirements of the contract and if not, in what ways the contractor did not fulfill the contract.
  4. Factors outside the control of the contractor that caused difficulties in contractor performance.
  5. Other information SCAG staff may require.
  6. How the contract results and findings will be utilized to meet the agency goals.

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- G. If the consultant's performance was judged unsatisfactory on any of the factors specified and was not mitigated, the evaluation shall be considered unsatisfactory for the purposes of bullets H and J below.
- H. Post-evaluations shall remain on file for a period of 36 months following contract completion. If the contractor did not satisfactorily perform the work or service specified in the contract, Contracts staff shall send one copy of the evaluation to Caltrans District 7 Office of Regional Planning within five (5) working days of the completion of the evaluation.
- I. Upon the PM filing an unsatisfactory evaluation the consultant shall have the right, within 30 days after receipt, to submit to SCAG a written response statement that shall be filed with the evaluation in the contract file.
- J. Contracts staff shall file the form and the contract deliverables in the electronic contract file and forward both to Caltrans District 7 Office of Regional Planning within 60-days of each contract's end date.

### **10. Other Requirements**

#### **10.1. Insurance**

- A. Prior to an issuance of a Purchase Order or Contract execution, evidence of proper insurance coverage is required for any procurement involving services that put SCAG at risk. (See current version of Contract Template on SCAG website.) If a consultant requests SCAG to waive or alter any of its insurance requirements, the Risk Manager in consultation with SCAG Legal Counsel may elect to waive certain insurance requirements, depending upon his/her assessment of the risks and liabilities posed to SCAG.
- B. SCAG posts its insurance requirements on the SCAG internet website <http://scag.ca.gov/business/> in order to communicate the requirements to potential offerors prior to receiving proposals so that the offeror can determine if he/she will be able to comply with the terms.
- C. If consultants request SCAG to waive or alter any of its insurance requirements, the Risk Manager will make a determination on whether to waive insurance requirements or not, depending upon the Risk Manager's assessment of the risks and liabilities posed to SCAG.

#### **10.2. Disadvantaged Business Enterprise (DBE)**

- A. As required by 2 CFR Part 200, it is SCAG's responsibility to comply with DBE requirements. SCAG is required to provide to the Caltrans District Local Assistance Engineer (DLAE) a completed DBE Annual Submittal Form usually by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL) and the methodology used for establishing the AADPL.

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- B. SCAG also is required to assist Caltrans in achieving its Overall Statewide DBE Goal through race-neutral means. This includes establishing a DBE Availability Advisory (Advisory) for individual contracts, as applicable, to assist bidders in ascertaining what a reasonable level of DBE participation would be for any given contract, and semiannually reporting to Caltrans on the attainment of goals. The Advisory is a level of DBE participation expressed as a percentage of the total contract amount that bidders could reasonably be expected to achieve, by using certified DBE firms. The Advisory is not an enforceable goal and compliance with it is not a condition of contract award.

### 10.3. W-9 Form

- A. SCAG shall only enter into contracts with vendors who possess a valid business license. In order for vendors to receive payment, all vendors and consultants doing business with SCAG must have an account created in SCAG's vendor and consultant database. To ensure that there is an account for each vendor/consultant in SCAG's Financial Management Information System, the W-9 Form must be completed and returned to SCAG.
- B. The W-9 Form may be obtained online at [www.scag.ca.gov](http://www.scag.ca.gov) under "Doing Business with SCAG".
- C. After the initial set up, Contracts will make any updates to a vendor's/consultant's information as follows:
  - 1. Contracts staff shall call the number and contact person on file to inform him/her that a request to change the existing ACH information has been received.
  - 2. If the contact person on file is not available, Contracts staff shall either call the person that initiated the request or contact the company independently and obtain written confirm of the change.
  - 3. Send a follow-up e-mail to the person spoken on the phone with an attachment of the ACH Change Request Form. Ask the person to fill out the attached form, sign and date and return to Ted by e-mail. Begin the e-mail by "per our phone conversation....".
  - 4. Once ACH Change Request Form is received back, Contracts staff shall make the changes on the vendor's profile and inform the Accounting Manager to issue a pre-note for the changes made.
  - 5. Contracts staff save the e-mail in the Contract vendor folder for future reference.

### 10.4. Public Records Request

- A. SCAG shall disclose documents requested by any person in accordance with the Public Records Act, California Government Code 6253 et seq and SCAG records request policies and procedures. The procedures for responding to public records requests of documents retained in the Contracts Department are as follows:

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1. Requestors must address a written public records request to the Legal Division, specifying the desired information. E-mail is acceptable.
2. In order to maintain the integrity of the procurement process and maximize SCAG's negotiating position, SCAG shall not release any record related to an active solicitation, including but not limited to, records regarding bid proposals, score sheets, evaluation information, and cost/price analysis until after SCAG has issued the Notice-to-Proceed for the subject solicitation or the procurement is cancelled. As a courtesy SCAG may provide copies of public records regarding closed RFPs to governmental agencies without a formal public records request.
3. Contracts staff shall only release records subject to disclosure under the California Public Records Act. Generally, Contracts shall release the following information after coordinating with SCAG Legal Counsel (for any other documents see Chief Counsel or Deputy Legal Counsel):
  - Proposal(s) received
  - Executed contract
  - Summary of scores (not the individual scoring sheets)

Note, while requestors do not have to make a public records request to obtain an **active** or closed solicitation itself (RFP or Request for Quote...), Contracts staff shall only release an active or closed solicitation in accordance with Section 10.4.1 below.

4. Each request must reasonably describe the records being sought. This means that a request must be specific enough to permit a professional employee of the agency who is familiar with the subject matter to locate the record in a reasonable period of time.
5. SCAG shall provide a response to the requester within 10 business days after the receipt of a request. Electronic Transmission is permitted if the underlying data is available electronically.
6. SCAG may assess the requestor a fee to recover the cost of reproducing and transmitting documents (contact Chief Counsel and/or the IT Division to determine the fee - typically 10 cents per page). SCAG may also assess a fee if SCAG incurred costs to convert a hard copy of a document to an electronic version.

### 10.4.1. **Procedure:**

- A. After forwarding the written request to SCAG Legal Counsel (or receiving the request from the Legal Division) the CA shall obtain direction from SCAG Legal Counsel on how to process the request. This includes identifying or clarifying what if any information is subject to disclosure and or what redactions to make.
- B. In most instances the CA will simply review the hard copy of the requested document(s) and redact (cover the text/information with a marker so that it is not legible) any information marked as proprietary or confidential, assess and collect any applicable fee, - which would be forwarded to the Accounting Department

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(checks must be made out to the “Southern California Association of Governments”), and mail or e-mail the document(s) to the requestor.

- C. If Contracts staff assesses a fee, Contracts staff shall inform (e-mail is acceptable) the requestor how much the charge will be, before making and providing him or her with copies of the requested documents
- D. Generally, an offeror’s private information including but not limited to, social security number, home address and non-business phone number are not subject to disclosure.

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## Glossary of Terms

Consolidated Planning Grant (CPG)	Grant funds administered Caltrans. Including, but not limited to: <ul style="list-style-type: none"> <li>• Federal Highway Administration, Metropolitan Planning (FHWA PL)</li> <li>• FTA Metropolitan Planning, Section 5303 (FTA § 5303)</li> <li>• FHWA State Planning &amp; Research - Part 1, Strategic Partnerships Grants</li> <li>• FTA § 5304 Sustainable Communities Grants</li> </ul>	
Contracts Staff (CA)	General reference to any member of the Contracts Department.	
Federal Micro Purchase Threshold	The dollar threshold established by the Federal government under which contract awards do not need to be competitively procured. The threshold is \$10,000 as of June 2018.	
Financial Management Information System	General reference to SCAG enterprise financial software, currently Microsoft Dynamic Great Plains.	
Finance Management System (FMS),	Database used to 1. Generate solicitation numbers and the resulting contract(s) and 2. Track the status of the solicitation or contract.	
Prevailing Wages	Prevailing wages represents the State mandated minimum wage for the persons working on public projects within a particular geographical area, and it prevents the use of cheap, non-local labor to undercut local workers.	
Project Manager (PM)	SCAG staff responsible for overseeing a consultant contract.	
Proposal Evaluation Committee (PRC)	Individuals approved by Contracts Staff to evaluate a solicitation.	
Public Contract Code - PCC	Regulations that govern contracts made in the State of California.	

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Risk Manager	SCAG staff responsible for assessing any insurance requirements or risks associated with SCAG's operations, including sponsored events with external parties (such as cities, government and nongovernment entities). The Chief Financial Officer is the current Risk Manager.	
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