

ARCHITECTURAL and ENGINEERING (A&E) PURCHASE PROCEDURES

Purpose: This guidance is to help explain to a subrecipient agency what is considered A&E services and the procedures for document submittal to the Division of Rail and Mass Transportation (DRMT) for review and approval of an FTA funded A&E procurement. Contract award for A&E services shall be completed using the qualifications-based (“Brooks Act”) procurement procedures.

What is A&E?

A contract where preponderance of the work to be performed is of an architectural and engineering nature, where:

- The services are professional services of an architectural or engineering nature, required to be performed or approved by a person licensed, registered, or certified to provide such services; **or**
- The services are professional services of an architectural or engineering nature associated with research, planning, development, design, construction, alteration, or repair of real property; **or**
- The services are professional services of an architectural or engineering nature, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services; **or**
- Design-Build services that include a preponderance of work considered to be architectural and engineering as defined above; **or**
- Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping and services which require performance by a registered or licensed architect or engineer. However, to be considered as A&E these types of services must be directly connected or lead to construction, alteration, or repair of real property.

What must be included in the solicitation for A&E contracts?

Qualifications-Based Procurement Procedures. FTA’s enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the “**Brooks Act**,” 40 U.S.C. Sections 1101 through 1104, to acquire A&E services. The following requirements apply to qualifications-based procurements, regardless of dollar value:

- Technical proposals are evaluated and ranked based on the published evaluation criteria;
- Price must be excluded as an evaluations factor;
- Negotiations is conducted with only the most qualified offeror; and
- Failing agreement on a fair and reasonable price, negotiations are formally terminated with that firm and cannot be resumed at a later date;

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- Negotiations are then conducted with the next most qualified offeror. If necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price is considered fair and reasonable by the subrecipient.

NOTE: Consistent with State Government Code §§ 4525-4529.20, Public Contracts Code § 6106, and State Contracting Manual Vol. 1, these qualifications-based procurement requirements apply only to federally funded purchase of services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

What should be submitted to Caltrans DRMT?

The following procedures apply when requesting A&E procurement or contract document review:

1. Agency completes and submit the Procurement Document Review Form and the completed FTA required clauses matrix along with the following documents:
 - In-house Independent Cost Estimate (ICE). The ICE should mirror the cost proposal form which will be a useful tool during the evaluation and negotiation process.
 - Proof of Advertisement. Solicitation for proposals must be adequately advertised in a local publication with general circulation and/or trade magazine.
 - Bidder's List. List of firms that are qualified to submit proposals.
 - The draft RFP or RFQ document. The RFP or RFQ should include the Scope of Work, general instructions, all attachments and exhibits.
 - Draft agreement to be signed between the Agency and the selected contractor, unless it is included in the RFP or RFQ.
2. If the Agency has already awarded the third-party A&E contract the following documents should be submitted in addition to the items in No. 1 above:
 - Executed A&E contract
 - Technical proposal evaluation summary and ranking
 - Oral presentation summary and ranking
 - Contract negotiation summary
 - Staff report (if available)
3. DRMT Grant Program Liaison Staff will route the Agency's procurement-related documents to the Federal Procurement Management Branch for review.
4. The Procurement Branch will reach out to the Agency confirming receipt of the procurement-related documents. All aspects of the procurement review will be handled by the Procurement Branch.
5. Upon completion of the procurement review DRMT will issue formal letter to the Agency informing them of the review results.

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How A&E contracts differ from other types of contracts

Geographic Preference

In general, FTA prohibits specifying in-state or local geographic preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, however, geographic location may be a selection criterion for A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

Negotiating Indirect/Overhead Cost

- The subrecipient may not negotiate an indirect or overhead rate but must use undisputed audits that have been conducted by a Federal or State agency of the contractor's indirect cost rate if the audit report has been developed in accordance with the cost principles contained in the Federal Acquisition Regulations (FAR) Part 31. Undisputed audited rates must be used by the prime contractor and sub-contractor for contract estimation, negotiation, administration, reporting and contract payment.
- In accordance with the State Management Plan, Chapter 7.7., approval of Indirect Cost Allocation Plan must be completed by Caltrans DRMT and Audits and Investigations prior to grant application.

Additional References

Caltrans State Management Plan

<http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/SMR/finalsmp2013.pdf>

FTA Best Practices Procurement Manual, Chapter 6.5. Architect – Engineer Services

http://www.fta.dot.gov/12831_6189.html#BM6_5

FTA Best Practices Procurement Manual, Appendix B.9. - Memorandum of Negotiations

http://www.fta.dot.gov/12831_6203.html

FTA Third Party Procurement FAQ – A&E Contracts

http://www.fta.dot.gov/13057_6042.html

FTA Circular 4220.1F

http://www.fta.dot.gov/legislation_law/12349_8641.html