100.01 Introduction

This Consultant Services Manual establishes policy for acquiring consultant services that support all phases of transportation project delivery. The manual is intended to provide direction and guidance to those who seek to acquire consultant services and those who have a role in managing and administering consultant services agreements and contracts.

The policies contained herein are governed by the WSDOT Chief Engineer. Any deviations or variances must be approved by the Chief Engineer.

The policies outlined in this manual are mandatory for WSDOT staff and are based on federal and state laws and regulations. The most significant components of the legal framework are:

- 23 CFR, Highways
- 48 CFR 31, Federal Acquisition Regulations System – Contract cost
- 49 CFR 18, Federal-aid highways – Common grant rule
- 49 CFR 26, Disadvantaged Business Enterprise (DBE)
- 40 USC 1101–1104, Brooks Act
- Chapter 39.29 RCW, Personal service contracts
- Chapter 39.80 RCW, Contracts for architectural and engineering services

The manual contains the policies and procedures for architectural and engineering (A & E) and related consultant services acquisition as prescribed in 23 CFR 172 (see Appendix A) and 49 CFR 18.36(g)(3). Approval by the Federal Highway Administration (FHWA) of these procedures is required in order to receive, or continue to receive, participating federal-aid highway funds in design efforts that lead to participating construction projects. These are the same procedures followed by WSDOT in acquiring consultant services when federal-aid funds are not involved.

WSDOT is subject to FHWA approvals for the following procedures:

- Competitive negotiation (23 CFR 172.5(a)(1))
- Simplified acquisition (23 CFR 172.5(a)(2))
- Noncompetitive negotiation (23 CFR 172.5(a)(3))
- Disadvantaged Business Enterprise (DBE) (23 CFR 172.5(b))
Individual project approvals are required from FHWA for the following:

- All major projects (as defined in 23 USC 106(h)).
- Federally funded projects where consultants are in a management role.

The HQ Consultant Services Office (CSO) is responsible for the application of the policies and procedures contained in this manual. The CSO is also responsible for keeping the manual current with state and federal regulations, providing training to those who use it, and answering questions pertaining to its content.

The federal regulations cited above and throughout the manual are equally applicable to WSDOT and its subagencies, including the cities, counties, ports, and other subagencies that are recipients of United States Department of Transportation funds through WSDOT. The Highways and Local Programs Division (H&LP) administers, oversees, and provides guidance to those entities through the H&LP Office and the Local Agency Guidelines manual.

100.02 Understanding Consultant Services Agreements

The CSO administers all agreements classified as “Y” agreements (see Chapter 800). These agreements are typically related to project delivery and can be categorized as either personal services (see Chapter 200) or A&E services (see Chapter 400).

A fundamental difference between the two types of agreements is:

- When advertising for and selecting personal services consultants, cost may be a consideration during the competitive selection process.
- For A&E agreements, cost is not considered until the negotiation phase with the top three most qualified firms. At that point, cost becomes part of the negotiation process.

The Office of Financial Management reviews and approves personal services agreements and provides input on the specific types of services that fit within that classification.

Consultant services may be obtained through several different procurement processes, including competitive selection for project-specific and sole source agreements, as well as statewide on-call agreements that use task orders for specific scopes of work.

The CSO, located at WSDOT’s Headquarters, is the hub for management and administration of the consultant services agreements process. The office is supported by area consultant liaisons who operate in the regions and HQ divisional programs to provide support throughout the contracting process.
Chapter 110

WSDOT Policy Regarding Consultant Services

110.01 Introduction

The Washington State Department of Transportation adheres to the statutory intent established in Chapter 39.29 RCW when acquiring and managing agreements for personal services provided by consultants. The department follows a policy of open competition for all personal services agreements unless exempted by law. In addition, the department provides all required information and follows filing and reporting rules established by the Office of Financial Management in order to ensure there is opportunity for legislative, executive, and public review of all personal services agreements, and there is appropriate accounting of expenditures.

It is WSDOT’s policy to solicit for and secure the services of professionals under the broad definition of architectural and engineering (A&E) services, whenever needed, to the best and most efficient operation of the state. Consultant services acquisition will be in accordance with state and federal law and applicable regulations, as follows:

- Solicitations for appropriate services will be in compliance with 40 USC 1101–1104, commonly known as the “Brooks Act.”
- WSDOT’s policies and procedures will be subject to approval by the Federal Highway Administration in accordance with 23 CFR 172 and 49 CFR 18.

110.02 Open Competition

WSDOT will publicly announce, in advance, the department’s requirement for architectural and engineering services. WSDOT will negotiate contracts with consultants for A&E services on the basis of demonstrated competence and qualifications for the type of professional services required at fair and reasonable prices to the state, in accordance with Chapter 39.80 RCW.

It is WSDOT’s policy to fully comply with and meet the intent of Chapter 39.80 RCW for open competition in the acquisition of A&E services. The circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

- The service is available from a single source only.
- There is an emergency that will not permit the time necessary to conduct competitive negotiations.
- After solicitation of a number of sources, it is determined that competition is inadequate.

For the purposes of this policy statement, the contracting authority referred to in the RCW is the WSDOT Chief Engineer.
110.03 Consultant Database

WSDOT will maintain a database of consultants’ qualifications and past performance history; encourage firms interested in doing business with the state to submit and/or annually update their qualifications and past performance history; and make database information available for use in the selection process. The database is to be maintained by the HQ Consultant Services Office (CSO).

110.04 Fair and Open Competition

WSDOT will provide for fair and open competition among consultants to the highest degree possible, on the basis of their qualifications and demonstrated past performance. WSDOT will establish processes that ensure all firms have the full, unhindered opportunity to compete for and potentially be awarded contracts in accordance with RCW 39.80.040 and 49 CFR 26.

110.05 Policy and Procedures Manual

WSDOT will establish a policy and procedures manual, owned and maintained by the CSO, which clearly describes the processes and criteria to acquire consultant services by the department; administer the contracts awarded for consultant services; close out and evaluate the work performed by the consultant; and maintain the required documentation of contracts for consultant services in accordance with federal and state law and with state and department guidelines.

110.06 Debriefing

For firms that respond to Requests for Qualifications or Requests for Proposals related to specific work or specific projects, WSDOT will provide a debriefing to the extent required by federal and/or state law. Such debriefing will occur for firms that make a formal request. Firms requesting debriefing will be debriefed only after execution of a contract for the work or project being solicited.

To be compliant with this policy, proposing firms are to notify the CSO manager in writing of their desire for a debriefing. Notice is to be sent to the CSO manager within three business days after the firms are notified of the final selection and award of a contract for the work or project they responded to. Debriefing will occur within five business days after the CSO receives written notification from the firm that seeks to be debriefed.
110.07 Fair and Impartial Treatment

WSDOT will administer the contracts for services in a professional and efficient manner, providing fair and impartial treatment to all vendors while maintaining the best interests of the state. Consultants will be paid promptly in accordance with RCW 39.76.011. Consultants will be fairly evaluated for the work they perform and provided meaningful feedback and the opportunity to redress any issues. WSDOT will close out contracts in a timely manner, protecting all appropriate records and documentation. WSDOT will seek to avoid contract claims through strong change management processes and will ensure all contractor claims are addressed quickly and fairly.

110.08 Measurable Evaluations

WSDOT will perform measurable evaluations of the work of consultants who enter into A&E contracts and personal services contracts directly related to projects with the department. These evaluations will be in accordance with state and federal regulations.

Evaluations will be performed for each professional services contract entered into between a consultant and the state. Evaluations will be performed in a manner that provides meaningful feedback to the consultants, while providing WSDOT with documented performance measurements, which will aid in future determinations of a firm’s qualifications to perform under similar circumstances. The CSO will retain all final performance evaluations for each consultant for a minimum of six years after the date of the completed evaluation.

110.09 Emergencies

In the event of an emergency, those within WSDOT with the authority to do so will act in the best interests of the state. An “emergency” is defined by state law as a set of unforeseen circumstances beyond the control of the agency that either (1) present a real, immediate threat to the proper performance of essential functions, or (2) may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. This policy statement will not relieve anyone acting in accordance with this policy from complying with applicable laws limiting emergency expenditures.
110.10 Nondiscrimination

WSDOT is very clear regarding its policy on nondiscrimination. WSDOT will not tolerate discrimination in any form in its hiring and contracting practices. When contracting for professional services, WSDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin. Further, in administering its Disadvantaged Business Enterprises program, WSDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

In addition, WSDOT will not accept any form of discrimination in the hiring or contracting practices of its contractors. WSDOT has specific language in its contracts regarding the department’s (1) nondiscrimination policy, (2) expectation that any contractor hired by WSDOT will attest to and affirm having a policy of nondiscrimination on the basis of race, color, sex, or national origin, and (3) ability to verify said policy through random interviews with individual employees or subcontractors of the contractor.

110.11 Ethical Standards and Behavior

Throughout the process of acquiring and managing consultant services, those performing the services on behalf of WSDOT will adhere to, and comply with, the ethical standards set forth in state and federal law. It is the department’s expectation that both its employees and its contractors will follow a code of ethical behavior in professional and business activities. In addition, WSDOT has the responsibility to determine whether a potential organizational conflict of interest exists in a contracting process and will take necessary action to avoid, neutralize, or mitigate such conflicts.
120.01 Introduction

Several distinct sets of responsibilities are involved in operating a complex, high-risk government contracting program such as the consultant services program managed by the HQ Consultant Services Office (CSO). The primary functional areas of the CSO include:

1. **Agreement procurement**: The process of acquiring services under contract, including solicitation, selection, negotiation, and execution of new agreements.

2. **Agreement administration**: The process of filing, tracking, and supplementing agreements; applying internal controls; managing documentation; providing technical assistance and support to internal and external customers; and ensuring compliance with contractual terms and conditions for the duration of a project through the contract’s closeout or termination.

3. **Agreement management**: Managing the contractual agreement and the relationship with the contractor throughout the duration of a project, tracking deliverables, processing payments, and solving problems.

120.02 CSO Responsibilities and Functions

In fulfilling its responsibilities, the CSO performs the following functions:

- Policy management.
- Training and communications.
- Compliance reviews and audit liaison.
- Disadvantaged Business Enterprise program management and reporting.
- American Council of Engineering Companies/WSDOT committee representation.
- Contract solicitation, acquisition, final assembly, and administration.
- Rate-setting and negotiation.
- Technical review of engineering-related contract elements.
- Debriefing and dispute resolution.
- Establishment and monitoring of operational procedures.
- Development/management of contract tracking and information systems.
- Legislative analysis.
In the role of chief contracting officer, the CSO manager:

- Under delegated authority from the Assistant Secretary, Engineering and Regional Operations, oversees and provides all CSO functions listed above.
- Implements the Consultant Services Manual and all CSO operations.
- Signs and executes all agreements acquired and administered by the CSO.
- Represents the CSO in consultant selection and approves final recommendations from selection teams.
- Serves in a decision-making role in resolving disputes, claims, conflicts of interest, and protests.
- Directs the day-to-day operations of the CSO, ensuring the administrative support and guidance in the acquisition and management of consultant services agreements is of high quality, is timely, and meets customers’ needs.
- Monitors and promotes adherence to federal and state statutes and rules that govern consultant services agreements.
- Coordinates and ensures training is provided to the area consultant liaisons and other internal customer groups regarding agreement processing, including selection, negotiation, agreement management, internal controls, and ethical standards.
- Participates in strategic planning for the department’s consultant services needs and serves as an active member of WSDOT’s Engineering and Regional Operations management team.
- Provides program information and reports to the WSDOT Secretary of Transportation, the Assistant Secretary, Engineering and Regional Operations, and other WSDOT executive staff; the Office of Equal Opportunity; the Federal Highway Administration and other federal agencies; the Washington State legislature; other state agencies; and the general public regarding WSDOT’s use of consultant agreements.
- Communicates and collaborates with the consultant community, primarily through activities related to the American Council of Engineering Companies – Washington.

120.03 Responsibilities and Functions of Area Consultant Liaisons

In the regions and programs, the area consultant liaisons (ACLs) carry out duties related to agreement administration and management. The ACLs have a matrix relationship† with the CSO. They are the point of contact for the CSO to ensure agreement processes are followed. They perform critical functions in scoping and estimating agreements, and they facilitate agreement

†ACLs are employees of the region or program, with an indirect reporting relationship with the CSO. (They do not officially report to the CSO, but their duties relate to the CSO on a daily basis.)
management steps from beginning to end. ACLs serve as key resources in the field, providing and interpreting policies and procedures and providing direct assistance to project managers and end users of agreements in their respective organizations. In this role, ACLs:

- Handle requests for consultant services agreements and supplements.
- Provide guidance to project managers regarding potential contracting options available to them.
- Negotiate agreements.
- Initiate and process task orders.
- Develop and maintain supporting documentation.
- Monitor compliance with internal controls.
- Facilitate contract management, payment, and closeout.
- Route agreement documents to the CSO to obtain necessary approvals, meet filing requirements, and set up accounting records.
- Provide program data and information to the CSO as needed.
- Facilitate Disadvantaged Business Enterprise reporting and completion of consultant performance evaluations.
- Manage certain types of agreements (such as the current on-call agreements and, in the future, indefinite-delivery contracts).

ACLs are the point of contact for WSDOT with the consultant community. In that capacity, they:

- Provide information on upcoming projects and consultant needs.
- Respond to questions regarding current advertisements (typically concerning scopes of work).
- Provide information on upcoming meetings and negotiation sessions.
- Keep consultants updated on the status of their agreements and/or supplements.
- Provide notices to proceed.
- Respond to questions regarding agreement terms and conditions.
- Clarify scopes of work.
- Provide information regarding payment status.
- Handle other requests as necessary and refer requests to the CSO as appropriate.
## Chapter 130  
### Glossary of Acronyms

Following are the acronyms used throughout the *Consultant Services Manual*:

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>ACEC</td>
<td>American Council of Engineering Companies</td>
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<tr>
<td>A&amp;E</td>
<td>architectural and engineering</td>
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<tr>
<td>ACL</td>
<td>area consultant liaison</td>
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<tr>
<td>ADA</td>
<td>Americans with Disabilities Act</td>
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<tr>
<td>AGO</td>
<td>Attorney General’s Office</td>
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<tr>
<td>AIA</td>
<td>American Institute of Architects</td>
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<tr>
<td>ASCO</td>
<td>Administrative Services Contracts Office</td>
</tr>
<tr>
<td>BLM</td>
<td>Bureau of Land Management</td>
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<tr>
<td>CECW</td>
<td>Consultant Engineer’s Council of Washington</td>
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<tr>
<td>CEVP</td>
<td>cost estimate validation process</td>
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<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>CPFF</td>
<td>cost-plus-fixed-fee</td>
</tr>
<tr>
<td>CRA</td>
<td>cost risk assessment (or analysis)</td>
</tr>
<tr>
<td>CSO</td>
<td>HQ Consultant Services Office</td>
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<tr>
<td>DBE</td>
<td>Disadvantaged Business Enterprise</td>
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<tr>
<td>DRB</td>
<td>Disputes Review Board</td>
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<tr>
<td>EA</td>
<td>Environmental Analysis</td>
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<tr>
<td>EIS</td>
<td>Environmental Impact Statement</td>
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<tr>
<td>FAA</td>
<td>Federal Aviation Administration</td>
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<tr>
<td>FAR</td>
<td>Federal Acquisition Regulation</td>
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<td>FHWA</td>
<td>Federal Highway Administration</td>
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<td>FOIA</td>
<td>Freedom of Information Act</td>
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<tr>
<td>FRA</td>
<td>Federal Railroad Administration</td>
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<tr>
<td>FTA</td>
<td>Federal Transit Administration</td>
</tr>
<tr>
<td>FTE</td>
<td>full-time employee</td>
</tr>
<tr>
<td>FY</td>
<td>fiscal year</td>
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<tr>
<td>G&amp;A</td>
<td>General and Administrative</td>
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<tr>
<td>GEC</td>
<td>General Engineering Consultant</td>
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<tr>
<td>GS</td>
<td>General Schedule</td>
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<tr>
<td>GSP</td>
<td>General Special Provision</td>
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<tr>
<td>HQ</td>
<td>WSDOT Headquarters in Olympia</td>
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<tr>
<td>IDC</td>
<td>indefinite-delivery contract</td>
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<tr>
<td>LNTP</td>
<td>limited notice to proceed</td>
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<tr>
<td>LS</td>
<td>lump sum</td>
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<tr>
<td>MPD</td>
<td>managing project (or program) delivery</td>
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<tr>
<td>NAICS</td>
<td>North American Industry Classification System</td>
</tr>
<tr>
<td>NEPA</td>
<td>National Environmental Policy Act</td>
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<tr>
<td>NHR</td>
<td>negotiated hourly rate</td>
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<tr>
<td>NTP</td>
<td>notice to proceed</td>
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<tr>
<td>OCOI</td>
<td>organizational conflict of interest</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>OEO</td>
<td>Office of Equal Opportunity</td>
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<td>OFM</td>
<td>Office of Financial Management</td>
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<tr>
<td>OH</td>
<td>overhead</td>
</tr>
<tr>
<td>OMWBE</td>
<td>Office of Minority and Women’s Business Enterprises</td>
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<tr>
<td>PDF</td>
<td>portable document format</td>
</tr>
<tr>
<td>PIN</td>
<td>personal identification number</td>
</tr>
<tr>
<td>PM</td>
<td>project manager</td>
</tr>
<tr>
<td>PS&amp;E</td>
<td>plans, specifications, and estimates</td>
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<tr>
<td>Q&amp;A</td>
<td>question and answer</td>
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<tr>
<td>RCW</td>
<td>Revised Code of Washington</td>
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<tr>
<td>RFP</td>
<td>Request for Proposal</td>
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<tr>
<td>RFQ</td>
<td>Request for Qualifications</td>
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<tr>
<td>SAAM</td>
<td>State Administrative and Accounting Manual</td>
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<tr>
<td>SCE</td>
<td>State Construction Engineer</td>
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<tr>
<td>SDE</td>
<td>State Design Engineer</td>
</tr>
<tr>
<td>SEPA</td>
<td>State Environmental Policy Act</td>
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<tr>
<td>SNAME</td>
<td>Society for Naval Architects and Marine Engineers</td>
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<tr>
<td>SOQ</td>
<td>Statement of Qualifications</td>
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<tr>
<td>SOW</td>
<td>statement of work</td>
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<tr>
<td>TAA</td>
<td>task assignment amendment</td>
</tr>
<tr>
<td>TAC</td>
<td>task assignment contract</td>
</tr>
<tr>
<td>TOD</td>
<td>task order document</td>
</tr>
<tr>
<td>TONHR</td>
<td>task order negotiated hourly rate</td>
</tr>
<tr>
<td>TRAINS</td>
<td>Transportation Reporting and Accounting Information System</td>
</tr>
<tr>
<td>USACE</td>
<td>United States Army Corps of Engineers</td>
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<tr>
<td>USC</td>
<td>United States Code</td>
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<tr>
<td>USDA</td>
<td>United States Department of Agriculture</td>
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<tr>
<td>USDI</td>
<td>United States Department of the Interior</td>
</tr>
<tr>
<td>USDOT</td>
<td>United States Department of Transportation</td>
</tr>
<tr>
<td>WAC</td>
<td>Washington Administrative Code</td>
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<tr>
<td>WBS</td>
<td>Work Breakdown Structure</td>
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<tr>
<td>WEBS</td>
<td>Washington’s Electronic Business Solution</td>
</tr>
<tr>
<td>WSDOT</td>
<td>Washington State Department of Transportation</td>
</tr>
<tr>
<td>WSF</td>
<td>WSDOT Ferries Division</td>
</tr>
</tbody>
</table>
**Chapter 140**

**Definitions**

**acquisition**  The acquiring by contract, with appropriated funds, services (including construction) by and for the use of the government through purchase, whether the services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs; solicitation and selection of sources; award of contracts; contract financing; contract performance; contract administration; and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**acquisition planning**  The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency’s need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

**advance payment**  Amount paid to WSDOT in advance for work to be performed under a reimbursable (receivable) agreement.

**Agency Head or Head of the Agency**  The Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.

**agreement**  (see contract)  A meeting of minds with the understanding and acceptance of reciprocal legal rights and duties regarding particular actions or obligations the parties intend to exchange; a mutual assent to do or refrain from doing something; or under certain circumstances, a contract. The writing or document that records the meeting of the minds of the parties.

An agreement is not always synonymous with a contract because it might lack an essential element of a contract, such as consideration. An on-call agreement is not a contract. An on-call agreement lacks both an offer and consideration (see FAR 16.7). It is only after a task order document is executed for specific work and consideration that a binding contract exists. It is the task order document that, as a contract, binds the previous elements, making up the meeting of the minds.

Where the term contract is meant, contract should be used. Within this manual and in the A&E contracting process, occasionally the terms agreement and contract will be used interchangeably.

**agreement cancellation**  Any discontinuance of the agreement process prior to it becoming a contract.
**agreement (contract) closure**  The process for closing a contract in TRAINS, WSDOT’s financial system. (See Chapter 530 for further information.)

**agreement (contract) manager**  The person normally responsible for setting up any needed work orders, monitoring the progress of work and costs, and closing the contract.

**agreement supplement**  See supplement.

**agreement termination**  Terms that specify how and when an executed agreement will expire and when the parties are no longer obligated under the agreement. This is usually triggered by an agreed-upon end date, completion of work, expenditure of certain funding limits, or at the discretion of one or both parties. Note that an on-call agreement can terminate without any work having been authorized, thus without the agreement leading to a contract.

**agreement writer**  The person responsible for developing the agreement language, coordinating required reviews, and providing to the parties a final agreement that is ready for execution.

**amendment**  A written document used to modify the contents of an existing task order document previously issued under a master on-call agreement. An amendment may be used to add new elements, make up for a deficiency, or extend or strengthen the task order.

**application**  A completed Statement of Qualifications together with a request to be considered for the award of one or more contracts for professional services (RCW 39.80.020).

**architect-engineer services**  For the purposes of federal regulation, architect-engineer services are defined in 48 CFR 36.601-4 as follows:

1. Professional services of an architectural or engineering nature, as defined by applicable state law, which the state law requires to be performed or approved by a registered architect or engineer.

2. Professional services of an architectural or engineering nature associated with design or construction of real property.

3. Other professional services of an architectural or engineering nature or services incidental thereto (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 operating and maintenance manuals; and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.
4. Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and will be procured pursuant to Section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to Section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities, or have not in themselves traditionally been considered architectural and engineering services will be procured pursuant to provisions in Parts 13, 14, and 15.

In the Brooks Act, 40 USC 1102, the term “architectural and engineering services” means:

1. Professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

2. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

3. Other professional services of an architectural or engineering nature, or incidental services that 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 operating and maintenance manuals; and other related services.

architectural and engineering services or professional services
Professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in Chapters 18.08, 18.43, or 18.96 RCW.

certification A formal release of the state’s jurisdiction over a state highway designated to become part of a local agency road or street network to a county, city, or town. The certification process for abandoned state highways may be the result of legislative changes to route designations, or because a section of state highway has been replaced or relocated during construction, or a frontage road or other modification to a local road or street is relinquished to the local jurisdiction (commonly called a turnback).
**Code of Federal Regulations (CFR)**  The CFR is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. It is divided into 50 titles that represent broad areas subject to federal regulation. Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.

Each title is divided into chapters, which usually bear the name of the issuing agency. Each chapter is further subdivided into parts that cover specific regulatory areas. Large parts may be subdivided into subparts. All parts are organized in sections, and most citations in the CFR are provided at the section level.

**cognizant agency**  The agency that, on behalf of all state agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for a firm’s particular business unit. This is typically the Department of Transportation in the state where the firm is domiciled.

**commercially useful function**  A term used to describe whether a contractor or subcontractor, most often a disadvantaged business that is certified in the Disadvantaged Business Enterprise program, is actually doing the work identified in a WSDOT contract as work to be performed by that firm.

**competitive negotiations**  Refers to the process of A&E consultant acquisition as specified in federal law 23 CFR 172, which utilizes the qualifications-based procedures delineated in federal law Title 40 USC 1101-1104 and Washington State law RCW 39.80.

**compliance**  When a recipient has correctly implemented the requirements of a contract or an agreement.

**computer database or database**  A collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

**consultant**  Any person providing professional services who is not an employee of the agency for which the services are provided (RCW 39.80.020).

**Continued Portion of the Contract**  The portion of a contract that the contractor must continue to work on following a partial termination.

**contract**  An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration. The existence of a contract requires finding the following factual elements: an offer; an acceptance of that offer that results in a meeting of the minds; a promise to perform; a valuable consideration (which can be a promise or payment in some form); performance; a time or event when performance must be accomplished (meet commitments); and terms and conditions for performance, including fulfilling promises.
• A **unilateral contract** is one in which there is a promise to pay or give other consideration in return for actual performance. (For example, I will pay you $500 to fix my car by Thursday; the performance is fixing the car by that date.)

• A **bilateral contract** is one in which a promise is exchanged for a promise. (For example, I promise to fix your car by Thursday and you promise to pay $500 on Thursday.)

**contract closure**  The process for closing a contract in TRAINS, WSDOT’s financial system. (See Chapter 530 for further information.)

**contract (agreement) manager**  The person normally responsible for setting up any needed work orders, monitoring the progress of work and costs, and closing the contract.

**contract supplement**  A contract that changes the provisions of another contract. It adds to, subtracts from, clarifies the intent of, or modifies the original contract in some manner without stepping outside the scope of the original contract.

**contractor**  One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

**conveyance**  A legal document, such as a quitclaim deed, supporting a relinquishment or certification of real property, which WSDOT conveys to a local agency.

**cost estimate**  The estimated cost of work to be performed based on the most current information available at the time the agreement is prepared.

**Disadvantaged Business Enterprise (DBE)**  A for-profit small business concern:

- That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and

- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOT (USDOT)**  The United States Department of Transportation.

**DOT-assisted contract**  Any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**EBASE (Estimates and Bid Analysis System)**  WSDOT’s system for developing project cost estimates. For additional information, see www.wsdot.wa.gov/design/projectdev/engineeringapplications
**Definitions**

**Force Majeure** Language that provides for assignment of liability in the event that agreement obligations cannot be performed due to causes that are outside the control of the parties and could not be avoided by the exercise of due care, such as “acts of God,” which include adverse weather, earthquakes, fires, and floods; or such as acts of war and strikes.

**good faith efforts** Efforts to achieve a DBE goal or other requirement of a contract/agreement, which, by their scope, intensity, and appropriateness to the objective, can be reasonably expected to fulfill the program goal or requirement.

**HQ** The WSDOT Headquarters in Olympia.

**indefinite-delivery contract (IDC)** A contract form that implements one of three commitment models for the delivery of category-specific consultant services, based on the anticipated needs of the state. Acquisition shall be through competitive negotiations with one or more contracts being awarded based on the delivery model that best addresses the needs of WSDOT. (See 1.5 for delivery model descriptions and implementation processes.)

**indirect cost rate** The overhead percentage rate applied to the total cost of work performed by WSDOT for another entity under a reimbursable agreement. (See the *Accounting Manual* for more information.)

**local agency** A county, city, or town within Washington State.

**Management Reserve Fund** Additional funds set aside in the contract/agreement at the request of management.

**master agreement** Provides all the necessary general terms and conditions for a general type of work and an overall beginning and ending date. It will not contain specifics for individual elements of work (tasks). This information will be in each individually executed task order (see **task order**). Between the master agreement and the task order, the task’s scope of work, beginning and ending dates, and estimate for the work must be completely defined.

**Memorandum of Understanding (MOU)** A written document executed between two or more parties that establishes each party’s intent, objectives, and/or requirements regarding some future action. An MOU is also known as a Letter of Understanding (LOU). MOUs and LOUs differ from agreements in that they do not create a legally binding commitment.

**noncompliance** When a recipient has not correctly implemented the requirements of a contract/agreement.

**Non-Operating Property** Waste sites, pit sites, stockpile sites, maintenance sites, and other such lands required or used in support of the construction and/or operation of a highway.
**nonstandard agreement**  Any agreement that is not a WSDOT standard form. Any revision to a standard form will constitute a nonstandard agreement.

**operation of law**  A change or transfer that occurs automatically due to existing laws and not due to an agreement or court order. For example, WSDOT buys right of way for a project on a managed access state highway within a city. Once construction is complete, the city will automatically own the purchased right of way in accordance with RCW 47.24.020(15).

**organizational conflict of interest (OCOI)**  OCOI means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage (FAR 2.101).

**overtime**  Time worked by a contractor’s employee in excess of the employee’s normal work week.

**overtime premium**  The difference between the contractor’s regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium (the difference between the contractor’s regular rate of pay to an employee and the higher rate paid for extra-pay shift work).

**payable agreement**  An agreement where WSDOT agrees to pay for goods and/or services provided by another entity.

**payable cost**  The estimated or lump sum dollar amount WSDOT will pay under the terms of an agreement.

**person**  Any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof (RCW 39.80.020).

**Primary Industry Classification**  The North American Industrial Classification System (NAICS) designation, which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual, United States, 1997.

**Primary Recipient**  A recipient who receives DOT financial assistance and passes some or all of it on to another recipient.

**principal place of business**  The business location where the individuals who manage the firm’s day-to-day operations spend most working hours and where top management’s business records are kept. If the management offices and the offices where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.
private party agreement An agreement between WSDOT and a non-public entity or individual.

public agencies Any agency, political subdivision, or unit of local government of this state, including, but not limited to, municipal corporations, quasi-municipal corporations, special-purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state (see RCW 39.34.02).

race-conscious A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

race-neutral A measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender neutrality.

recipient Any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the Federal Aviation Administration, the Federal Highway Administration, or the Federal Transit Administration, or an entity that has applied for such assistance.

reciprocal overhead agreement An agreement between a local governmental agency (city, town, or county) and WSDOT where each agree not to charge an indirect cost rate (see indirect cost rate) when performing work or services for the other party.

reimbursable agreement An agreement under which WSDOT receives payment from another entity for goods and/or services provided by the department.

reimbursable cost The total estimated or lump sum gross dollar amount a party will pay WSDOT under the terms of an agreement. This amount is entered on the Agreement Edit Information form (WSDOT Form 130-005).

relinquishment The turning back to a county, city, or town that portion of a facility constructed by WSDOT and designated by agreement to become the property of the local agency upon completion of construction (see certification).

Revised Code of Washington (RCW) The law of the state as enacted by the Washington State Legislature.

SBA-Certified Firm A firm that has a current, valid certification from or is recognized by the SBA under the 8(a) BD or SDB programs.

simplified acquisition (small purchase) Small purchase procedures are those relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 USC 403(11).
Small Business Administration (SBA) The United States Small Business Administration.

small business concern With respect to firms seeking to participate as Disadvantaged Business Enterprises in USDOT-assisted contracts, a small business concern is defined pursuant to Section 3 of the Small Business Act (Public Law 85536) and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

socially and economically disadvantaged individual Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
   a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa.
   b. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
   c. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
   d. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
   e. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.
   f. Women.
   g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

standard form agreement A preapproved agreement format that contains a form number assigned by WSDOT forms management. Any revision to a standard form agreement will constitute a nonstandard agreement and will require further review (see nonstandard agreement).
state-generated funds  Revenues that are collected and dispensed by the state, such as cash receipts and receivables derived from taxes and other sources.

Statutory Authority  The specific law or rule, resolution, or ordinance that authorizes an entity to enter into an agreement to perform an action, take on an obligation, and/or make payment for services and/or products received.

task order document  A contract that is a derivative document, from a master agreement, containing all the elements that make it a contract, including a statement of work, beginning and ending dates of the work, and a specific dollar amount for the work to be completed. A task order cannot be used to make changes or additions to the terms of the master agreement. Task orders are executed and monitored individually (see master agreement).

TRAINS  The Transportation Reporting and Accounting Information System, which is the official financial system of WSDOT.

tribally-owned concern  Any concern at least 51% owned by a Native American tribe as defined in this section.

United States Code (USC)  The USC is the codification by subject matter of the general and permanent laws of the United States based on what is printed in the Statutes at Large. It is divided by broad subjects into 50 titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives.

Since 1926, the USC has been published every six years. Between editions, annual cumulative supplements are published in order to present the most current information.

uneconomic remainder  Due to a WSDOT acquisition, the portion of real property, lying outside the right of way, left in such shape or condition as to be of little value to its owner. WSDOT may acquire an uneconomic remainder if its value does not exceed its potential severance claims or damages.

Washington Administrative Code (WAC)  Rules and regulations that apply to individual state agencies that are developed by each agency according to the Administrative Procedures Act.

Work Order Authorization (WOA)  An accounting system document used to authorize, set up, and revise a work order. (See the Accounting Manual for details.)

work order  An account set up as the central collection point for recording all WSDOT payments or receivables associated with a particular project or activity. (See the Accounting Manual for details.)

WSDOT  Washington State Department of Transportation.