

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 Assistant Secretary Engineering & Regional Operations Chief Engineer. Any deviations or variances must be approved by the Assistant Secretary Engineering & Regional Operations 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 39.26 RCW](#), Professional 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 ([23 CFR 172.7\(b\)\(5\)](#)).

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. Local Programs (LP) administers, oversees, and provides guidance to those entities through the LP Office and the *Local Agency Guidelines* (LAG) 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 Professional 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 Professional Services consultants, cost may be a consideration during the competitive selection process.
- For A&E agreements, cost is not considered until the negotiation phase. At that point, cost becomes part of the negotiation process.

The Department of Enterprise Services (DES) reviews and approves Professional 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. Processes include various competitive selection procedures for project specific agreements and task orders for specific scopes of work, and sole source requests.

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.

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The Washington State Department of Transportation adheres to the statutory intent established in [Chapter 39.26 RCW](#) when acquiring and managing agreements for Professional Services provided by consultants. The department follows a policy of open competition for all Professional Services agreements unless exempted by law. In addition, the department provides all required information and follows filing and reporting rules established by the Department of Enterprise Services in order to ensure there is opportunity for legislative, executive, and public review of all Professional Services agreements, as well as an appropriate accounting of expenditures.

The WSDOT also adheres to the statutory intent of [Chapter 39.80 RCW](#) and [23 CFR 172](#) when acquiring and managing agreements for A&E services provided by consultants. The WSDOT retains and develops the organizational capacity and resources to provide oversight and other services related to the procurement, management and administration of these contracts. It is WSDOT's policy to solicit for and secure the services of professionals for both Professional Services contracts and A&E contracts, 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 found in the Appendices A ([23 CFR 172](#)), C (USC Title 40, the Brooks Act), D ([Chapter 39.80 RCW](#)) and E ([Chapter 39.26 RCW](#)).

The WSDOT will also administer federal sub-awards in accord with State laws and as specified under [2 CFR part 1201](#), under the Local Programs section of the WSDOT and providing their own manual for such administration.

110.02 Open Competition

WSDOT will publicly announce, in advance, the department's requirement for Architectural and Engineering and Professional Services contracts. WSDOT will negotiate with consultants for Professional Services and A&E contracts on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices to the state, in accordance with [Chapters 39.26 RCW](#) and [39.80 RCW](#).

It is WSDOT's policy to fully comply with and meet the intent of [Chapters 39.26](#) and [39.80 RCW](#) as well as the federal rules and regulations for open competition in the acquisition of Professional Services and A&E contracts. 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 (see [Chapter 440](#)).
- There is an emergency that will not permit the time necessary to conduct competitive negotiations (see [Chapter 600](#)).
- After solicitation of a number of sources, it is determined that competition is inadequate (see [Chapter 440](#)).

For the purposes of this policy statement, the contracting authority referred to in the Revised Code of Washington is the WSDOT Assistant Secretary Engineering & Regional Operations Chief Engineer.

110.03 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 state and federal laws, some of which are quoted in full in Appendices A, C, D, and E.

110.04 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 WSDOT; 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.

110.05 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. See [Appendix K](#) for debriefing and protest procedures and disclosure of consultant information.

110.06 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 and subconsultants 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.

110.07 Measurable Evaluations

WSDOT will perform measurable evaluations of the work of consultants who enter into A&E contracts and Professional 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 A&E or 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 three years after the date of the completed evaluation.

110.08 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. See [Chapter 600](#).

110.09 Nondiscrimination

WSDOT will not tolerate discrimination in any form in its hiring and contracting practices. When contracting for A&E or 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.

110.10 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. See Appendices [M](#) and [P](#).

110.11 Public Access to Proposals

All requests for disclosure of procurement documents shall be done on appropriate “Request for Public Disclosure” forms and submitted to the WSDOT Records and Information Services Office. For additional information, see 550.02.02 RCW.

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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, 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 & Regional Operations Chief Engineer, 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.
- 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 relationship¹ 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 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, which includes guiding the development of the Second Tier Competition Process and managing the task order consultant selections.
- 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.

¹ACLs 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.)

- 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 some of the current on-call agreements).

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).
- Coordinate the Second Tier Competition Process.
- 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.
- Provide consultant contract administration services under the CSO.

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

ACEC	American Council of Engineering Companies
A&E	architectural and engineering
ACL	Area Consultant Liaison
ADA	Americans with Disabilities Act
AGO	Attorney General's Office
AIA	American Institute of Architects
ASCO	Administrative Services Contracts Office
BAFO	Best and Final Offer
BLM	Bureau of Land Management
CECW	Consultant Engineer's Council of Washington
CEVP	cost estimate validation process
CFR	Code of Federal Regulations
CPFF	cost-plus-fixed-fee
CRA	cost risk assessment (or analysis)
CSO	HQ Consultant Services Office
DBE	Disadvantaged Business Enterprise
DES	Department of Enterprise Services
DRB	Disputes Review Board
EA	Environmental Analysis
EIS	Environmental Impact Statement
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTE	full-time employee
FY	fiscal year
G&A	General and Administrative
GEC	General Engineering Consultant
GS	General Schedule
GSP	General Special Provision
HQ	WSDOT Headquarters in Olympia
IDC	Indirect Quantity Contract
LNTP	limited notice to proceed
LS	lump sum
MPD	managing project (or program) delivery
NAICS	North American Industry Classification System
NEPA	National Environmental Policy Act
NHR	negotiated hourly rate
NTP	notice to proceed
OCOI	organizational conflict of interest

OEO	Office of Equal Opportunity
OH	overhead
OMWBE	Office of Minority and Women's Business Enterprises
PDF	portable document format
PIN	personal identification number
PM	project manager
PS&E	plans, specifications, and estimates
Q&A	question and answer
RCW	Revised Code of Washington
RFP	Request for Proposal
RFQ	Request for Qualifications
SAAM	<i>State Administrative and Accounting Manual</i>
SAM	System for Award Management
SCE	State Construction Engineer
SDE	State Design Engineer
SEPA	State Environmental Policy Act
SNAME	Society for Naval Architects and Marine Engineers
SOQ	Statement of Qualifications
SOW	statement of work
TAA	task assignment amendment
TAC	task assignment contract
TOD	task order document
TONHR	task order negotiated hourly rate
TRAINS	Transportation Reporting and Accounting Information System
USACE	United States Army Corps of Engineers
USC	United States Code
USDA	United States Department of Agriculture
USDI	United States Department of the Interior
USDOT	United States Department of Transportation
WAC	Washington Administrative Code
WBS	Work Breakdown Structure
WEBS	Washington's Electronic Business Solution
WSDOT	Washington State Department of Transportation
WSF	WSDOT Ferries Division

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 (task order) 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.

Where the term *contract* is meant, contract should be used. Within this manual, 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 at WSDOT, including closure in WSDOT's financial system. (See [Chapter 500](#) 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, in accord with state and federal regulations.

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, expenditures reaching 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 (A&E) 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 (A&E) services of an architectural or engineering nature associated with design or construction of real property.
3. Other professional (A&E) 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 (A&E) 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 (A&E) 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 (A&E) 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 (A&E) 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, including A&E 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 [Chapter 18 RCW](#).

audit A formal examination, in accordance with professional standards, of a consultant’s accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allowability, and allocability of costs in accordance with the Federal Cost Principles as specified in [48 CFR Part 31](#).

Best Value A measure of short term and long term usefulness, quality, expandability, richness of function, customer support structure and options and confidence that the consultant will continue to aggressively support and enhance the product or service offered. This aspect is part of the advertisement for services, and requires the consultant or vendor to describe in detail what value its product and/or service will provide to WSDOT. Examples include robustness, supportability, flexibility, and extensibility of the proposed solution, compliance with industry standards, and ease of use of the proposed solution. Best Value is often used in Professional Services selection processes.

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 Any governmental agency that, on behalf of all state agencies, has performed an audit in accordance with auditing standards to establish final indirect cost rates (ICR) and forward pricing rates, if applicable, and administering cost accounting standards for a firm's particular business unit. This can be either a Federal agency or a State transportation agency, as outlined in [23 CFR 172.11](#).

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 expert services or advice who is not an employee of the agency for which the services are provided.

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

contract A legally binding 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 administration The process of handling the administrative functions of the contract, such as invoice documentation, verification, and authorization for payment. It also includes the contractual functions such as change management documentation, funding and programmatic administration, and verification of contract terms such as insurance coverage, payroll documentation, and reporting requirements. The contract terms, references to state and federal regulations, policy manuals, and budgetary exhibits govern contract administration.

contract closure The process for closing a contract in TRAINS, WSDOT's financial system. (See [Chapter 530](#) for further information.)

contract management The process of managing the contract based on the negotiated statement of work and project schedule. Contract management may include providing verification and approval of the monthly progress reports and earned value calculations prior to approving the invoice, and includes project meetings with the consultant project manager. Contract management includes the responsibility to be aware of any changes which may require supplements or task order amendments, and requesting the closure of an agreement or task order prior to closing the contract in the WSDOT's financial system.

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 modifies 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.

cost factors All the costs associated with a contract, including direct labor, indirect costs or overhead, and fixed fee. Cost factors are regulated under the Federal Acquisition Regulation, or FARs.

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

- That is at least 51% owned and controlled 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.

DUNS number Data Universal Numbering System – a unique numeric identifier for credit checking businesses, which was developed and regulated by Dun & Bradstreet on a proprietary basis, and which is available to any business worldwide. This number is required by WSDOT to ensure a business is not debarred.

Ebase (Estimates and Bid Analysis System) WSDOT’s system for developing project cost estimates.

fixed fee The sum expressed in US dollars which covers the consultant’s profit and other business expenses not allowable or included as a direct or indirect cost.

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, floods and other natural disasters; or such as acts of war and strikes.

good faith efforts The efforts taken 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.

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 –non-State governmental agency or other eligible entity allowed/authorized to receive federal funds through WSDOT.

Management Reserve Fund Additional funds set aside in the contract/agreement at the request of management. This fund is limited to Cost Plus Fixed Fee agreements.

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 statement 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.

noncompetitive The method of procurement of services when it is not feasible to award a contract using competitive negotiations or small purchase procurement methods.

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. After 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 39.34.020](#)).

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.

scope of work All services, work activities and actions required of the consultant by the obligations of the contract.

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, Kiribati, 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.

subconsultant The individual or firm contracted by a consultant to provide a portion of the services for which the consultant is responsible in its contract with WSDOT.

System for Award Management (SAM) Per federal regulations, CSO is required to ensure, to the best of its knowledge and belief, that none of the principals, affiliates, third party Contractors and subcontractors selected for work by the State are suspended, debarred, ineligible or voluntarily excluded from participation in federally assisted transactions or procurements. Federal regulations require CSO to review records of excluded parties in the federal System for Award Management (SAM) before entering into any third party Contracts exceeding \$25,000.00. This system combines several existing registries and agency lists into one search engine that is updated on a regular basis to ensure that companies selected for work are not excluded.

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](#)).

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.

Veteran Business Enterprise (VBE) A business which is at least 51% owned by a veteran of foreign wars.

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.