

400.01 Introduction

The HQ Consultant Services Office (CSO) is the delegated authority for acquisition and administration of Architectural and Engineering (A&E) services for WSDOT. The CSO ensures the appropriate legal processes are followed, protects the rights of outside funding sources, and maintains uniformity of treatment within the department and to the consultant firms. All WSDOT contracts that fall under the category of A&E work are subject to review and approval by the CSO. Certain exceptions exist for agreements executed for specific situations where non-competitive selection is appropriate and in emergency situations. (See [Chapter 440](#) and [Chapter 600](#) for details.)

A&E contracts are used for professional services that are specialized in nature. A&E work requires the oversight of those licensed by a state to practice the professions of architecture, engineering, surveying, and/or certain other specialized services, specifically those governed by statute. State and federal regulations covering A&E contracts are different than those covering Professional Service contracts in [Chapter 200](#).

The sections herein cover the various processes involved in A&E contract acquisition, amendment and closure, from determination of need for a contract to the distribution of the executed contracts to contract managers and area consultant liaisons (ACLs) for management and administration (see [Chapter 500](#)). Also included are Task Orders (see [Chapter 450](#)) which are acquired under Task Order Master Agreements usually through the Second Tier Competitive Selection process outlined in [Appendix Y](#).

This part of the manual covers the various methods of acquisition WSDOT uses for project specific A&E services including Task Orders under Task Order Master Agreements that are compliant with the requirements of [23 CFR 172](#):

- Competitive negotiation
- Small purchases (simplified acquisition)
- Noncompetitive negotiations
- Task orders
- Emergencies

Most of the contracts for A&E work will occur through the *competitive negotiation* process. Both project-specific contracts and Task Order Master contracts are procured under this process. See [Chapters 410](#) and [420](#) for procurement and negotiations. For the Task Order Second Tier procurement process under the Task Order Master Agreements, see [Appendix Y](#).

Small purchases (simplified acquisitions) retain open competition, but restrict the maximum amount of the contract awarded to the amount allowed in [41 USC 403\(11\)](#). It also streamlines the solicitation/selection process to provide efficiency in these smaller work efforts.

Smaller project-specific contracts and Task Order contracts may both be awarded using the simplified acquisition process, provided the dollar caps and any other restrictions are maintained. The differences between the competitive negotiation process and the simplified acquisition process and the selection processes are covered in [Chapter 410](#).

Noncompetitive negotiations are covered in Chapters [440](#) and [600](#) for those circumstances when noncompetitive negotiations and emergencies cannot be avoided.

400.02 Additional Approvals and Concurrence

There are a number of circumstances that require concurrence or additional approval from sources outside the normal processing by the CSO and the WSDOT approval chain. The ACL and project personnel need to be aware of these circumstances because they usually involve at least partial funding sources. Funding from federal sources may be part of a project indirectly, through another state or local agency who are the recipients of the funds. It is the responsibility of the Project Office to inform the ACL and CSO if funds for the project are federal (and from which USDOT agency) but not awarded to WSDOT directly.

Approvals include:

1. **FHWA, 23 USC 106(h):** Specifies that recipients of federal-aid highway funds get FHWA approval of design contracts (and any modifications or supplements) for projects that are defined as “Major Projects.”
2. **Other USDOT Resources:** Similar approvals (to FHWA) may be required where funding sources are from other agencies, such as the Federal Aviation Administration, Federal Rail Authority, or Federal Transit Authority.
3. **Office of Equal Opportunity (OEO):** The OEO’s concurrence is required for all contracts and supplements to determine goals establishment and/or changes. This includes task order documents issued on Task Order Master agreements.

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When the Project Office determines that there is a need for a consultant on a project, the responsible requesting manager (the requester) needs to contact the appropriate Area Consultant Liaison (ACL) and the WSDOT HQ Consultant Services Office (CSO) as soon as possible. The process for selecting the consultant, and for handling the contractual issues that follow, is the responsibility of the CSO.

The following sections describe the steps involved in the acquisition of consultant contracts, including Project Specific Agreements, Master Task Order Agreements, and Simplified Acquisitions, using a competitive process. The steps necessary to assign work under existing master Task Order agreements will involve the Second Tier Competition Process between firms holding those types of contracts. (The Second Tier process is discussed in [Section 410.02.04](#) below with details in [Appendix Y](#).) The simplified acquisition process is in [Section 410.04](#), below. For non-competitive processes, including sole source and emergency contracts, see Chapters [440](#) and [600](#) respectively. For application and determination of DBE, SBE (federal or state), MBE, WBE or Veteran Business Enterprise goals, refer to [Chapter 700](#).

410.01.02 Legal Basis for Consultant Acquisition

410.01.02.01 A&E Federal Regulations for Consultant Acquisition

The Brooks Act, as codified in 40 USC 1101–1104, is the legal basis for consultant selection for A&E contracts when federal funds participate. This law separates professional services of an architectural and engineering nature from all other forms of contracting for goods and services at all levels of government.

In addition to the Brooks Act, other federal laws apply to state departments of transportation and their subrecipients that receive federal-aid highway funds. The regulations are as follows:

[48 CFR 31](#) *Cost factors for architecture-engineer services*

[49 CFR 18](#) *Common Grant Rule*

[49 CFR 18.36](#) *Issues regarding A&E consultant services*

23 USC 106 *Project approval and oversight*

23 USC 112 *Letting of contracts*

40 USC 1101–1104 *Policy (Brooks Act)* (see [Appendix C](#))

[23 CFR 172](#) *Administration of engineering and design related service contracts* (see [Appendix A](#))

[49 CFR 26](#) *Participation by disadvantaged business enterprises in department of transportation financial assistance programs*

410.01.02.02 Washington State Laws for A&E Consultant Acquisition

[Chapter 39.80 RCW](#), Contracts for architectural and engineering services, quotes the Brooks Act language as the basis for A&E contracting in the state of Washington and provides the basis for department policy on A&E contracting. Therefore, whether federal funds are participating or not, the requirements of the Brooks Act are to be met. The only exceptions are when an emergency exists as covered in [Chapter 600](#) or there is justification for sole source as covered in [Chapter 430](#).

As with the federal regulations related to A&E services, state law distinguishes architectural and engineering services from all other professional services contracting. This separate treatment is not only addressed as separate from Professional Services, but is also clearly separated from laws related to public works. For the full text of [Chapter 39.80 RCW](#), see [Appendix D](#).

For A&E contracting, this manual follows the federal regulations, as outlined above, in the requirements described in the chapter below and in subsequent chapters.

410.02 Request Memos

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Whenever a project manager determines that consultant services are required, and the need is for a single project agreement, one or more Task Order Master Agreements, or a small purchase contract, a request memo must be written and submitted to the HQ Consultant Services Office (CSO) as the first step. This memo provides the initial basis for the documentation of the process as a “audit trail”. The memo will be initiated by the project manager responsible for the agreement(s) and will need to pass through an approval process with the responsible funding manager, such as the regional Program Manager, Regional Administrator, or other designated person who can vouch for the need and the appropriate funds’ availability. The memo itself is designed to cover pertinent issues related to consultant selection.

State law prohibits anyone from committing the state to a potential financial obligation for which funds are not available, have not been appropriated, or are not yet authorized through appropriate channels in program management. There are penalties that could include fines and/or imprisonment for breaking this law.

410.02.02 Required Memo Items

The CSO maintains ownership of and responsibility for the formal request memo format. A copy of the formal request memo is available for download as a template from the CSO’s intranet website (wwwi.wsdot.wa.gov/consulting). The memo has a number of questions that need to be answered and requires the attachment of proposed statements of work, estimates of cost, materials to be shared during the advertisement, and other information pertinent to the selection of a consultant.

Pre-planning by the project office managing the project or Task Order masters is critical to obtaining the consultant services in a timely manner. Project managers or designated individuals responsible for preparing the request memo should meet with their appropriate ACL as early as possible to discuss the work for which a consultant is going to be needed. It is important for project managers to keep in mind that the selection process can take from three weeks to four months or more, depending on

workloads at the CSO, the complexity of the proposed work, the type of agreement needed, and the level of involvement by the project personnel. Potential involvement by outside entities like Sound Transit, ports, or cities can further lengthen the process.

As part of the request memo, the project office must include a draft scope of work that details as much as possible the extent of the services that will be required of the consultant during the entire project. In addition, the project office must include a draft estimate of cost of both the consultant services, and the internal staff time expected to provide guidance or services (including WSDOT resources from other sections of WSDOT, such as Environmental Services or Real Estate Services) for the project.

Because time is a factor, it is critical to the process that the following be addressed in the memo:

- The appropriate ACL.
- The point of contact for the project.
- The start date when a consultant is needed.
- Budget and funding source(s). All requests for consultant services, whether federally or state funded or combined funding, will be reviewed for the assignment of either Disadvantaged Business Enterprise (DBE) or Small Business Enterprise (federal SBE) goals (federal funds) or Minority, Small (state SBE), Veteran and Women Owned Business (MSVWBE) goals. Federal SBE and state MSVWBE goals are voluntary.
- Duration of the anticipated work.
- Official project title.
- Documentation, including a list of the attempts and/or contacts made, verifying that no WSDOT or other public resources are available to perform the services.
- Charge codes to pay for ads.
- Boundaries of the project or limits of the work; for this element, any reports and concept plans, maps and photos are helpful to include with the advertisement.
- Attached draft scope of work and the state's independent estimate.

Unanswered or unexplained items may delay the process.

After the request memo is received by the CSO, it is logged in and sent to the assistant manager for review and recommendation for approval. Any questions regarding the request will most likely occur at this point. Upon recommendation for approval, the request memo will go to the CSO manager for approval.

Additional items that will need to be determined include:

- The main emphasis of the consultant involvement in the project (full project or specific work).
- Key scoring factors (for example, key personnel experience and/or project manager experience).
- Any incentives or disincentives that might be included.
- Anticipation of short list interviews and additional evaluation factors to use for interviews.
- Scoring panel and interview panel make-up.

- If the project is federally funded, what coordination with the Assistant Secretary, Engineering and Regional Operations Chief Engineer and the Federal Highway Administration (FHWA) or other federal agency funding the project is required.
- If the total project is anticipated to exceed \$500,000,000, coordination is required with the Assistant Secretary, Engineering and Regional Operations Chief Engineer and FHWA (see [Section 410.02.06](#)).
- Other factors that could affect the outcome.

The CSO will assign the type of agreement (see Contract Types in [Appendix I](#)) to be used for the project specific agreements. As part of the process, the CSO will consider input from the requesting office and the appropriate ACL. In addition, the DBE, SBE, or MSVWBE goals will be assigned based on the scope and type of funding.

410.02.03 Task Order Master Agreements Request Memos

In most cases where consultants are needed to provide work efforts in specific categories of work, a category-specific competitive selection process to establish one or more Task Order Master Agreements in a specific category of work can be used. Category-specific project support solicitation and selection can be used for different elements of projects, especially when specialized State forces are not available.

Category-Specific agreements are requested and advertised in a similar fashion to the project specific agreements noted above, and could be specific to a region, or statewide. Request memos will cover the same items as required by project specific request memos, outlining the need for a selection of consultants able to provide the specific services over a maximum of five years to support the WSDOT program. These request memos are developed by the ACL or CSO manager for the specific types of agreements. Funding for master agreements is not an issue, though the maximum amount for the master agreements must be noted in the request. A general scope of work for the items expected to be covered by the Master Task Order Agreement is required to be presented with the request memo, and considerations noted in the project specific memo section may be requested of the initiator of the category-specific master agreements.

For larger projects which will use a project specific Task Order Agreement, or to establish regional or divisional Master Task Order Agreements, a formal request memo from the region or division is needed by the CSO. Under certain circumstances, if the CSO manager determines there is a statewide need for a particular category, the CSO manager may generate the request memo and submit it to the WSDOT Assistant Secretary Engineering and Regional Operations Chief Engineer for approval.

410.02.04 Task Order Request Procedures

For smaller efforts (short-term, category-specific, or small design efforts), or immediate efforts where time is short and the work may be category-specific, consideration should be given to either task orders or letting small contracts in accordance with the WSDOT plan for encouraging small business participation. It is assumed that, to obtain a task order, the Master Agreements for that category of services needed are already established and active, and a list of firms is posted showing which firms are available.

For task orders, [Appendix Y](#) covers the Second Tier Competition Process which is required for most task orders. The main exception is a Project Specific Master Task

Order Agreement with a single competitively selected consultant team, which is used to manage work for only one project or corridor.

One or more Master Task Order Agreements must exist to use the Second Tier Selection Process to obtain a task. For services needed that are short term and in a specific category, such as surveying or geotechnical, then a statewide Task Order contract may exist from which the services can be obtained. The project office will need to coordinate with the contract manager responsible for the particular type of Task Orders needed. That contract manager will want a request based on a format they have developed. If the CSO manages the Task Order contracts, a request in the form of an email with details regarding scope, state's estimate, and services sought to the CSO manager. It is recommended that the project office coordinate these requests with their ACL as well as with the specific contract manager. The appropriate ACL or division support office will know what is available, and will be able to manage the appropriate process, including the Second Tier Competition process ([Appendix Y](#)), for obtaining a task order.

It is noted that DBE, SBE, or MSVWBE goals may be set on specific task orders, so funding source(s) will be a required item in the request document, and a determination will be made prior to the start of the Second Tier process.

With the exception of the project-specific Master Task Order Agreement tasks, the total amount of the project elements on a task cannot exceed the amount established for the particular type of on-call service. For the general engineering lists, the tasks on the list with an allowance of \$500,000 are not to exceed \$150,000. For the statewide on call lists, the tasks on the list with an allowance of \$5,000,000 or more cannot exceed \$1,500,000. Other lists have maximum task amounts between this range. If a task or multiple tasks on a project are expected, in total, to exceed the list threshold, or \$1,500,000, whichever applies, the project office must advertise for a project specific agreement.

410.02.05 Small Purchase Request Procedures

For all small purchase acquisitions, a request memo that specifies the small purchase, simplified acquisition process is required. The request should certify that the simplified acquisition threshold, currently \$150,000, will not be exceeded. The total amount of the threshold includes all small purchase agreements for a specific project, whether with one firm or multiple firms. Thus, if a project office needs surveying, geotechnical and biological work, and wants to use the small purchase process, all agreements together for the project cannot exceed the simplified acquisition threshold. The memo must provide a draft scope of work and a detailed engineer's estimate, prepared by the State, that demonstrates how the small purchase threshold is not exceeded by the work requested. The small purchase consultant will be competitively selected utilizing a process established by the CSO as outlined in [Section 410.04](#).

410.02.06 Federal Highway Administration (FHWA) Approval

The project manager and the ACL are responsible for providing additional information to the CSO if the project is part of, or impacts, the Interstate System, or if the project is not on the Interstate System but is on the National Highway System (NHS) and the anticipated total cost of the project exceeds \$500,000,000. In these instances, approval by FHWA is required before a consultant contract can be awarded. Details of these requirements are found in [23 CFR 172.7](#) and 23 USC 106 (c) and (h). The CSO manager will coordinate with the Assistant Secretary, Engineering, and Regional Operations Chief Engineer in obtaining approvals from FHWA.

410.03 Solicitation/Selection Processes – Advertised Agreements

For A&E contracts, the solicitation process is a qualifications based process designed to select the best qualified firm(s). All information provided below applies to A&E contracting. Professional Services (non-A&E) processes are covered in [Chapter 200](#).

The solicitation for consultant Statements of Qualifications (SOQs) specific to a project is critical to the success of the project, and must meet the requirements of state policy. While some areas of an SOQ can be covered by a set criteria group that is used for every solicitation, solicitations for a specific project need to address the full spectrum of services that might be needed in a single contract. For category-specific work, the solicitation would need to address entirely different issues specific to that category for work deliverables.

It is WSDOT policy to not request or accept sealed bids in the solicitation process.

Information below includes the process for several types of solicitations, including single project and category specific acquisitions. The simplified acquisition process for small purchases are covered in [Section 410.04](#).

Note: All processes related to the RFQs for A&E projects and Professional Services at WSDOT are the responsibility of the CSO. No other groups within WSDOT will publish the RFQ or additional information related to the RFQ without the direct permission of the CSO manager. This includes processes prior to official publication of the announcement, concurrently with the announcement, or subsequent to the announcement.

410.03.01 Pre-solicitation Meeting

After the request memo has been approved, notification will go back to the requester and the appropriate ACL. If this is a request for project-specific, category-specific, or Second Tier competitive selection, the CSO may start the process to develop the solicitation by scheduling a pre-solicitation meeting.

If applicable, the pre-solicitation meeting will be scheduled to include the requester or project team, the ACL, a member of the Office of Equal Opportunity, and the CSO as soon as possible after approval of the request memo.

The purpose of the pre-solicitation meeting is to discuss with the CSO manager the important aspects of developing the selection criteria and scoring factors, potential selection of committee/panel members, and DBE and/or SBE goal requirements, if appropriate. The discussion will include the option for interviews, potential interview

board members, and what interviews may cover. The CSO will develop the selection criteria and solicitation based on the input from this meeting.

410.03.02 Standard Solicitation Process and Selection

The process outlined below covers the competitive selection of single project and category-specific agreements. Non-competitive and emergency contracts are covered in Chapters 440 and 600. Small purchases under the competitive simplified acquisitions procedures are outlined in Section 410.04.

Notes Regarding Fair and Impartial Treatment

State and federal regulations require that all consultants be treated fairly and impartially. The same regulations require a contracting entity to provide information to all potential responders that may materially affect the responses to the RFQ. If firms ask questions about projects that the consultant may respond to in future solicitation(s), care must be taken regarding the responses.

Prior to the formal announcement, it is quite common for firms to contact WSDOT personnel seeking information on upcoming work. Any information project personnel may have that is not readily available to all potential responding firms shall not be distributed. All inquiries shall be referred to the CSO manager.

After the announcement, no consultant may contact project personnel about the project. If such contact is made, it may result in disqualification. The CSO will publish the requirements regarding questions as part of the RFQ. The one exception is an organized pre-submittal meeting where all interested firms may ask questions regarding the project during the formal presentations and the Q&A session. Questions asked during the session and the answers given will be captured during the session and posted on the CSO's public website (www.wsdot.wa.gov/business/consulting), with the solicitation materials available to all firms.

Any questions during the advertisement period outside the formal pre-submittal meeting are to be directed to the CSO. Answers, if deemed necessary to the potential responses, will be posted on the CSO's public website with the other RFQ material.

410.03.02.01 Develop and Publish Solicitation

Both [23 CFR 172.7](#) and [RCW 39.80.010](#) require governmental agencies to publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualifications for the type of professional services required.

In order to meet these requirements, the solicitation has to be specific to the type of services being sought. Therefore, the scoring criteria must address the type of services needed. To determine the services needed requires the development of a draft scope of work that outlines the expected services the consultant is to provide. In addition, a draft budget for the consultant services needs to be developed along with the draft scope. The draft scope and draft budget must be done as part of the Request Memo process and submitted prior to determining the criteria by which the consultant team will be selected.

As part of the solicitation, for all types of advertisements, but especially important for single project solicitations, the CSO, ACL and project office will develop an introductory summary of the type of work expected of the consultant(s) selected, using the draft scope as a basis for this summary.

Certain criteria categories have been established by the state based on past practice for all solicitations, including Qualifications and Expertise of the Firms on the team, Qualifications of the Proposed Project Manager, Key Team Member Qualifications (prime and subconsultants), Firm's Project Management System (prime) and References/Past Performances (prime). Each of the sub-criteria under these categories can be made specific to the project or category of the solicitation, and should be revisited for each planned advertisement process. For project specific solicitations, a final category, Project Delivery Approach, is also developed to allow the consultant to provide their understanding of the project.

Each of the criteria for selection (except for References/Past Performances) is scored. Scores do not have to be the same for all criteria. The specific criteria scores and thus the total scores for a particular solicitation are designed to emphasize how critical particular criteria are to the final consultant team selection.

Category-specific advertisements to establish a list of consultants qualified to provide services on Task Order Agreements will use similar criteria to the project specific advertisements, with the exception that the Project Delivery Approach category is eliminated. Criteria for a category-specific set of agreements needs to be developed such that the consultants can provide specific information about their qualifications to provide the various services needed in that category.

References/Past performance evaluations are required as part of the solicitation process, but are not scored. Should the evaluations indicate a particular prime is not qualified to do the work within a proposal, the proposal will be eliminated from further consideration.

For Second Tier selections the process will be similar to the above outline for project specific solicitations, with the differences being that the criteria is very specific to the project and the consultants have already been awarded contracts based on qualifications in their category. The approach to the Second Tier Selection Process is in [Appendix Y](#).

Any informational documents, flow charts, data, preliminary reports, or other materials that may be necessary to the proposal process should be provided to the CSO at this meeting, along with a discussion of the materials' applicability to the consultants' submittals. Some of these materials may be posed with the solicitation if deemed necessary to aid the consultants in providing their best proposals.

410.03.02.02 Project Announcement

[RCW 39.26.120](#) and [39.80.030](#) states that each agency shall publish in advance that agency's requirement for Professional Services and A&E services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by (1) publishing an announcement on each occasion when the Professional Services or A&E of a

consultant are required by the agency, or (2) announcing generally to the public its projected requirements for any category or type of Professional Services or A&E services.

For project-specific solicitations, WSDOT, through the CSO, publishes the announcement on each occasion when services of a consultant is needed. For Task Order Master Agreements, the announcement is general and covers the projected requirements for any type or category for which the services are anticipated to be needed.

The full solicitation will be posted on the CSO's website and will provide a complete description of the project or work effort being announced. Included will be a description of the selection process and the scoring criteria, turn-in dates, pre-proposal meetings, proposal formats, and expected additions or exceptions to the contract, if any. Also included are any files containing project information along with all pertinent information on the project boundaries/limits; deliverables; time of anticipated notice to proceed; duration of the work effort; synopsis of the statement of work; Disadvantaged Business Enterprise (DBE), Small Business Enterprise (SBE either federal or state), Minority Business Enterprise (MBE), Veteran Business Enterprise and/or Women Business Enterprise (WBE) goal requirements; whether or not a short list will be created with secondary interviews; and any other information necessary for firms to make complete proposals.

Each solicitation will also be advertised in the *Seattle Daily Journal of Commerce* and/or other appropriate media that provides the broadest coverage reasonably possible, in synopsis form, with a link to the solicitation on the CSO's website. Additional information will be provided in this ad as to how those who do not have access to the Internet or those who have alternative needs may receive the full solicitation.

Smaller projects and category-specific announcements may be open for as little as three (3) weeks, while larger projects may have announcements open for up to eight (8) weeks. Projects that anticipate services in multi-millions of dollars (such as GEC contracts) may need to be advertised nationally, with longer lead times, and longer open periods.

For all advertisements, consideration must be given to limit what may cause difficulty for those scoring the proposals, as well as the cost to the consultant to develop the proposal. Areas to consider include document size, page count, font size, graphics, tables and other items. If not limited, the solicitation may inadvertently eliminate smaller firms that would have responded if the costs and other requirements to provide a proposal were less.

Note: Prior to advertising for consultant services in a management support role, where the consultant selected would manage WSDOT or a mix of WSDOT and consultant staff, and the funding includes FHWA or other federal funds, the WSDOT shall obtain permission from FHWA or other federal agency to use federal funds to pay for these services. Reasons for the WSDOT to use consultant managers in place of WSDOT employees include large projects for which sufficient WSDOT managerial staff are not available and/or the WSDOT cannot increase staff to cover these services and/or the WSDOT technical expertise is not available.

410.03.02.03 Solicitation Responses

All solicitations will have a designated turn-in time and date for responses. All responses to an advertisement are requested in PDF format sent to the CSO via email to a specific CSO address. Alternate methods of response will be published in the advertisement as needed.

All responses to RFQs shall be received by CSO personnel. Instructions in the announcement should specify that the CSO is to receive SOQs. Submittals arriving after the stated time and date will be considered nonresponsive (see the specific ad for more details). All materials received that are not in the proper format, as published in the announcement, will be considered nonresponsive. Exceptions will be made where necessary to comply with the Americans with Disabilities Act (ADA) and/or DBE, SBE (federal), MBE, SBE (state), VBE, or WBE requirements.

No restrictions as to media and format of submittal packages are to be made by the project or the CSO that would unfairly restrict any group of responders based on ethnicity or gender.

410.03.02.04 Log Received Submittals

The CSO will maintain a log of all submittals received. After logging submittals received, CSO personnel will review submittals for timeliness and completeness. If there is a closing date and time on an advertisement, then all submittals will be time-stamped and logged. Submittals received after published turn-in deadlines are considered nonresponsive and the submitting firm is to be notified. This should be done as soon as possible: first by phone call, then with a follow-up letter.

A general review of the submittals will be done to ensure all requested forms, files, data discs, and/or Statements of Qualifications are included. If something is missing that was requested as part of the solicitation, the firm will be notified immediately (preferably by phone) that a required item is missing. They will also be informed that they are now considered nonresponsive and will not be considered further under this solicitation.

410.03.02.05 Scoring Submittals

The CSO is responsible for determining the evaluation/selection board(s) appropriate to the solicitation. Possible methods for selecting the evaluation board members is in [Appendix U](#). The CSO will catalog all responses and prepare and distribute all materials to the scoring team, along with uniformly formatted scoring sheets and scoring instructions. All score sheets will be returned to the CSO.

The CSO will finalize the total scores for the consultants proposing on a solicitation by combining the scores received from the evaluation board members chosen to review the proposals which are received for that solicitation. From these total scores, the CSO will develop a ranked list of the firms. For single project solicitations, if several firms score close together on the final ranked list, the top firms may be invited to an interview. See [Section 410.03.02.08](#).

The CSO or its representative involved with the solicitation will verify that the consultants who have responded to the advertisement are not suspended or debarred and are actually eligible to contract with the WSDOT as specified in [2 CFR 1200](#) and [2 CFR 180](#). The WSDOT will use the federal System for Award Management (SAM) database to determine whether a consultant is suspended or debarred.

At times, the selection process identifies a firm whose qualifications for a project far exceed those of the other firms proposing. In this case, a request may be made by the project office through the ACL to CSO to select the top scoring firm without interview. If this request is approved by the CSO, then the process continues with negotiations, and the interview stage is skipped. Should the negotiations with this firm fail to come to a “fair and reasonable” price, the CSO and ACL will determine whether to negotiate with the second highest scoring firm or re-solicit for the services.

For category specific solicitations, the ACL in charge of the category together with the CSO will determine how many of the ranked list of firms will be awarded contracts.

410.03.02.06 Short-Listing

There are two notifications to be made after the CSO manager has approved the recommendations of the evaluation/selection board regarding the short-listing of firms. The first notification is to those firms no longer under consideration for interviews. The second notification is to those on the short list regarding interviews and the process that will follow.

- For firms no longer under consideration, notification will be in writing from the CSO manager explaining that they were not among the top firms still under consideration. The firms’ options for debriefing should be spelled out in the letter, as there are different processes involved if they request a debriefing (see [Section 410.03.02.09](#) and [Appendix K](#)) prior to final selection and agreement execution.
- The firms on the short list for interviews will be contacted by phone, with written follow-up (email or letter). Because the time frames may be short, every effort should be made to speak with the firms’ designated contacts. If schedules and other pertinent data are not yet available, the firms are to be made aware of the anticipated timing, the person who will be in contact from the selection board, what process will be followed, and any other process-related details the firms will need.

410.03.02.07 Interview Process

If, for a single project solicitation the CSO, along with the ACL and the project office, determine that interviews need to be conducted with the top-ranked firms, they shall be scheduled to be held as soon after the proposals are scored as possible. Therefore, prior to soliciting proposals, either under advertising or Second Tier, the important selection factors and the method of scoring the interviews should be developed along with scheduling any conference rooms needed if the interviews are face to face or by telephone conference call. The questions and scoring factors can include soliciting information that may have been provided in the proposals, but using a different angle, along with additional questions specifically related to the anticipated work. The questions used in the interview process may be modified after the proposals have been scored and prior to the interviews to better focus them, if needed.

The interview panel should also be discussed and the interviewers nominated prior to advertising the project. The final selection of the scorers and the interview panel will be determined by the CSO. The proposal scoring team and the interview panel members' names will not be provided to the consultants, and both the proposal scoring team and the interview panel members along with any observers will be required to sign the Evaluator Conflict of Interest and Confidentiality Statement ([Appendix AB](#)).

The selection board will meet with each firm scheduled for an interview based on the short list approved by the CSO manager. ([Appendix U](#) provides details regarding how interviews are conducted.) Upon completion of the interviews, the selection board will deliberate, document the ranked selections, and make the final recommendation to the CSO manager.

After the selection board has finished the selection process, made its recommendations to the CSO manager, and the manager has accepted the recommendations for the top three firms, notifications will be made in writing (email and letter) to the remaining firms regarding the outcome. The firms' options for debriefing will be spelled out in the letter, as debriefing will not be done prior to completion of the negotiation process and contract execution.

Notifications by phone and follow-up letters will be made to the top firms, including an explanation of the process to be used for negotiation and contract award (see [Appendix K](#)). In addition, the project and lead negotiator (contract officer) will be notified of the selections and provided with the necessary data and information for the scoping and/or negotiation process.

410.03.02.08 Notification of Top-Ranking Firms

Whether or not an interview is required to select the consultant team for a specific project, or whether the ranked consultants are short listed for a Task Order Master Agreement list, the top-rated firm or firms will be notified of their ranking and the method of negotiation to be used based on the solicitation. For a single project agreement, if the state has a detailed statement of work (SOW), it should be submitted to the firm asking the firm to prepare and submit its proposal. A reasonable amount of time needs to be allowed for the top-ranked team to prepare its response to this request. Should no more discussion be necessary, the state and consultant will proceed to negotiate the cost of the agreement. For this process, see [Chapter 420](#).

If the state intends to develop and/or discuss the SOW with the top-rated firm using the Managing Project Delivery (MPD) process (see [Appendix N](#)), the notification will address the process and establish the time and location for the initial meeting. Any further data required needs to be requested at this time.

Note: Under the Brooks Act regulations, the selection process is open through the negotiation process and until a contract is awarded. The top three consultants are considered selected going into negotiations, with negotiations beginning with the top-rated consultant. In the event that the consultant and the state are unable to reach a determination of "fair and reasonable" costs (see [Appendix L](#)), negotiations are terminated with the top firm and started with the next-ranked firm. Refer to [Chapter 420](#) for details on the negotiation process.

410.03.02.09 Announce and Debrief

After the execution of the contract(s), the CSO will publicly announce the contract award(s). Notice will also be sent to each firm that submitted a statement of qualifications in response to the solicitation. The notice will identify the firm(s) that received a contract and a description of the process they must follow if they wish to be debriefed.

Debriefings are offered to consultants after a selection process to provide them information regarding any apparent weaknesses or shortfalls in the process. In addition, debriefings provide consultants the opportunity to assure themselves that the criteria published in the solicitation or used during the interviews was the basis of the final decision and learn how they might improve for future solicitations. Debriefings will be offered to consultants after the final selection has occurred, and may be provided in writing, by phone, or in person. See [Appendix K](#) for details on notification, debriefing and disclosure of consultant information.

410.04 Small Purchases Using Simplified Acquisition

410.04.01 Introduction

As stated in the introduction ([Section 400.01](#)), [23 CFR 172](#) specifies three methods that state departments of transportation can use for competitively acquiring consultant services. One of the methods uses a simplified acquisition for small purchase contracts.

The CSO manager is responsible for generating requests for Statements of Qualifications and requests for statements of interest in small purchase contracting, which are announced separately from the specific project solicitations. Details regarding these solicitations can be found in [Section 410.04.02](#) and [Appendix J](#) (databases).

The small purchase acquisition process is provided as a faster, less costly alternative to the standard solicitation process when the anticipated overall costs of the services are less than the simplified acquisition threshold, currently set at \$150,000 as defined under [48 CFR 2.101](#). It is WSDOT's intent that when this occurs, the small purchase process will provide a mechanism for smaller or more specialized firms to compete with firms of similar size and/or specialized focus, in a manner that is cost-efficient for both the competing firms and WSDOT.

The following are requirements for small purchase contracts:

- The total contract, including supplements and changes, cannot exceed the simplified acquisition threshold as specified in [48 CFR 2.101](#).
- Public solicitations will occur for firms to express their interest in being considered for small purchase contracts.
- Firms' data, qualifications, past performance, and interest in small purchase contracts will be maintained in the WSDOT Consultant Services Office database.
- There must be a sufficient number of firms qualified and capable of performing the contracted services to provide adequate competition, as attested to by the WSDOT Assistant Secretary Engineering and Regional Operations Chief Engineer.
- At least three consultant firms must be reviewed for any simplified acquisition process, per [23 CFR 172.7\(a\)\(1\)](#).

- Under most circumstances, the consultant will not hold more than one small purchase contract at any given time. However, an exception may be made for the consultant to hold more than one small purchase contract at a time if the aggregate of the contracts together do not and will not exceed the simplified acquisition threshold. The CSO manager will determine if any consultant can hold more than one small purchase contract at a time.
- No consultant will receive, or be considered for, follow-on or additional contracts for work related to the project on which they have previously received a small purchase contract (for example, next-phase services).
- Projects or category-specific work will not be broken into smaller sizes simply to avoid the full solicitation process. Multiple small purchase contracts with different firms for different pieces on the same project may not be used to avoid the full solicitation process.

410.04.02 Selection Process

As noted, most contracting with the state utilizes the single project or task order procedures noted above, or for sole source and emergency needs, the processes noted in Chapters 440 and 600 respectively. Section J.3 describes the process for consultants to provide their statements of interest in working on small contracts, if the WSDOT decides to advertise for such statements and develop a database. The CSO is responsible for maintaining this consultant database. Should a project office require a simplified acquisition process, the project office must contact the ACL and CSO for direction.

Project personnel who wish to utilize the simplified acquisition, small purchase process will work with their appropriate ACL to prepare a request memo specifying “small purchase.” The CSO manager will review the number of firms in the database that have expressed interest in small purchase contracting for the type of services being requested and will provide that information to the WSDOT Assistant Secretary Engineering and Regional Operations Chief Engineer. The Chief Engineer will determine whether sufficient competition exists.

If the Assistant Secretary of Engineering and Regional Operations Chief Engineer determines that there is not sufficient competition (a minimum of three or more potentially qualified firms from one or more lists), then the full project-specific or category-specific solicitation process will need to be implemented.

Upon approval of the small purchase request, the project manager (or designee), the ACL, and the CSO manager (or designee) will meet to determine the selection criteria, develop the selection board, and outline the selection process, including determining DBE goals, if needed. After the selection process and criteria determinations have been made, the list of firms, with their qualifications and the selection criteria, will be forwarded to the person designated as the selection process board chair.

Under the simplified acquisition, small purchase process, there are two options for board evaluation and selection.

Option 1 – A list of the firms considered to be qualified is presented to the chair of the selection board. The board then evaluates project details, the firms’ Statements of Qualifications, past performance information, and project-specific criteria. The board conducts interviews as appropriate and selects the top three firms. The board makes its final report and submits the top three firms in order of preference to the CSO manager. The selection report is accepted as final and negotiations begin with the top-rated firm, following the process to contract award.

Option 2 – If the selection board determines that a full selection board is not required to make the selection, then the selection board chair is authorized to make the decision, ranking of the three top firms, preparing the selection report, and submitting it to the CSO manager. The selection report is accepted as final and negotiations begin with the top-rated firm, following the process to contract award.

Note: To ensure the correct dollar threshold is used for simplified acquisition (small purchase) under federal guidelines, it is recommended that, prior to starting the selection process, the CSO manager, the project manager or the ACL check the current dollar cap which is defined in [48 CFR 2.101](#).

420.01 Cost Proposal and Statement of Work Negotiations

After the selection of the top-ranked firm(s), the process of finalizing the detailed Statement of Work (SOW) and the anticipated cost enters the negotiation phase. Depending on the method of SOW development presented in the solicitation announcement, the CSO manager will submit to the top-ranked firm either a Request for Proposal (RFP) or a proposed schedule for the Managing Project Delivery (MPD) process.

420.01.01 Request for Proposal

420.01.01.01 Project-Specific Contracts

If WSDOT is not going to use the MPD process for detailed SOW development, then a concise project description or synopsis SOW is published in the solicitation. The CSO manager submits a formal notice to the top-ranked firm and requests a full proposal from the firm, to include:

- A more detailed statement of work.
- A detailed cost proposal for the firm and any proposed subconsultants covering labor rates, overhead, non-labor expenses, and proposed profit (fee).
- A proposed schedule listing appropriate mileposts.
- A Disadvantages Business Enterprise, Small Business Enterprise, or Minority/Women/Veteran Business Enterprise plan based on the requirements of the solicitation. (See [Chapter 700](#) for specifics on requirements.)
- Any other pertinent data necessary to the negotiations.

Refer to [Section N.1.3](#) for additional details regarding the negotiation process for project-specific contracts which do not use the MPD process.

420.01.01.02 Master Task Order/Category Specific Contracts

For Master Task Order agreements used for category-specific on call services, the CSO will develop the general statement of work that will govern the boundaries of the category of work covered, the maximum amount of the contract, the end date, and other terms that govern the overall scope of the contract. The CSO will also negotiate the cost factors, expenses, and profit for the overall life of the contract and be responsible for negotiating any changes to these items through the life of the contract.

Work authorized under Master Task Order contracts will be done through task order documents (TODs), if appropriate to the agreement type (see [Chapter 450](#)). Selection of the consultant to do a project on a task order, unless specific permission is given by CSO for a sole sourced task order, will require a Second Tier Competition Process (see [Appendix Y](#)). Items of work proposed for the task order contracts must be competed between at least several of the on call agreement holders in the specific category (per specifications in [Appendix Y](#)). It is recommended that all firms on a list of agreement holders be requested to participate in the competition. However, all task order master

contracts have a maximum amount allowed for a specific project task order, and the project office and ACL involved must scope and estimate the full project amount to select the right list and to determine if the project can be accommodated on a task order rather than making the work a project specific agreement through the regular advertisement and selection processes. All Second Tier Competitive Processes are coordinated with the CSO prior to contacting the consultants.

After selection of the consultant, negotiations for each TOD, or an amendment to a TOD, will follow the same steps listed above for project-specific contracts, if the MPD process is not used to develop the TOD statement of work. For TOD negotiations using the MPD process, see [Section 420.01.02](#).

For more information on category-specific contracts, see [Appendix I](#).

For more information on TODs, see [Chapter 450](#). For more information on Second Tier Competition Process, see [Appendix Y](#).

420.01.02 Statement of Work and Budget Negotiations Using the MPD Process

The statement of work (SOW) is the narrative description of the work to be done by the consultant. It describes in detail what each party understands about the services to be provided for which the state will pay.

Experience has shown that for larger, more complex projects or items of work, there are significant benefits to both the consultant and the state when the SOW is developed jointly. The process used for developing the SOW through a joint effort is known as Managing Project Delivery (MPD). (A full explanation of the MPD process and the steps involved in its use are provided in [Appendix N](#).)

Generally, Master Task Order contracts are limited in total project amounts, including all amendments, allowed per task order (which varies with each type of category-specific list), and cannot be used where high cost large or complex and multiple major work items are expected. For these, project-specific contracts should be used.

Nothing precludes WSDOT from using the MPD process on specific work authorizations under category-specific agreements as long as the process anticipated is announced as part of the solicitation process among the contract holders.

The appropriate ACL or a representative of the CSO manager will lead the MPD process, with support from the project personnel. A meeting is to be held between the project, the CSO, and the ACL prior to the first meeting with the consultant to establish the goals and expectations of the state.

420.02 Contract Execution and Notice to Proceed

After negotiations between the WSDOT and the consultant reach agreement and an award has been made, notifications will be sent to the submitting firms regarding the award. The award information included in the notification will include the contract amount, the name of the firm awarded the contract, and information regarding debriefing, if not already provided.

420.02.01 Final Submittals and Contract Assembly

For project-specific agreements, after the negotiations are complete, the ACL submits to the CSO:

- The completed SOW and the contract estimate of cost.
- The negotiation notes and any explanations regarding variances to the original engineer's estimate of cost that are more than 10% over or under.

The CSO reviews the final documents and, if found acceptable, requests that the consultant submit any other required material not already received. The CSO then proceeds with the assembly of the contract.

Final documents needed from the consultant include the most current approved overhead rates for all firms on the consultant team from the WSDOT Internal Audit Office or the firm's cognizant agency (see definition in [Chapter 140](#)); subconsultant information, including Disadvantaged Business Enterprise/Small Business Enterprise certifications; Washington State universal business identification number; System for Award Management (SAM) Excluded Parties Record search results for the prime and all subs on the contract; and federal employer identification number for prime and subs. Statewide Vendor Numbers are required for the prime, and requested from the subconsultants.

For category-specific on call agreements, the CSO manager will require the prime consultant to provide Actual Not to Exceed rates tables for the prime and all subconsultants based on the most current approved overhead rates for all firms and negotiated fee percentage, plus all additional information as outlined in the paragraph above.

420.02.02 Obtain Appropriate Signature

Upon completion of contract document assembly and receipt of necessary documentation, the CSO sends the original documents to the consultant for review and signature.

420.02.03 Contract Approval and Execution

After the consultant has approved and signed the original contract documents, they are returned to the CSO for execution by the state. The CSO manager signs all contracts and contract supplements.

If the document is a supplement to an existing agreement, it is then sent to the Washington State Attorney General's Office (AGO) for review and approval as to form, and returned to the CSO for final execution.

Task Order documents, including amendments, unless otherwise delegated, are also returned to the CSO for final execution.

420.02.04 Distribution and Notice to Proceed

After execution of the contract, contract supplement, or task order, the CSO sends one original to the appropriate ACL or requester for distribution to the consultant. The ACL will issue a notice to proceed (NTP), with a cover letter and the consultant's original agreement document. Copies of the document will be made to distribute to the

project office, the ACL files, the appropriate program management office and others as identified in the cover letter.

For Master Task Order contracts, the CSO distributes the contracts to the consultant firm and copies of the contracts to the appropriate ACL managing those contracts, if applicable.

There may be times when the project does not want to give a notice to proceed until a later date. When this is the case, the project should fully document to the CSO manager what date the consultant should anticipate a notice to proceed and the reasons for the delay.

There may be other times when the services of the consultant may be needed prior to the agreement being fully executed. The project should document to the CSO the details. A limited notice to proceed (LNTP) can be issued by the CSO manager, or designee, provided the negotiations are complete, the work authorized is based on the completed cost factors contained in the negotiations, and the consultant accepts the limited nature of the NTP.

The LNTP must spell out specific items of work that may begin, the limited dollar approval, and the limited time frame in anticipation of the full NTP. The discretion to issue a limited notice to proceed rests with the CSO manager.

420.02.05 Announce and Debrief

After the execution of the contract(s), the CSO will publicly announce the contract award(s). Notice will also be sent to each firm that submitted a statement of qualifications in response to the solicitation. The notice will identify the firm(s) that received a contract, the contract amount, and a description of the process they must follow if they wish to be debriefed.

[Appendix K](#) describes the notification and debriefing requirements in detail.

420.03 Legal Basis Regarding Contract Estimates

Federal regulations, in addressing the issue of government estimates for A&E contracts, specify that the contracting officer perform a detailed cost analysis in connection with each procurement action, including contract modifications. As a starting point, the contract officer should have an independent estimate made for the services required prior to receiving proposals, in accordance with [49 CFR 18.36\(f\)\(1&2\)](#).

[48 CFR 31.205-6\(b\)\(2\)](#) specifies the appropriate process and method for performing a qualified cost analysis based on the cost proposal of the firm with which negotiations are held.

Note: Contract officers and/or lead negotiators are encouraged to become familiar with the specifications in the above citations, as they address what determines “fair and reasonable pricing” to the government.

430.01 Introduction

Contract supplements occur as a result of a changed condition affecting the terms of the existing contract, and can be expected or unplanned. Any material change to the existing terms of a contract requires renegotiation of those terms and a detailed written supplement to the contract, regardless of whether the change includes changes to the agreement total dollar amount. Material changes can include additions or deletions of deliverables, different methods of delivery, shifts in type of work between consultant team members, the time required for delivery, as well as changes in cost or in personnel assigned to the work. Modifications can also impact Disadvantaged Business Enterprise (DBE), Small Business Enterprise (SBE) and Minority/Small/Veteran/ Women Business Enterprise goals and could potentially impact DBE, SBE, or MSVWBE participation. It is the responsibility of both the management team and the administrative team to have a unified change management plan in place that defines the processes involved. The plan must include the involvement of the designated area consultant liaison and, where necessary, the WSDOT HQ Consultant Services Office (CSO).

Supplements can be written and changes can be made only to the work within the scope of the original project as publicly described in the original solicitation. Where phased work is allowed, a supplement cannot be written to add subsequent phases of work to the contract unless those phases have specifically been covered in the original solicitation for subsequent inclusion in the contract. Work outside the parameters of the advertised project or synopsis descriptions cannot be added to the contract. For project-specific contracts, this means the project limits, both physically and categorically. Modifications that require a supplement need both documentation and justification, and they require approval from the HQ Consultant Services Office (CSO) prior to starting negotiations. In addition, all modifications to a contract with the exception of time modifications must have concurrence from the Office of Equal Opportunity.

430.02 Supplement Process

Contract supplements require approval from the CSO prior to starting negotiations. The process starts with a “request to supplement” provided on the proper request memo form. Types include memos requesting time only, as well as requests for various types of changes, and proper forms are available through the offices of the regional ACLs and HQ CSO. All changes and modifications to the contract must be done in writing. The area consultant liaison (ACL) will assist the project management team in writing the request memo.

The supplement process for time extensions requires a short memo explaining the need, and the time supplement form available through HQ CSO or the regional ACL. The process for obtaining signatures on this supplement include requesting the consultant to provide their signature on two originals, and the state executing the supplement on the two originals. One original will be returned to the consultant for their records.

For supplements which change the project conditions, such as adding new work, subtracting or shifting work, or other items, the supplement process after the request memo is approved may involve negotiations between the state and the consultant. Documents often attached to the supplement include a supplemental Statement of Work, a cost estimate for the prime consultant and each subconsultant affected by the change, and information related to the use of DBE, SBE (federal), MBE, SBE (state), VBE and/or WBE firms. Multiple documents may be needed to adequately detail the agreement for the change between the state and the consultant.

In cases where the supplement changes the total funding authorization, either by adding funds, subtracting funds, and/or shifting funds, the state project office and the consultant will need to provide independent estimates, and if necessary, will negotiate the final cost. Supplements to close agreements are suggested to ensure that both the consultant and the state have fulfilled the requirements agreed to in the agreement, the final invoices have been submitted and paid, and the agreement is able to close. This closure process also allows the project office to better manage their work order procedures.

All supplemental processes can use the Managing Project Delivery process if desired by the consultant and the state. If this process is used for a supplement, schedules need to be established as quickly as possible to prevent delay to the project and maintain the overall progress of the work effort already under way.

Supplements with funding changes of any kind, and/or which add or subtract firms, are required to be approved by the Assistant Attorney General for form prior to final execution by the state. Time in the schedule should be included for this process, which can take from two to four weeks.

After the final signatures have been added to any of the supplement types noted above, one original will be sent back to the consultant for their records. The HQ CSO will keep the state's original in their files. Copies will be provided to the accounting office, the project office, the appropriate program management office, and others as needed.

Chapter 440 *Acquisition of A&E Contracts Through Noncompetitive Negotiation*

440.01 Introduction

Federal regulations under [23 CFR 172](#) identifies three methods for obtaining the services of consultants for A&E work. These three include: competitive negotiation (qualifications-based selection) procurement, small purchases procurement for small dollar value contracts (falling under the definition of the simplified acquisition threshold), and noncompetitive procurement. Competitive negotiation and small purchase procurement are covered in [Chapter 410](#). FAR Subpart 6.3 covers policies and procedures for selecting consultants using other than full and open competition.

This chapter covers the process steps used by WSDOT for noncompetitive negotiation in the acquisition of architectural and engineering (A&E) consultant services in accord with the federal regulations. The circumstances under which the processes are used, also known as “sole source,” are described below, including emergency services, inadequate competition, and single sources. Note that while a brief description of emergency sole source acquisitions are outlined here, [Chapter 600](#) covers additional information for them, covering both A&E and personal services contracts that must be instituted immediately to protect public safety and/or public property.

It is noted that processes for scoping and negotiations for sole source agreements will follow the same procedures outlined for competitively selected agreements in [Chapter 420](#).

440.02 A&E Sole Source Justification and Procedures

440.02.01 *Noncompetitive Acquisitions – General Considerations*

FAR Part 6 governs acquisitions which normally are competitive, and under Subpart 6.3 covers those acquisitions done using other than full and open competition (non-competitive procurements). Non-competitive procurement may be used to procure engineering and design-related services on federal-aid participating contracts when specific conditions exist allowing solicitation and negotiations to take place with a single consultant. These conditions include that the procedures reflect applicable State and local laws and regulations in conformance to applicable Federal requirements, and the agency has established a process to determine when non-competitive procedures will be used. The award of a contract by non-competitive procedures can be done under the following limited circumstances:

1. The service is available from only a single source.
 - For the service to be available from only a single source requires that a firm be the only one that can provide the services.
2. There is an emergent situation that will not permit the time necessary to conduct competitive negotiations (see [Chapter 600](#)).
3. After solicitation of a number of sources, competition is determined to be inadequate.

440.02.02 Request Memo

For all sole source acquisitions, a request memo must be submitted to the CSO that addresses the existence of one of the above three circumstances and provides documentation to support the assertion. Contracting agencies shall submit justification and receive approval from the Federal Highway Administration (FHWA) prior to using this form of contracting. For the information needed in a request memo, and the data required for it, see [Section 410.02](#). ACLs need to be involved in the development of the memo, and the memo for sole source acquisitions must come from an appropriate executive level, such as a Regional Administrator or similar headquarters executive level.

After the request memo is received by the CSO, it will move to the CSO manager for review and recommendation for approval. If the memo is properly documented, the manager will meet with the contracting authority to obtain approval. With approval of the request, the contract process can begin. The proposed consultant will be notified and the scoping and negotiations process will go forward.

For obvious immediate emergency requests, see [Chapter 600](#). Where the emergency is less obvious, full justification and documentation should be covered in the request memo and any supporting documents attached. When this occurs, the appropriate executive-level authority will sign the memo.

440.02.03 Types of Noncompetitive Acquisitions

For the majority of WSDOT A&E work, there are a number of legitimate firms capable and willing to do whatever work the department needs. Usually, the issue is finding the most qualified firm at a fair and reasonable cost. WSDOT has a legally prescribed processes for making that determination through open competition.

Every effort must be made to ensure that full and open competition is done. Should the need not be satisfied or other considerations apply, adequate documentation and justification will be provided to the HQ Consultant Services Office (CSO) for any solicitation or selection where less than full and open competition was used. There are also occasions when there is only one firm capable of providing a very specialized service, or only one firm is available to provide a necessary service. These occasions are outlined below.

440.02.03.01 The service is available from only a single source.

For the **service to be available from only a single source** requires that a firm be the only one that can provide the services needed. For this condition to exist, the work process would typically be very specialized and highly technical. When time allows, the only way to ensure there is no other firm with the same or similar capabilities is to solicit submittals and allow firms to present their approaches to the work. If there is only one that has the qualifications, then this selection process falls under [Section 440.02.03.03](#) below.

When there is no time to provide for a full solicitation, or there is a firm that holds a patent or a trademark, or has developed a specialized process, then the sole source determination may be documented and justified.

The process will begin with a request memo to the CSO for approval of the sole source determination. After approval from the CSO, the firm selected and the state will negotiate a contract specific to the work required in a similar process as outlined in [Chapter 420](#).

440.02.03.02 An emergency exists that does not permit the time for competitive negotiations

WSDOT policy regarding acquisition for emergencies through noncompetitive negotiation requires executive-level determination as to whether or not a circumstance constitutes an emergency. Generally, those situations that pose an immediate threat of loss of life, bodily injury, or loss or damage to physical property are potentially situations which may require consultant services for an immediate response. Some situations which may be considered emergencies include earthquakes, severe weather events, accidents, land slides, and other natural disasters which can all pose an immediate threat to the public itself or to publicly owned property. However, there are circumstances when an emergency exists, but is not so readily seen.

The reference to an “emergency” is meant to be specific to actual emergencies as covered by [Chapter 600](#).

For emergency contracts, the project managers involved and the area consultant liaison (ACL) will follow the provisions in [Chapter 600](#) and provide the appropriate documentation to the CSO as soon as reasonably possible. Emergency contracts must be reported to the Department of Enterprise Services within three (3) business days of initiating the emergency procurement, using the DES Sole Source Contract Database.

440.02.03.03 After solicitation of a number of sources, competition is determined to be inadequate.

For certain types of work and at certain times within economic cycles, there may be only one or two firms that respond to solicitations. If a Request for Qualifications (RFQ) has been appropriately advertised, and attempts have been made to find sufficient competition without success, the CSO manager may determine and make a public announcement that inadequate competition exists.

An emergency is then presumed to exist, and a firm that the contracting authority determines sufficiently meets WSDOT’s requirements and has sufficient qualifications to do the work may be sole sourced without further solicitations. The sole source justification must include documentation that the work has been sufficiently advertised to meet the usual expectations, the attempt to solicit interest from a wide area of availability constitutes open competition, or the process followed at least satisfies the requirements of publicly providing the opportunity.

440.02.03.04 Sole Source Contracts for Phased Work Assignments

There are circumstances when it makes sense to end an agreement at the finish of one phase of work, or in the middle of a project, and keep the firm available for the next phase of the work. Under certain conditions, a “sole source” contract can be executed, provided precautions are observed. This means using more than one contract for the life of the same project.

Following are the circumstances where a sole source agreement is allowable without a determination of an emergency situation or inadequate competition:

1. One phase of work ends and another begins with the same consultant.
2. Overlapping phases require a new agreement to start before work ends on the last phase.
3. Design support is needed during construction.
4. The contract payment type or contract type changes during the course of the work.
5. An expert witness is needed.
6. There is a legislative exemption for expert or review panels (A&E).

In each of the first three cases above, the issue of potentially awarding the next phase of work to the consultant who has been authorized to do the first and possibly successive phases must be addressed in the announcement soliciting for the original work, and process is outlined below. The fourth case is also outlined below. The fifth and sixth cases usually are initiated by other branches of the state government.

The following is an example statement for use in the Request for Qualifications (RFQ) or Request for Proposal (RFP), and subsequently contained in any contract entered into where this option may be exercised:

The state reserves the right to authorize subsequent phases of work to the consultant within the scope of this project as described herein. Should the state exercise this right, the state may choose to supplement the existing contract or the state may choose to close the existing contract and negotiate a new contract, at its option.

Note: Notification before entering into a separate contract for phased work is mandatory. It must be addressed in the solicitation for Statements of Qualifications (SOQs), not after the project gets through one phase and is ready to start the next. Otherwise, the next phase would have to be advertised soliciting new SOQs. It should be further noted that this applies to A&E project-specific contracts. Indefinite-delivery contracts (IDC) cannot be “sole sourced.”

Should a firm produce a significant portion of work for a project under a task order document (TOD) authorized from an on-call contract under an emergency determination, and the contracting authority determines that it is appropriate to have that consultant “on-call” during construction, a “sole source on-call during construction contract” may be negotiated for that firm. Otherwise, no “sole sourcing” should be done from work started, or performed under an on-call contract task order. For more information on IDCs, see [Appendix I](#).

440.02.03.05 Changing the Contract Type or Payment Method During the Course of the Work

Changing contracts during the course of the work most often happens when a transition is made from design work (PS&E) to a design support during advertisement and construction contract. Usually, a cost-plus-fixed-fee (CPFF) contract is used for design work. However, a CPFF contract is difficult to work with during advertisement and construction, due to the uncertain nature of the amount of support services which will

be required, and difficulty in determining the proper fee for the services. In addition, changing the type of payment within a contract is not allowed by the HQ Office of Accounting and Financial Services. In this case, it is acceptable to issue a new sole source contract based on negotiated hourly rates. Additional information about design support during construction contracts is found in [Appendix I](#).

It is also possible that a Task Order, for which a second tier process was used for consultant selection, was used to develop the design. In this case, it may be that the Task Order Master Agreement has insufficient time to cover the services during advertisement and construction. If this is the case, a project specific sole source can be requested to replace the Task Order for the project on a negotiated hourly rates basis.

Occasionally, the wrong type of contract may be used for a project. In this case, it may be necessary to change the contract type during the course of the work. This cannot be done by supplementing the existing contract, since usually the reason for the change is due to initially using the inappropriate type of payment for the work. A change of this type needs careful management to not to change or modify the limits or general scope of the original solicitation. In addition, to prevent project delays, the change should be done at a point where the shift can be easily made. Some overlap of the two contracts may be necessary to accommodate this change.

For those circumstances where prior approval of the consultant services includes an option to the state to add additional phases of work within the boundaries of the project, the responsible ACL should check with the CSO manager to verify the existence of the option for the particular phase in question and discuss the possibility of supplementing the existing contract, the potential contract type if a supplement option is not appropriate, and other parameters related to the progress of the project. This would be similar to the pre-solicitation meeting covered in [Section 410.03](#).

440.03 Ensuring Sole Source Negotiations Obtain a Fair Price

The instructions in this section assume that the services being requested do not fall under [Chapter 600](#), Emergency Consultant Contracts, but do fall under the noncompetitive negotiations process.

After appropriate approvals have been received, the CSO manager will notify the intended firm of its selection and the state's intent to enter into a negotiated contract, per [Chapter 420](#). In addition, the project manager and lead negotiator (contract officer) will be notified of the selection and provided with the necessary data and information for the scoping and/or negotiations process.

A detailed scope may be established using one of the two WSDOT methods outlined in [Chapter 420](#) and [Appendix N](#). The method used and the approach to negotiations will be determined by the nature of the work required.

For negotiations on a non-competitive contract, it is important to establish how the state ensures "fair and reasonable cost" when there is no second or third firm waiting to be hired, should the "sole source" firm and the state not reach agreement on cost for the work.

Generally, most firms that the state seeks to acquire services from have audited Indirect Cost Rates and established labor rates within their organizations. The profit portion of an all-inclusive billing rate or a cost plus fixed fee contract is subject to negotiations based on the factors covered within the WSDOT Audit Guide for Consultants. The negotiations will mainly be centered on the number of hours required for the work.

Occasionally, there may be a need to acquire the services from a highly specialized firm that has typically provided services at market rates. It will be up to the chief negotiator to determine “fair and reasonable” for the state. Discussions with project management prior to the actual negotiations need to occur. The negotiator needs to become familiar with the budget and target pricing before starting the actual negotiations.

For details on negotiations and the MPD process for SOW development, see [Appendix N](#).

After negotiations have concluded and the state and the consultant have reached agreement on all issues, the contract will be assembled and circulated for approvals and execution per the process outlined in [Chapter 420](#). As appropriate to the work, a notice to proceed (NTP) will be issued to the consultant with details regarding the project manager, where the invoices are to be sent, when the first meeting with project management is scheduled, and any other details the consultant may need regarding the contract.

In cases where there is a time constraint, a limited notice to proceed (LNTP) may be issued after the negotiations have concluded. The notice will cover what work the consultant may start based on the negotiations. The notice will also cover all limiting factors and state when full NTP can be expected.

If the time factor is such that the work must start before negotiations can occur, an emergency will be declared by the contracting authority and an LNTP will be issued. The LNTP will cover any limiting factors, clearly state that the work is subject to final negotiations, and provide for specific rates and terms limited to the time frame up to conclusion of negotiations.

Under most circumstances, the administration of the contract will follow the provisions of [Chapter 500](#), Administration of Contracts.

440.04 A&E Federal and State Regulations for Non-Competitive Consultant Acquisition

Following are the federal and state laws and regulations upon which [Chapter 440](#) are based.

440.04.1 Federal Regulations

[23 USC 112](#) *Letting of contracts*

[23 USC 106](#) *Project approval and oversight*

[49 CFR 18.36](#) *Common grant rule for states*

[23 CFR 172.7\(a\)\(3\)](#) *Procurement Methods and Procedures*

Contracting agencies shall submit justification and receive approval from the Federal Highway Administration (FHWA) before using this form of contracting.

440.04.2 Washington State Laws

[RCW 39.26.130](#), Emergency Purchases (see [Appendix E](#) for full RCW text)

[RCW 39.80](#), Contracts for architect and engineering services

[RCW 39.80.010](#), Legislative declaration

“The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.”

[RCW 39.80.060](#), Procurement of architectural and engineering services – Exception for emergency work (see [Appendix D](#) for full text)

