Department of Finance and Administrative Services

City Consultant Contract Guidelines

Purchasing and Contracting
Department of Finance and Administrative Services

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Introduction.

The Purchasing and Contracting (PC) division of the Department of Finance and Administrative Services (FAS) establishes City-wide policies and guidelines for consultant contracts, including professional consultants, architects and engineers.

Every office and Department follows these policies and guidelines. Some Departments have supplemental procedures. For assistance, ask your department staff or:

Steven Larson, 684-4529, Procurement Strategic Advisor
Julie Salinas 684-0383, Procurement Program Manager
Krista Díaz 684-0456, Purchasing Manager
Presley Palmer, 233-7158, Division Director, PC

Effective Date.

The most recent update was published August 20, 2026. The original Guide was effective July 18, 2011 and superseded all other policies, rules and Standard Operating Procedures.

Roles, Responsibilities, and Contacts.

City-wide Policy Assistance	Contact Information
Purchasing and Contracting	Steven Larson, PC Procurement Strategic Advisor steven.larson@seattle.gov 206-684-4529 Julie Salinas, PC Procurement Program Manager Julie.salinas@seattle.gov 206-684-0383 Krista Díaz, PC Purchasing Manager Krista.diaz@seattle.gov 206-684-0456 Presley Palmer, PC Division Director, PC Presley.Palmer@seattle.gov 206-233-7158
Risk Management, FAS	Travis Steichen Insurance Operations Manager Travis.Steichen@Seattle.gov Insurance Operations Manager 206-386-0071

Department Specific Resources	Contact Information
Seattle IT	Jeremy Doane, Contracts Manager Jeremy.doane@seattle.gov 206-684-5962
FAS for FAS Contracts	Steven Larson Procurement Strategic Advisor Steven.Larson@seattle.gov 206-684-4529 Julie Salinas Procurement Program Manager Julie.salinas@seattle.gov 206-684-0383
SCL	Kim Rayray, Manager Kim.Rayray@seattle.gov 206-684-3042
SDOT	Maura Donoghue, CCU Manager Maura.Donoghue@Seattle.gov 206-684-5898 Beth Lofton, CCU Supervisor Beth.Lofton@Seattle.gov 206-684-5182
SPU	Jana Duran, Manager Jana.Duran@seattle.gov 206-256-5190 Kathy Peterson KathyA.Peterson@Seattle.gov 206-684-5084
WMBE Specific Resources	**Contact Information**
Website	http://www.seattle.gov/purchasing-and-contracting/social-equity/wmbe
All Departments	Miguel Beltran Miguel.Beltran@seattle.gov 206-684-4525 Carmen Kucinski Carmen.Kucinski@seattle.gov 206-684-0188
SCL	Kara Williams Kara.Williams@seattle.gov 206-684-3641
SDOT	Viviana Garza Viviana.Garza@seattle.gov

	206-684-5188
SPU	Katia Garcia Katia.Garcia@seattle.gov 206-733-9155

Guide Objectives.

This Guide:

- Provides City policy, procedures and background for consultant contracting in one comprehensive document;
- Provides policies, requirements, roles and responsibilities in an approachable format for less familiar readers;
- Replaces previous Standard Operating Procedures;
- Provides flexibility to Departments, giving direction to ensure compliance with essential legal requirements, while offering and differentiating essential requirements from best practices and Department options;
- Promotes compliance with legal and policy requirements; and
- Provides a basic procedural document that Departments can supplement or use as a stand-alone Guide.

Guide Applicability.

This Guide does not include public works or goods and services. For assistance, call:

Resources	Contact Information
City Purchasing	Krista Díaz 684-0456, Purchasing Manager
Public Works	Mark Nakagawara, 206-684-4542 City Construction Contracts Manager

Definition of a Consultant: An independent contractor who provides specialized services on a discrete, nonrecurring basis over a limited and pre-established term. Consultants perform analysis, advise, make recommendations, prepare reports, develop designs, and provide other specialized services. Consultants include firms that provide professional services, such as architects and engineers. SMC 20.50.010 provides a detailed definition of a Consultant. Per SMC, the following are not consultants and not subject to this Guide:

- Any provider of purchased services;
- Expert witnesses retained by the Law Department for anticipated or actual litigation, or by City Council for a hearing on the nomination or appointment of a municipal officer; and
- Anyone retained for legal advice when the Law Department determines a public solicitation could adversely affect the City's legal interests or the attorney-client relationship.

This checklist "Is This a Consultant Service?" in the Purchasing Manual may help determine if services are a consultant. Purchased Services are routine, on-going, or highly repetitive, ordinary work, such as janitorial services, window washing, debris removal or mailing. Public Works is construction or reconstruction, alteration, repair or improvements to roadways, buildings and major fixed assets.

The SMC definition of a Consultant refers to "nonrecurring" work; a consultant can perform repetitive, routine tasks and still be a Consultant if the overall character of the contract fits the consultant definition. SMC refers to "over a limited and pre-established term," which may be simply a set of deliverables that need to be completed.

A Memorandum of Understanding (MOU) can also be considered a consultant contract subject to these rules; it is the nature of work performed that determines it may be a consultant contract, not the contract form itself.

Key Principles in Consultant Contracting

Contracting Out
Retainer – On Call Contracts
The Consultant Perspective
Woman and Minority Business
Equal Benefits

Contracting Out.

Carefully consider the two policies, collectively termed "Contracting Out."

First, City policy and bargaining agreements expect the City to hire employees or temporary employees for City work. This is advisable for all work, but required when work is covered by a bargaining union agreement for your department. Bargaining union agreements provide threshold criteria that must be met before contracting work normally performed by union employees in your Department.

Second, federal and state law requires the City avoid consultants that "look and feel" like an employee. If they look and feel like an employee, then they are one. A contract does not make a consultant; it is the nature of their work that determines they are an employee. The City owes taxes and employee benefits to workers who look and feel like employees. Even contract provisions such as "independent contractor" do not protect the City.
See Guidelines for Contracting Out.

On Call Contracts.

On-calls are a good option for many departments with repetitive consultant needs. They may be multiple years or year-to-year. They can be for any amount given proper competitive processes for the amount of money being authorized.

SMC 20.50.040 (G) refers to retainers. The City rarely uses a retainer (technically a contract where we pay a fee to have them on reserve). We apply those rules to the common "On Call" contract. SMC prohibits contracts with any Consultant for performance of services on a retainer business for more than five consecutive years. Contact PC for more information.

See *Procurement Options: On-Call Contracts*.

The Consultant's Perspective.

Be communicative, open, and accessible about upcoming projects. This helps companies anticipate, strategize and prepare. It creates a competitive environment that brings better responses from the bidding community. A reluctance to talk or return phone calls is often viewed as bias towards a pre-selected candidate.

You don't know what you don't know." An often-heard complaint from consultants is that the team does not have experts that understand the work well. "Early discussion with potential interested firms can help gain perspectives useful for your project, scoring and evaluation.

Share information openly. Anything that isn't confidential can be confidently shared to a single firm. If others request, you can share to them as well. Sharing to one doesn't obligate you to share to all, except you can not share confidential information which would not be in the public domain. Use the Consultant Connection if you have pre-project information to broadly share. Once the solicitation is on the street, ensure every bidder receives the same information at the same time.

Consultants need time to prepare and partner. Four weeks is the minimum to form teams and prepare submittals for A&E work. Offering less time messages that you have pre-selected a winner.

Try to solicit your phased work in one solicitation instead of new procurements for each phase. It is difficult for other consultants to compete for remaining phases once a project is underway. Split procurements unwittingly create a sole source (more information about sole source). State law prohibits separation of work into smaller components to avoid competitive solicitation requirements.

Appoint your evaluation team carefully. Consultants take signals from who is on your team. For example, having your WMBE Representative join your team sends a message that your department cares about social equity. You may disclose who is on the interview team if you choose, however, you should disclose to all firms equally.

Women and Minority Business Inclusion.

The City's strong commitment to include woman and minority owned business (WMBE) is articulated in Executive Order 2019-06, City Code (SMC 20.42.050), City policy, and Department commitments.

- Alert your Department WMBE Representative of upcoming projects so they can strategize recruitment.
- Strategize the scale and scope that will encourage WMBE utilization.
- Notify Tabor 100, OMWBE and other associations of upcoming procurements.
- Consider at least one WMBE firm among the Roster companies you consider.
- Small contracts under $71,000 can be awarded directly to a WMBE.

Inclusion Plans are required per Mayor's memo (November 23, 2010) for contracts estimated at $420,000 or more and is recommended for smaller projects if reasonable opportunity exists. This includes contracts that are amended up to $420,000 or more.

- Inclusion Plans must be worth at least 10 percent of your evaluation points.
- Your WMBE Rep should be invited to the interview panel and a question about WMBE Inclusion must be asked.

Seattle Municipal Code defines a Women or Minority Business to be at least 51% women and/or minority owners. A directory of self-identified WMBE firms is at https://web6.seattle.gov/fas/registration/ . The City does not require a business to be certified at the state level. Publicly owned corporations and nonprofits are also not able to be a WMBE.

For projects with federal funds, the Disadvantaged Business Enterprise (DBE) program applies. Some federal

agencies now require it for professional service contracts, not just construction. Work with your Department contracting staff, Miguel Beltran or Presley Palmer for advice. More information can also be found on Inweb at https://seattlegov.sharepoint.com/sites/FAS_Purchasing_Contracting/sitepages/Federal-Consultant-Funding.aspx

Also see Sidebar-Inclusion Plans.

Equal Benefits Provision – SMC 20.45.

The Equal Benefits Ordinance SMC 20.45.020 applies to contracts estimated at $71,000 or more. If your contract intends multiple phases or amendments, use the total estimated value of all work.

It is recommended you obtain a Consultant Questionnaire for every contract and required for contracts over $10,000. For solicitations, this is embedded into the RFQ/RFP solicitation boilerplates. The Consultant Questionnaire has a declaration of Equal Benefits compliance. All answers are compliant EXCEPT the last (Non-Compliant and do not intend to become compliant). Reject any consultant that checks the last box (Non-Compliant), unless all respondents check the last box.

The Equal Benefits Rule allows you to waive Equal Benefits requirement for the following situations:

- Emergency;
- Sole Source;
- There is no compliant consultant among your candidates;
- A piggyback* (also known as cooperative or joint purchasing agreements);
- If EB contravenes a grant
- You are contracting with a public entity

**A "piggyback" contract is typically a co-executed agreement between the City and another agency that allows either party to utilize contracted services to complete the same body of work.*

PC provides a form to document your waiver. For additional information, please contact your Department Contract Office staff, or:

Steven Larson 684-4529 (Procurement Strategic Advisor),
Julie Salinas 684-0383 (Procurement Program Manger),
Krista Díaz 684-0456 (Purchasing Manager) or
Presley Palmer 233-7158 (Division Director, Purchasing and Contracting).

Key Requirements in Consultant Contracting

Scope of Work Development
City and State Consultant Licensing
Contract Amendments /Supplements
Performance Evaluations

Scope of Work Development.
The scope of work is critical to your contract. A clear, well-written scope reduces misunderstandings, facilitates accurate cost estimates and negotiation of fair and reasonable costs, and provides a basis for assessing consultant performance and pay requests.

First develop a summary level scope, so Department contracting staff and your WMBE representative can picture the work. This gives a starting point to strategize WMBE inclusion. Department executives and City Budget Office need this high level description as well. Your scope needs to include:

1. Qualifications: Identify minimum qualifications. Those are "drop dead" must haves. Don't mix "desired qualifications" (those that make a company more competitive) with minimum qualifications. Your overall scoring will bring any desired qualifications to the surface.

2. Give a general overview of tasks. Avoid the "how to." Consultants can suggest approaches (as part of proposals or during interviews), so allow those experts wiggle room to explain their ideas to you.

3. List key assumptions to ensure the Department and consultant have common understandings.

4. List information the Department will provide the consultant (i.e. preliminary engineering studies, manuals or guidelines). These can be contract attachments or given separately.

5. Identify deliverables (reports, spreadsheets, trainings, attendance at meetings, presentations and designs or plans). Provide calendar due dates or a general schedule such as "by the end of Q3 2011."

After you select the consultant, have the consultant assist and negotiate the scope of work. The final scope of work in the contract should not look significantly different than the scope of work that was advertised in the solicitation.

City and State Consultant Licensing.
With rare exception, Consultants must have a City of Seattle Business License. Consultants can check http://www.seattle.gov/licenses/get-a-business-license for application instructions. Consultants can expect to wait three to six weeks if they mail the application. They also need to be paid current on any due taxes.

Consultants must also have a Washington State Unified Business Identifier (UBI) number. Consultants can apply for a UBI online at http://bls.dor.wa.gov/file.aspx. There are some exceptions to this requirement such as if revenues are under $12,000. To verify a UBI: https://secure.dor.wa.gov/gteunauth/_/

Contract Amendments

- Changes to contract time, scope, and costs require an Amendment or Supplement
- Can only add work stated in the original RFP/RFQ, or limited criteria.
- Consultant and Department Director's signature should be obtained before work **starts.**

Contract Amendments/Supplements.
The City usually says "Amendments," although some Departments call them "Supplements" or "Addenda."

Contract amendments can be a strategy for your procurement and contract (such as approving phased work). Amendments are appropriate for certain situations:

1. Additional work identified within the scope and RFP/Q, such as anticipated and planned phases.
2. Sometimes an RFP and contract expect phases to control the start of phased work, like a "notice to proceed." That is acceptable.
3. Unforeseen conditions related to the original scope;
4. Amendments to add sole source or adverse impact conditions, where the City must continue with the existing consultant.

An Amendment must meet these criteria:

1. Can only be made to an executed and active contract. An expired contract cannot be amended; and.
2. Must be for a legitimate reason; and
3. Pricing must follow the original pricing structure of the contract (such as hourly rates, and other specific costs); and.
4. Reasonably within the original procurement scope OR could not have been reasonably foreseen or known; and
5. Not add a scope of work large enough or different enough to have been reasonably bid as a separate project; and.
6. Not alter the project such that it would have attracted a different pool of competition; and.
7. Cannot vary the essential identity or main purpose of the contract.

See page 63 for additional information about amendments.

Performance Evaluations.
SMC 20.50.080 requires a written evaluation for every contract. You may use the standard Evaluation form supplied by PC or customize as appropriate. The Performance Evaluation must be given to the Consultant and kept with your Contract file. See page 65.

Contracts with Special Requirements

Architectural and Engineering Services
Federally Funded Contracts
Contracts for Accounting, Auditing and Opinion-Gathering
Acquisition of IT Consulting Services

Architectural and Engineering Services.
State Law (RCW 39.80) governs the procurement process for architectural and engineering (A&E) services, including land survey and landscaping architectural services. If work must be performed by a licensed expert in these professions and is for a public works project, follow A&E procurement law. If unsure whether a service must be performed by one of these professionals, review the definitions (see http://app.leg.wa.gov/RCW/default.aspx?cite=39.80.020), contact your Contracting Office, or PC:

Julie Salinas, 684-0383, Procurement Program Manager
Steven Larson, 684-4529, Procurement Strategic Advisor
Krista Díaz, 684-0456, Purchasing Manager
Presley Palmer, 233-7158, Division Director, PC

State law requires you select the "most highly qualified" A&E team. Regardless of the process (Consultant Roster, On-Call, or a full solicitation), **price cannot be asked or considered during** selection. Consider qualifications, team, availability, WMBE and skills. Once you select the most qualified, ask for and negotiate price.

Federally Funded Contracts.
If your project is funded in whole or part through federal funds, the grant will likely impose requirements. Strictly follow those requirements, including "Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments."

Verify and document the consultant is not debarred by the Federal government. Search www.sam.gov to confirm and print. This is a closely-audited Federal requirement. It is strongly advised you keep a copy for your file.

Contracts with FHWA funding above $10,000 must use WSDOT Local Agency Standard Consultant Agreement form 140-089 EF and 140-089A EF: http://wsdot.wa.gov/forms/pdfForms.html .

Departments must follow FTA Circular 4220.1F. If unfamiliar, consult your Contracting staff or Presley Palmer. You can also refer to the City's Consultant Federal Contracting page https://seattlegov.sharepoint.com/sites/FAS_Purchasing_Contracting/sitepages/Federal-Consultant-Funding.aspx .

For projects with federal funds, the Disadvantaged Business Enterprise program applies. Some federal agencies now require it for professional service contracts, not just construction. Work with your Department contracting staff or Miguel Beltran, Carmen Kucinski or Presley Palmer (PC) for assistance.

Also see Sidebar – Supplement for Federal Transit Administration (FTA) Consultant Contracts

Contracts for Accounting, Auditing and Opinion Gathering.

- SMC 20.50.040 provides instruction regarding accounting, auditing or management consulting services. Departments shall not retain the same Consultant to perform accounting or auditing services and to provide management consulting services during the term of a current Contract or within one year after completion of a contract for either type of service. Refer to the City Auditor for updates and requirements.

- SMC 5.09.030 provides that no Department may spend $2,500 or more on opinion gathering without first receiving approval from the Chairperson of the Council Committee. This includes public and internal/employee polls, surveys, questionnaires, focus groups, telephone calling, automated telephone calling, or other mechanisms the primary propose of which gathers opinions or data from 10 persons.

Acquisition of IT Consulting Services

Departments are reminded that the acquisition of IT products and services, including small dollar spends and consulting services, may only be made in accordance with policies and practices established by the Chief Technology Officer (SMC 3.22.040). See this website for more info: https://seattlegov.sharepoint.com/sites/ITD_Finance/SitePages/ITD-Contracts-%26-Purchasing.aspx

Only IT products and services on the City Technology Board approved standards and roadmap have been authorized for acquisition by departments.

IT products and services that do not conform to the standards must be approved through the City's IT Exception Request Process prior to order placement or prior to entering into agreements.

IT products and services, including projects, that are not on the roadmap and meet the IT Project Registration Criteria listed in this section [see box] must be registered through the MITIE Program prior to the expenditure of any funds and prior to starting any vendor/consultant selection process.

Departments submitting BIPS which include IT products and services that do not conform to the standards or on the roadmap should begin the IT Exception Request process and work with Seattle IT on development of their BIPS.

Questions about this information should be directed to: COS_Citywide_IT_Portfolio@seattle.gov or Jeremy Doane at Jeremy.Doane@Seattle.gov or 206-684-5962.

City Ethics Code

Background
Conflicts of interest
Consultant Conflicts with Pre-design Knowledge
Selection Committee Participants
Communications with Consultants before Solicitation
Communications with Consultants During Solicitation
Campaign Donations

Direct questions to Ethics at 684-8500 or visit
http://www.seattle.gov/ethics/etpub/faqcontractorcovered.htm

Background.

SMC restricts contracts with current and former City officers and employees, family members of City employees, and other potential conflicts. If a Consultant worker is a current or former City employee, has a family member who works for the City, or a business relationship with a City employee, review SMC Ch 4.16.070, SMC Ch 4.16.075 and *Consultant Contracting Ethics*.

The Ethics Code applies to certain workers for contractors, vendors and Consultants. They become Covered Individuals. if they work for the City more than 1,000 hours in any 12-month period. The 1,000 hour threshold is cumulative across Departments. The Code applies to individuals, not organizations or companies. It is the number of hours that an individual works counted toward the 1,000-hour threshold.

Your RFQ/RFP will include a "Consultant Questionnaire" that is a mandatory form. It asks Consultants whether any workers are subject to the Ethics Code.

Conflicts of Interest.

The City is committed to a fair, transparent and equitable process when contracting out. Anyone involved in contract decisions should be briefed and thoughtful of perceived or actual conflicts.

Reasonable Person Standard: Avoid situations that provide an appearance of conflict or opportunity to inappropriately influence the procurement. The Ethics Code uses a reasonable person standard, i.e. how a reasonable person would perceive the situation. How would the situation appear if covered in a news story, or viewed by a public interest group? Could you comfortably explain your actions?

Limitations on gifts: It is a best practice to refuse gifts, invitations to events or meals. The standard RFP/RFQ templates prohibit companies from offering gifts during solicitation and contract. For advice, contact the Seattle Ethics and Elections (SEE) Director. Refuse:

- Invitations to meals, events or parties not open to the general public or all interested public agencies, which are sponsored by a Consultant doing business or seeking to do business with the City.
- Tickets to sporting events.

- Gifts that could be perceived as influence, finding favor or as given with a reasonable expectation of obligating the employee to the giver.
- Gifts that could be perceived as a reward for performance such as awarding a contract.
- Gifts offered for display to provide advertisement or promotion of the Consultant.

Certain items are permissible under the City Ethics Code, but discouraged. If received, such gifts should not be displayed where other companies may see them, such as the reception, conference and/or individual office areas. The following are examples of permissible items:

- Unsolicited advertising or promotional items from a single source in a calendar year valued at $25 or less, with an aggregate value of less than $50.
- Unsolicited items under $25 and placed in a common area where they are shared by coworkers. The aggregate value of such unsolicited items must not exceed $50 from a single source in a calendar year.

Former Employees.

The nature of the work performed by the former employee relative to their past City employment determines whether s/he can serve on a project. To assess, consider the City Ethics rule. If you have questions, contact Wayne Barnett (Wayne.Barnett@seattle.gov), the Ethics and Elections Director.

Former Employees – For one year after employee left the City: Former employees must follow the limitations of the City Ethics Code. The City Ethics Code places responsibility upon the Covered Individual (former employee) to inform the SEE director (Wayne Barnett) if a contract is awarded where the former employee would work within one year after the employee left City employment. (SMC 4.16.075 C- E) states" "A Covered Individual, who contracts with a former City officer or employee for expert or consultant services within one year of the latter's leaving City work, shall promptly inform the executive director [of the Seattle Ethics and Elections Commission] about the agreement." SMC 4.16.075 (Prohibited Conduct after Leaving the City):

No former officer or employee shall, during the period of one (1) year after leaving City Office or employment:

- Assist any person in proceedings involving the agency of the City which s/he was previously employed, or on a matter in which he or she was officially involved, participated or acted in the course of duty;
- Represent any person as an advocate in any matter in which the former officer or employee was officially involved while a City officer or employee;
- Participate as a competitor in any competitive selection process for a City contract in which s/he assisted the City in determining the project or work to be done or the process to be used.
- Communicate, for any person on a matter involving the City, with an employee of the agency of the City with which he or she was previously employed;
- participate as a competitor in any competitive selection process for a City contract in which he or she assisted the City in determining the project or work to be done or the process to be used in selecting a contractor.

Former Employees – For two years after employee leaves the City: the employee cannot "assist" any person (or consultant) on a matter in which he or she participated. "Assist" means to act, or offer or agree to

act, to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

Use of City information, property and facilities: Companies may request or receive access to City e-mail lists, facilities, or other City property, to promote their services. It may be appropriate in the following situations:

- The City may sponsor trade shows or similar forums, and provide City facilities, space and arrangements, when the even serves a City interest.
- Consultants may distribute brochures, tokens, or other materials, to help City employees learn of and be familiar with Consultants
- Firms may provide special offers, if those offers are the same as what they provide to other similar customers. Note that special offers are to the City, not to the individual employee.

Consultant Conflicts with Pre-Design Knowledge.

It is important you are clear about potential conflicts that may occur if a consultant accepts work. The original Consultant should have straightforward advice so they can understand choices for competing later.

Advise your Consultant if accepting an initial scope for preliminary work eliminates them from a future solicitation. Decide and provide direct, straightforward written guidance. Even better is to make that decision and state it in the RFP/Q for such preliminary work.

This is an issue of unfair advantage and of appropriate risk distribution among contractors for a project.

Risk Distribution.
Consider whether you want one consultant to perform the entire project, given distribution of risk and liabilities. The City may eliminate consultants from multiple project assignments (such as design and then development), if liability to the City can be improved. Also, there may be advantage in having a different contractor because the second firm may find errors in the original consultant's work overlooked if the original consultant performed the follow-on work.

Unfair Advantage.
A Consultant might be able to compete and perform future phases, if each phase exposes them to only a generic understanding of the future project. However, other situations could cause an unfair advantage, if the preliminary Consultant has (a) access to material information not available to other bidders, or (b) opportunity to influence strategy, specifications, scope of work or solutions for future acquisitions in a way that may favor them.

1. Does this project provide the Consultant with substantive and material advantage (knowledge, information, forewarning) compared to others? Exposure to generic information is fair, reasonable and not a conflict. However, the City should avoid substantial advantage such as hidden information which can not be readily shared with other prospective bidders.

    a. If no such advantage would be gained, the Consultant could continue;

b. If the Project Manager (PM) foresaw a material or perceived advantage could be gained, can it be reasonably mitigated if the City published documents and information so any interested bidder would have timely and informative access to the same materials, such that it eliminated the perceived advantage? Can it become further mitigated by scoring criterion that weighs various elements not advantaged by the previous work performed?

    i. If no, then the Consultant should be informed in writing in advance of the initial Consultant work and/or when reasonable after such a conflict becomes apparent, and then prohibited from competing on the future work.

    ii. If yes, the City may consider continuing with the preliminary Consultant and then publishing and making the documents or information accessible other bidders to also have access to within in a timely manner.

2. Would the preliminary work provide a material opportunity for the preliminary Consultant to steer the decisions to their advantage, including but not limited to narrowing the specifications, project schedules, qualifications, strategies, or approaches to their advantage for the future bid process or sole source decision? If yes, then the Consultant should be prohibited from competing upon future work. If not, then the Consultant could continue.

Acquisition Team Participants – Ethics and Conflicts.

Does any participant have a conflict? The Project Manager or evaluation team Chair person must ensure everyone aiding in development or selection is fully free of conflicts before they are appointed. A conflict includes financial or personal interest, whether for the evaluator, evaluator's family or domestic partner. Seek advice from the Ethics and Elections Director if needed.

Do you have a Consultant on the Team? If so, their participation is subject to the same conflict expectations. This likely eliminates the Consultant from competing for future related acquisitions, if any.

Public Accountability: Team decisions and materials are subject to public accountability. Make sure decisions are documented and have sufficient explanation that a public reader could understand the decision. Make no written or verbal derogatory or slanderous remarks about any Consultant. Make only those remarks or notes you would share directly with the Consultant.

Advise members of your team to always:

- Refer questions from external stakeholders to the Contract Manager.
- Refer requests for clarifications to the Contract Manager.
- Attend all meetings.

Advise team members to never:

- Discuss or opine about the process, firms, proposals, or rankings outside of the Committee forum except for supervisors and City attorneys who have confidential access;
- Accept gifts/meals, gratuity or services from any competitor;
- Give preferential treatment to any firm.

Remember Public Disclosure: Formal notes and decisions are part of our public decision making process. Your formal notes and score sheets will become subject to public disclosure. Informal notes or personal notes should be avoided and not retained. Remember:

- Formal notes and score sheets become public. Do not make remarks or comments you are uncomfortable sharing with a public audience.
- Organize score sheets and results so they can be understood.
- Submit all your materials and score sheets to the Contract Manager.

Communications with Consultants before Solicitation.

It is a best practice to share information with prospective firms, to help the market prepare for your solicitation. That said, never share confidential information and only share information with one firm you would share with any firm.

Input on Drafts: You can request a company to preview a draft RFP/Q. The City may desire industry input to improve City understanding. However, do this carefully to ensure it gives no unique advantage to one company. One option is to post drafts on the City consultant website.

Communications with Consultant during Solicitation.

Once the RFP/Q is public, the confidentiality of the documents, decisions, information and opinions must be maintained throughout the process. Do not share with anyone outside of Team meetings; however, the City Attorney's have Attorney-Client Privilege to documents, and your supervisor should be kept informed as appropriate to your management's expectations. Avoid conversations, meals or contact with Consultants or others about the evaluation until the contract is signed.

Access to Bid Documents: Acquisition team participants have access to valuable information for prospective firms (specifications, interview questions, scoring and evaluation sheets, results, decisions). City drafts and related information is usually proprietary while selection is underway, and not to be disclosed before award decisions are announced. Release of such documents could violate the City Ethics Code.

Limitations on communications: If you are working on an Acquisition, communications must be routed to the Contract Manager. Once on the street, any communications between the Consultant and other City employees or officials, can be grounds for rejection of the Consultant proposal. This protects the City and Consultant.

Limits on gifts: Refuse gifts, invitations to events, or meals. Companies are prohibited from offering gifts during the solicitation and the ensuing contract period. If there are unusual situations, contact the Ethics and Election Director for assistance.

Campaign Donations

The City adopted an ordinance implementing restrictions on the amounts that consultants can contribute to campaigns of elected officials. The standard templates and boilerplates remind consultants of this restriction. Please see Wayne Barnett, Ethics and Elections Director, for any questions.

Consultant Procurement Options

Direct Selections
Consultant Roster
On-Call Contracts
Competitive Solicitations
Exceptions to the Competitive Process
Interlocal Agreements and Public-Benefit Non Profits

The City uses several consultant procurement processes. Before selecting a procurement option, estimate the dollar value of the entire contract including amendments. Your Department Contracting staff can help determine the best consultant procurement option; they are described below.

The solicitation (RFP/RFQ) should describe the entire scope including all phases, whether the entire scope is within the first phase or added later by amendments. If the solicitation does not describe all phases, it could likely trigger a need to resolicit later; this is inefficient and it may be difficult to achieve fair competition.

All consultant contracts require a written agreement per SMC 20.50.060, and a Purchase Order posted into PeopleSoft 9.2.

Direct Selection- Less than $71,000:
If your contract is estimated under $71,000 including amendments and phases, you may select any firm without competition. Consider WMBE firms. Small contracts under $71,000 can use a small Agreement boilerplate.

Exception: RCW 39.80 prohibits direct selection for Architectural and Engineering services except for emergencies. Departments must make a selection based on qualifications and solicit to more than 1 (one) A&E firm(s) when selecting from the Consultant Roster. Departments may advertise by RFQ as well.

City Consultant Roster - Less than $420,000:
The Consultant Roster is a good choice for work under $420,000. The Roster is a list of qualified firms, sorted by specialty (category) managed by PC. Firms can apply throughout the year; PC advertises annually.

The City does not conduct rigorous screening to place firms on the Roster.
This is the job of the Contract Manager.
Verify skills, references, qualifications and licenses unique for your project.

SMC 20.50.110. sets mandatory bid thresholds; Departments cannot spend over $839,000 annually on an individual Consultant in any one Roster category. When a Consultant's reaches the annual maximum limit per category, your Department shall not select that consultant for work in that same category for the remainder of the calendar year.

To use the Roster, look at the descriptions of the roster categories located at http://fas/registration/subcategorylist.aspx. If you are unable to find an appropriate category, call PC (Julie Salinas at 684-0383 or Steven Larson at 684-4529) for assistance.
Once you find the appropriate roster category, visit the Online Business Directory (OBD) to search for firms approved to that category:

- From the OBD Search page (http://fas/Registration/) use the Advanced Search feature.
- Check the boxes next to Consulting and Consultant Roster Only Approved Businesses, then check the box next to the appropriate roster category.
- Click on the Find Businesses button to see a list of all of the consultants approved to that roster.
- **Firms that are approved to the roster will have an asterisk next to the name of the roster categories to which they are approved.**

Departments may have a business practice to solicit three to five firms, although SMC and City policy don't require this. Document your solicitation and consultant's replies; set a deadline for responses. Before issuing a contract, obtain a Consultant Questionnaire and review responses for red flags.

Background Checks: City ordinance prohibits the City from undergoing background checks until a candidate is selected. A background check is strictly limited by this ordinance. See the background policy: http://www.seattle.gov/city-purchasing-and-contracting/social-equity/background-checks

A&E Selection through the Roster: A&E firms on the Roster are pre-approved to provide services under the category that they applied to, but not pre-qualified for any unique qualifications of your project. State law (RCW 39.80.040 & .050) requires A&E selection on qualifications alone. Cost is negotiated after you selected the most qualified.

If the project will be developed in phases, the solicitation and contract Scope should identify the anticipated phases and that the Scope will be amended as the project progresses. The original solicitation and contract should describe the work for additional phases. The total contract cost, including all phases, may not exceed the $420,000 roster limit. State law prohibits work to be separated to avoid competitive solicitation requirements.

Roster Small Business Priority: The Roster recognizes small businesses per SMC 20.50.110. When fifteen (15) or more Consultants qualify as "small business concern" for a roster category, the Roster category closes to small businesses only. All large businesses who were previously on the roster are automatically removed and only small businesses can be added to that roster in the future. We use the Small Business Act (SBA), 15 USC Section 632 and 13 CFR Part 121 to define a small business concern. Firms self-identify as a Small Business during Roster application.

On-Call Contracts.

As is common with public agencies in Washington, certain Departments establish on-call contracts. These are often used for engineering services, although On-Call contracts are not limited to engineering.

To establish On-Calls, Departments can select a firm from the Roster (if cumulative value of all tasks will be under $420,000) or an advertised competitive solicitation.

The cumulative value of work orders must not exceed the threshold appropriate to the procurement process. Each Department may institute a lower cap for tasks or the total contract.

On-Call Contracts don't require additional selection processes when a task order is desired. Departments may chose different approaches to select the consultant, but City policy does not require that. Be specific in your RFP/RFQ about your selection process for tasks.

City policy would permit PC to create a large on-call contract for all Departments, with task orders executed by administering Departments.

If you solicit an On-Call contract, consider union notification. The Union requires notice from at least one Department, if it covers a body of work under union jurisdiction. Additional notices upon issuance of each work order are unnecessary, within the current City Personnel (Labor Relations Unit) requirements.

SMC 20.50.040 (G) prohibits on-call contracts from being active for more than 5 consecutive years. Read the complete chapter to view exceptions to this rule.

Competitive Solicitation.

If the project is estimated to be more than $71,000 and the consultant is not selected from the Roster (an option for projects less than $420,000), SMC 20.50.030 requires a publically advertised competition:

- Request for Qualifications (RFQ): selection is based on qualifications only and not on the consultant's proposed approach or pricing.
- Request for Proposal (RFP): selection considers qualifications and proposed approach. An RFP is especially useful if there are various ways to approach the work.
- An RFQ and an RFP may be used in combination, when it's desirable to short-list the number of consultants asked to develop proposals.

If the project will be developed in multiple phases of work, the advertisement and solicitation must briefly describe each phase so the contract includes the full scope and budget. This is important to meet State Auditor expectations that all work is carefully identified in the original solicitation, and not change ordered in later.

An RFP or RFQ process requires careful planning and can often last 90 days or more depending on the size and complexity of the project and the efficiency of the Department.

SMC 20.50.030 requires you advertise these projects for 2 days (which need not be consecutive) in the City's official newspaper (Daily Journal of Commerce). SMC requires a description, your Department name, name and phone of contact person, and a statement that consultant is bound to laws and ordinances regarding equal employment opportunity. The depth and breadth of the advertisement is otherwise the choice of the Department.

Per SMC 20.50, solicitations require a Consultant Evaluation Committee (CEC) appointed by the Department Director. Once the CEC has evaluated the consultants, the CEC chair recommends the CEC's choice and why

for Department Director approval. Once approved, send a Selection and Non-Selection notice to firms who responded to the solicitation (per 20.50,)

Exceptions to the Competitive Process.
City code 20.50.090 allows Department Directors to waive competition in certain situations. Exemptions are rare and may be used for.

Emergency: An threat to life, property, infrastructure, revenues or essential business functions. This should be rare and for situations that truly require immediate response; it is not for long-term needs or a rush due to deadlines. The Department Director must file a written explanation with the Contract. This form may be used if desired for that purpose.

Adverse Impact: State law prohibits Adverse Impact waivers for A&E. This exception waives the competitive solicitation if it would have a significant adverse effect on City interests. It should be used rarely. Examples include a confidential security review, management audit, or a determination that the cost or potential liability requires direct negotiation with a single Consultant. This form may be used.

Sole Source: When there is only one consultant with the required expertise. These should be rare and the Department Director must file a written explanation with the Contract. This form may be used. Obtain a Consultant Questionnaire and review for any red flags.

Intergovernmental Agreements.
SMC 20.50.090 permits a Department to "piggyback" with another public agency or public benefit non-profit corporation (501C (3)), waiving what would otherwise be mandatory competitive solicitation requirements. An Interlocal is between governments. It is unlikely to be appropriate for architects and engineers given Chapter 39.80 RCW, which requires selection of the "most qualified".

If you piggyback:

- Execute an Interlocal agreement with the other entity. City Purchasing already has many in place. The list can be downloaded from this page: http://www.seattle.gov/city-purchasing-and-contracting/city-purchasing.
- Ask the other agency for the contract, originating RFP/Q, proposal response, original ad and/or proof of website posting of the ad.
- Ask the Consultant to submit an Equal Benefits Form if the contract is above $71,000. If they don't comply with EB, document a waiver project.
- Obtain the WMBE Inclusion Plan before signature if the contract is above $420,000 or otherwise appropriate.

NonProfits.
You may contract directly, without competition, with a Public Benefit Nonprofit[1]. The IRS grants the public benefit nonprofit status, called "501(c) 3"; you must verify and should retain documentation that they are, in fact, a 501(c) 3. This is defined in State law (RCW), so we do not have discretion on which nonprofits qualify; they must be a 501(c) 3. Departments may benefit from a competitive process with large, complex

projects but is not required when contracting directly with the nonprofit that can perform the Scope of Work.

Be aware that some nonprofits may be accustomed to working within a grant environment instead of a contract environment. This means, that some may be unaccustomed to the documentation requirements and other demands of a consultant contract process. They may be unaccustomed to having hard deliverables tied to their payments, and to the invoicing process.

It is important to ensure that the nonprofit can perform the Scope of Work and meet all City contracting requirements. A nonprofit or an unincorporated group may ask if they can use a "fiscal sponsor" to contract with the City as a Consultant. The term "fiscal sponsor" can be misleading, so it is best to understand what that means in terms of contracting with the City.

The City does not formally recognize fiscal sponsors or fiscal sponsorship in its Consultant contracting guidelines. The City may enter into a contract with one entity (i.e. the Prime Consultant) and that entity may choose to subcontract the work, only as allowed by the Consultant's contract with the City. As the City requires a tax identification number or employer identification number (EIN) to pay a Consultant, the City must ensure that any Consultant (either an individual, group or corporation) has an established EIN. When utilizing the Public Benefit Nonprofit exemption, to contract without competition, the awarded Consultant must have current 501(c)(3) status granted by the IRS. Therefore, if a "fiscal sponsor" is used to meet the 501(c)(3) requirement, they are the Prime Contractor.

The City will treat any so-called "fiscal sponsor" as its Prime Consultant, as long as the Prime meets all other eligibility criteria for the Consultant contract. The Prime is responsible for full compliance with the contract and ensuring that any of its subconsultants comply with the contract as required. The Prime Consultant will be the City's sole contractor for the written agreement and there will be no third-party to the contract.

The Prime Consultant is fully responsible for complying with all terms and conditions of the Contract with the City and ensuring that any subconsultants do the same. Any "sponsored" groups or agencies would be viewed by the City as the Prime's subconsultant(s) and the City will have no contractual relationship with the subconsultant(s). The City will only make payment to the Prime Consultant holding the contract. No payments will be made by the City to a Prime Consultant's subconsultant(s).

Departments should not develop a Consultant Contract that absolves the Prime Consultant of any of the required terms and conditions of the City's contract, regardless of if the Prime Consultant has chosen to act as a "fiscal sponsor" for another entity. The City has no right or recourse to hold the "sponsored" entity accountable because that entity is not a party to the Contract.

Please refer to the Public Benefit Nonprofit Exemption Checklist prior to contracting with a nonprofit under the exemption.

[1] RCW 24.03.005 (17): "Public benefit not for profit corporation" or "public benefit nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3).

Process Steps

Ask your Department Contracting Office for Department specific procedures

Determine you need a Consultant.

Verify Contracting Restrictions. See the 2009 Contracting Out Memo.

Obtain Approval.
Get your Supervisor, Manager and Division Director Approval. PC has sample forms on Inweb that Departments can use or customize.

Develop Procurement and WMBE Inclusion Strategy.
Work with your Department Contracting Office and WMBE Rep to develop a WMBE procurement strategy. Your strategy should identify your scope, contract phasing, cost(s), solicitation type (Roster, RFQ, RFP, etc), WMBE outreach, payment (lump sum, fixed fee, or actual cost not to exceed), and whether grants or federal funds are involved. Appoint your Consultant Evaluation Committee (CEC).

Review "Women and Minority Business" section in this Guide.

Decide on roles and responsibilities for your contract manager (and/or Project Manager if these are two people), your Contracting Office, and WMBE Rep. Identify tasks, schedule, project lead, and required reviewers. Update your scope and cost estimate. You may need to update your scope if you have unbundled some scope for WMBE inclusion.

Consultant Process Summary

1. **Determine need to hire Consultant**
2. **Verify restrictions on Contracting Out**
3. **Obtain Department approval**
4. **Strategize procurement plan & WMBE**
5. **Develop draft scope**
6. **Conduct appropriate solicitation process**
7. **Prepare in-house cost estimate.**
8. **Negotiate final contract**
9. **Route contract for review & signature**
10. **Enter as a PO into PS 9.2**
11. **Send original to City Clerk**
12. **Pay Consultant**
13. **Request and process amendments**
14. **Close out contract**
15. **conduct performance evaluation**

Request Risk Management Review.
Complete the Risk Management Checklist. Medium high or high risk requires review by FAS Risk Management, Travis Steichen 386-0071.

Develop "Solicitation Ready" Scope of Work.
See Scope of Work Development. Prepare a scope with a description of the work to be performed; key assumptions; contract deliverables and deadlines; schedule constraints; and criteria to evaluate consultant invoices and performance.

Describe any and all phases. The scope for the first phase will be more detailed than later phases, which may be developed after the contract is underway. Some contracts will require a solicitation at this point; others may jump directly to negotiations and finalizing the contract.

Preparation.
You are ready to start the procurement process. The following is guidance, with notes about a Consultant Roster process compared to full Solicitation (RFP/RFQ). Contact your Department Contracting Office for unique Department processes.

- Estimate the maximum contract dollar amount, including all intended phases of the project within the entire RFP/RFQ project scope. Identify whether there are Federal Funds and requirements.
- Identify the pricing format (lump sum, fixed fee, or actual cost not to exceed). Discuss with your Contracting Office or call either Julie Salinas at 684-0383 or Steven Larson at 684-4529. SMC 20.50.040(G) restricts Departments from "retainer" contracts (where you give them money just to hold a place) longer than five years (page 7, On Call Contracts).
- Identify (and justify) Minimum Qualifications that firms must have to compete. Use these rarely, since they are a hard-line prohibition on who can compete.
- Consider local business' advantages, such as easy-access and reduced travel which might be important. The City is prohibited by State Law from providing a point preference to local business.

Select the solicitation process (see page 23).

- For a "Direct Selection" under $71,000, an informal solicitation is encouraged but not required.
- For Consultant Roster projects, you may solicit one or more firms. Although Departments are encouraged to contact three to five firms, with at least one WMBE, SMC 20.50.100 does not require multiple quotes. Contact can be through an informal phone call, e-mail or letter
- For a formal solicitation (including all projects with a total estimated value of $71,000 or more, non-Roster) you must use a formal, advertised RFP or RFQ.
- An RFQ is best used when the PM is only evaluating Consultant qualifications and not evaluating designs or proposals.
- An RFP is used when the PM wants detailed proposals and is looking for how respondents will solve a problem, such as, explaining their training approach or creating a design.
- An RFQ and RFP can be used together when the PM wants to shortlist respondents, and then invite the short-list to provide proposals.

- Prepare an RFQ or RFP. Call your Contracting Office or PC (Julie Salinas, 684-0383 or Steve Larson, 684-4529) for questions. PC (Inweb) has templates to be used for the RFQ/RFP and contract.

Advertising.

- A Consultant Roster project requires no advertisement.
- All other solicitations above $71,000 require you to advertise at least two days (per SMC 20.50.030.B) in the Daily Journal of Commerce. SMC 20.50.30 requires your ad to include (1) description of services sought; (2) your Department and contact information; (3) a WMBE statement. We suggest you publish the pre-proposal conference date/time and deadline for submittal. Make sure your delivery point has administrative support to receive and stamp the incoming proposals.
- Post ads and the solicitation documents on the City Consultant website. Carol Wong 684-0444 (PC) or PC) can assist.
- You can also post on EBid (there is a fee to do so).

Incoming Proposals.

Receive and record the incoming responses. Make sure your front-desk can receive proposals as they arrive. It is a best practice to time/date stamp the package. The

Screen incoming proposals to ensure they meet basic responsiveness. The proposal submitted must be:

- On time (unless waived as immaterial; contact PC' Steven Larson or Presley Palmer for guidance);
- With all mandatory forms,
- Showing clear compliance with the minimum qualifications,
- Showing compliance with Equal Benefits (if $71,000 or more), relative to the other respondents,
- with a responsive Inclusion Plan (if above $420,000) properly filled out,
- Not debarred by the Federal Government or by the City. Check at: https://www.sam.gov/. Print out and retain for your contract file

The Contract Manager typically rejects those that don't comply. Certain situations can have unique facts that may find a discrepancy as immaterial (such as lateness). Call your Contracting Office or PC:

Julie Salinas, 684.0383, Procurement Program Manager
Steven Larson, 684-4529, Procurement Strategic Advisor
Krista Díaz, 684-0456, Purchasing Manager
Presley Palmer, 233-7158, Division Director, PC

Likewise, review the incoming responses for responsibility. Carefully review the Consultant Questionnaire for any red flags, such as legal convictions, financial issues, or similar. If the scope merits additional scrutiny such as background checks, the department should initiate those now or before final selection. The Roster application process does not screen for responsibility nor background checks.

Scoring, Evaluation and Selection.

1. A Consultant Evaluation Committee (CEC) is mandatory for advertised projects ($71,000 or more) and optional for Roster Contracts, per SMC 20.50.040. Ensure a mix of team members representing strong expertise and different interests. SMC 20.50.040 also seeks women and minorities where practical to be on your team. For projects above $420,000, invite your Department WMBE Representative to the team. Recommend and receive approval from Division management for your proposed Consultant Evaluation Committee (CEC).
2. When applicable for capital improvement projects, consideration should be given to including a member of the Seattle Design Commission.
3. Provide your team with the instruction letter. You may wish to have them sign and retain in your contract file.
4. With your team, develop evaluation criteria for written responses and interviews (if any):
    a. Score the WMBE Inclusion Plan for projects above $420,000 and smaller projects at Department discretion. This must be at worth no less than 10 percent of total points. See Sidebar - Inclusion Plan Evaluation.
    b. For A&E, you may not ask or score price (Chapter 39.80 RCW).
    c. You likely should use both written results + interview scores to select the finalist. Alternatively, the team may use written proposal scores to short-list, and start over with new scoring to select the finalist.
5. Scoring can be done individually then tabulated, or teams can talk together and arrive at one team score for each evaluation factor.

6. The Contract Manager guides your CEC Team through scoring and evaluation. Keep documentation that shows the evaluation scores (whether you chose individual scores or a single group score), the tabulated totals, and the basis of the scores. This material should be well-prepared, so it can present the CEC decisions in a clear, well-documented approach. Although casual hand-written notes from the evaluation team may be discarded, all formal notes, scores and score sheets should be collected and retained in the Contract File.

7. Shortlist candidates in the order they were scored by your CEC team. Look for an obvious differential or an cut-off point for the short list. Do not skip one candidate to short-list a lower-ranked candidate. SMC 20.50.040(C) requires that formal, advertised processes rank the top five Consultants where possible.

8. Be thoughtful to local and woman and minority business as you determine your short-list and optimum cut-off.

9. Notify all firms of short-list decisions in writing. Allow three days for protests about short-list decisions. If a protest is received on items that have FTA funds, notify FTA. The RFP/Q document will refer protests to PC, unless you edit to receive those in your own department.

10. Select your interview team (which can be your original CEC team or may be new or different members). A best practice provides them with the Interview Advice sheet. Establish questions; confirm the process you intend to use, how long each presenter must present, any materials the firm must cover. Confirm who will manage the interview process. Conduct interviews;

11. CEC members score interviews and make a recommendation. Whether you have scored based on written proposals + interview results, or the best interview wins, determine the finalist. The finalist proposer must be selected following exactly the process you published in your RFP/RFQ. If you are not satisfied so, you will likely need to reject all responses and start over.

12. CEC provides a written recommendation to the Department Director designee of its selection. SMC 20.50.040(C). SMC 20.50.040(D) requires the Department Director to consider the report and recommendation of the committee in making the final selection. If the Department Director rejects the recommendation, s/he must file a written explanation to be retained with Contract File.

13. Contract Manager prepares a Consultant Selection Notification letter. Contract Manager notifies Consultant(s) of results in writing per SMC 20.50.050.

Prepare and Finalize the Contract.

If this is a direct selection or sole source, you may not have yet asked the Consultant for a "Consultant Questionnaire." This form seeks verification of responsibility elements, such as bankruptcy, criminal convictions, and similar. If your particular scope merits, also be sure you have considered background checks or criminal checks.

To prepare the contract itself, integrate your proposed scope of work with the proposal response from the finalist, and negotiate contract. For A&E projects, price is requested and negotiated at this point in the process. See the Sidebar Discussion on page 34. Once the contract substance is agreed upon (final scope, final cost estimate, Consultant information, WMBE Inclusion Plan etc.), the Contract Manager or Contracting Office will prepare the appropriate contract boilerplate for the contract type and funding.

PC has issued required and standard boilerplate templates for contracts. See below. For questions, call PC:

Julie Salinas, 684-0383, Procurement Program Manager
Steven Larson, 684-4529, Procurement Strategic Advisor
Krista Díaz, 684-0456, Purchasing Manager
Presley Palmer, 233-7158, Division Director, PC

At times, a Consultant will request a change. The RFP/Q boilerplate prompts you to decide and instruct firms whether you will consider such changes. Follow your own procedures from the RFP/Q. Any proposed changes should be reviewed with your Contracting Office. SMC 20.50.060 requires Law to review changes in indemnification, bonding, and liability. Insurance changes are delegated to City Risk Management (Travis Steichen) for review.

- Mini Agreement (an option for contracts less than $10,000 including amendments)
- Small Agreement (less than $71,000)
- Standard Consultant Agreement ($71,000 or more, but can be used for all contracts)

Most Consultant contracts include or attach:

- Scope of Work– A narrative describing the work Consultant will perform, project schedule, services or equipment provided by the City, general assumptions.
- Consultant Fee– A detailed breakdown of costs. The detail depends on project size and complexity.
- Insurance Addendum -- what insurance coverage's are required of Consultant.
- Required Social Equity documents (Equal Benefits, WMBE Inclusion Plan)

The boilerplates contain standard contract provisions to comply with City ordinances and protect the City's interests. Some sections may be modified by Departments. Other sections may need to be added by the Department.

The standard agreements contain instructions on insurance documentation. Usually, the "Risk Management Addendum: Insurance Requirements and Transmittal" form will be referenced in the Insurance section of the boilerplate and attached to the agreement along with the proof of insurance. Risk Management should be consulted (Travis Steichen) if you need assistance.

The City's boilerplate agreements if properly completed should meet the following requirements.

1. Be in writing and signed by at least one authorized representative of each contracting party.

2. Include a specific and detailed description of the scope of work or services to be provided by the Consultant(s) and the products of any sort to be delivered to the City.

3. Include the maximum amount of compensation to be paid and any other consideration to be provided to the parties to the Contract, together with a description of the timing and method(s) of such payment and any retainage to be held.

4. The Contract takes effect on the date that it is fully-executed. The Contract may include an alternative start date the Contract takes effect and the date the Contract expires. Under rare circumstances, such as during an emergency, a contract can have an effective date that starts earlier than the final signatures.

5. Utilize the PC Contract template carefully, which specifies which provisions are required by law, such as equal employment opportunity, women and minority business, and affirmative efforts provisions.

6. Provide the authority of the City to audit the Consultant's books and records with respect to services to be provided, costs thereof, and compensation paid.

7. Include any appropriate or required funding or other provisions related to the source of funding.

8. Contain legal relations and insurance sections as deemed necessary by the awarding Department with advice from the City Attorney and/or the Risk Management regarding the amount of general liability and/or professional liability insurance necessary to protect the City's interests.

9. On the last page of the contract, you can include the Consultant's City of Seattle Business License number, and UBI number. Do not include any Social Security Number onto the contract form; that is private information that cannot be disclosed.

Sidebar – Insurance.

Most Consultants must carry insurance and must provide proof of their coverage.

Low Risk projects have no standard minimum insurance and your Consultant need not provide proof of insurance. The level of risk depends on the scope of work for each project and Risk Management.

The City Risk Management Office establishes the insurance requirements. Sometimes, the coverage's and limits required may exceed the level of insurance maintained by the Consultant. If this poses a problem, call Risk Management.

New Contracts: When a new contract is developed, complete the Risk Management Checklist. If Medium or High Risk, send to Risk Management. Work with Risk Management to resolve issues or concerns that the Consultant may have. Sometimes they don't have enough to cover the amount you seek, and it can be reduced if appropriate. Talk to Risk Management

Amendments: The Project Manager determines if changes add any new risk and adjust insurance appropriately.

On larger contracts, the consultant's broker must provide proof of insurance and send to you and Risk Management.

Small contracts may not require any insurance or documentation. Larger or those with risk will seek the Consultant insurance broker to send certification to Risk Management. If you want to review and maintain copies, check the box on the Transmittal Form to receive a copy. Certificates of insurance (called an ACCORD) are the evidence you will be asking for. It is simple to compare the coverage's and limits of liability specified in the Insurance Addendum with the ACORD.

Besides the ACORD, the City would typically receive evidence that the City is an additional insured. This cannot be met with the ACORD alone. It is necessary to have an the policy or endorsement as well.

Additional insured status on the policy is demonstrated in two ways:

- There will be "blanket additional insured" language either in the policy or on an endorsement. It will state that an entity is an additional insured if it is required by written contract. This form of additional insured is satisfactory proof of insurance.
- Alternatively, the broker may furnish a policy endorsement that names "The City of Seattle" (or the Department) as an additional insured.

Note: Please contact Risk Management, Travis Steichen 386-0071 if you have any questions about the insurance documentation or Checklist processes.

Sidebar - Scope of Work.

For most Architectural and Engineering (A&E) contracts, the Scope of Work is finalized by the Project Manager after selection, and included as an exhibit in the contract. For most A&E contracts, you have a detailed scope for pre-design and a general statement for future phases. Write a detailed scope for future phases once work proceeds, using an amendment. Each scope must identify work tasks, deliverables and completion schedules for tasks and work product. The Scope of Work describes:

- work the Consultant will perform
- project schedule
- services or equipment provided by the City
- general assumptions
- equipment and materials provided by the Consultant
- other information necessary for the Consultant to meet PM expectations, and
- Consultant deliverables and when the deliverables are due

Usually, the PM will independently draft a Scope or review the Consultant's Scope. If the Consultant develops the Scope, the scope may be slanted toward the Consultant's business interests rather than the City's. If the Project Manager writes the scope, clarify contract expectations, assumptions, and tasks. You may prefer the Consultant write the scope if the project requires technical ability not in the Department. It is important for the Project Manager to review the scope before execution.

Depending on complexity, a Scope can be one or many pages. The most important factor is that the Scope defines expectations, assumptions, timelines, City's responsibilities, and deliverables.

Scopes are technical and not always in a standard format. Scope statements use action verbs, such as, "the Consultant shall…" Some Departments have standard "Scope of Work" templates. Check with your supervisor or Contracting Office .

As a common business process, Consultants will outline a Scope of Work to use during contract negotiations. It is acceptable for the PM and the Consultant to negotiate the scope if it is not vastly different from the Scope of Work advertised. As part of the negotiation with the PM, the Consultant may request edits and suggestions to the developed scope document.

The contract boilerplate outlines the payment terms, indemnification conditions, and other contract provisions approved by PC. Any negotiations for contract changes that may conflict with or change the City's approved boilerplate language will need to go through a formal approval process led by the Department.

Completing the final Scope of Work and cost estimate is on the critical path for completing the contract approval process. Delays to finalizing these contract items often results in the delay of final contract issuance.

When the PM has completed the final draft of the scope of work he or she should submit it as a Word document by email to the Department Consultant Office for a final review. When the Department approves the Scope of Work statement, the PM may prepare an in-house cost estimate and negotiate the fees with the Consultant. See Step 9 – Prepare an in-house cost estimate and negotiate fees with Consultant.

Sidebar - In-House Cost Estimate and Negotiation of Fees.

When the draft Scope of Work is completed, most consultant contracts will have deliverables in lieu of time & materials. This is a decision the PM will make using the facts of the work and the contract For example, an on-call contract will not have a cost estimate, but the individual work order may. When using deliverables as your measure, the PM will develop an in-house cost estimate for each scope task. Identify the hours projected for each task, schedule restrictions, and other direct expenses anticipated for reimbursement (travel, materials, etc.). Study the contract language, which has considerable detail around acceptable expenses items. There are a few situations where the Consultant might develop the initial cost estimate *Note: The revised, negotiated and final/approved Scope of Work should not significantly differ from the original Scope of Work advertised or proposed to consultants. The final/approved Scope of Work should not be so different as to attract different consultants or a significant change in proposal responses.*

This estimate is your basis for negotiation with the selected Consultant. During the fee negotiations with the Consultant the PM should consider the following:

- Is the Consultant's hourly fee reasonable for the expertise being provided?
- Aare rates and fees comparable to other Consultants' within that discipline?
- If your Department allows a mark-up on subconsultant invoices, ensure the rate for sub-Consultant costs are not duplicated in the fee structure.
- Are the hours allocated for upper management and administrative support reasonable; were they duplicated in the Consultant's over Director?
- Are the non-staff expenses reasonable and acceptable?
- If Consultant is to be co-located in City offices, the Law Department has advised fees for rent, equipment usage, etc. The contract boilerplates have provisions that address this requirement.

Generally, the City does not pay:

- Airline travel costs at a higher cost compared to the cost of the same route in coach or Economy. Consultants are limited to the Contract Travel policy.
- Commuting costs from home to the Consultant's office or work site.
- Consultant's time spent developing and negotiating the contract.
- Supplies which can be reused after the project (e.g. calculators, computers, safety vests, and furniture)
- Memberships and subscriptions.

Carefully document the negotiation with your intended Consultant. Have more than one City person in the room to witness discussions. This public record or documentation demonstrates that the City has negotiated fair and reasonable compensation terms for a contract or amendment.

Include a written narrative summary of the negotiation describing how the contract negotiations resolved any differences between the Consultant's cost proposal and the Department's estimates. The level or standard of such documentation in the contract files shall be sufficient for, and acceptable to, the Director of the administering Department. Review the Documenting Work Scope & Negotiations document for examples of documentation forms used by one City Department. This document is available on the Consultant Contracting Boilerplates, Forms and Documents page.

Once there is agreement between the PM and Consultant, the PM electronically sends the final scope and cost forms and signature page to the Consultant for final review. The Consultant reviews these draft documents, assuring the work and cost is as agreed and the appropriate signature is indicated on the signature page. Note: the administering Department should obtain at least one with an original signature, and typically prefer to obtain three original signatures (one for the Clerk, one for the Department, one for the Consultant).

Sidebar - Indirect Costs (Overhead and Fringe Benefits).

Consultant contracts may use a cost-plus fixed fee payment methodology. Indirect costs are normally recovered by Consultants as a percentage of direct salary costs, and comprise non-salary related indirect costs (over Direct) and salary related indirect costs (fringe benefits)

Definitions:

a) Overhead. An indirect rate covering costs of the Consultant that cannot be allocated to a specific contract and is reimbursed as a percentage of the base salary costs.
b) Fringe Benefits. An indirect rate covering costs associated with employees beyond salaries and reimbursed as a percentage of the base salary costs (i.e., reasonable sick leave, vacation and holiday pay, unemployment compensation insurance, FICA, retirement contributions, medical insurance, etc.).

For cost-plus fixed fee or other Consultant contracts that use indirect rates, the administering Department must:

1. Provide the Consultant the list of allowable and unallowable indirect rates (noted below). Review the *Allowable and Unallowable Overhead Costs* document, available on the Consultant Templates and Forms page under "Guidelines and Procedures."
2. Inform the Consultant that the City will pay only indirect rates consistent with provisions below, and that they bill only the allowable indirect rates.
3. Inform the Consultant that charges to the City may be audited by the City Auditor or designee and are subject to adjustment based on an audit.

Sidebar - Overhead Expenses.

The City has cost categories allowed or disallowed as overhead. The lists are not exhaustive. Costs are subject to audit based on contract terms accepted accounting principles, reasonableness, documentation and the proper base. The Federal Acquisition Regulations ("FAR") shall be the definitive standard for allowable versus unallowable costs. Costs should have a basis in the company's established policy, plans or practices. Costs should not be discriminatory against the City. Exceptions may be allowable if fully documented and justified.

Review the *Allowable and Unallowable Overhead Costs*, available on the Consultant Templates and Forms page under "Guidelines and Procedures," for a listing of allowable overhead expenses and categories of costs that are not allowed either as direct or indirect expenses. For further information, refer to Subpart 31.2 of the Federal Acquisition Regulation, as of 2005 (48 CFR 31.2). A full text version of the Federal Acquisition Regulations may be found at the following Internet Website address https://www.acquisition.gov/far/reissue/FARvol1ForPaperOnly.pdf

Also See Sidebar – Supplement for Federal Transit Administration (FTA) Consultant Contracts

Sidebar - Evaluation of Fixed Fee or Profit

In negotiating a contract or amendment on a cost-plus fixed fee basis, the City considers a reasonable fixed fee range to be 10 – 13 percent (of the Consultant's total labor costs including base salary rate, overhead, and fringe benefits). In negotiating a fixed fee, the administering Department should consider:

1. The level of risk involved in the work to be performed. The City should expect to pay a lower fixed fee for routine, low-risk work, while unique or high-risk work may warrant the payment of a higher fixed fee.
2. The fixed fee paid to other Consultants by the City for similar types of work.
3. The fixed fee paid to Consultants for similar types of work by other large government agencies.

If the administering Department negotiates a fixed fee above the 10 – 13 percent range, documentation shall be maintained in its contract files explaining why.

Sidebar – Inclusion Plan Evaluation.

For projects above $420,000, the Inclusion Plan is required. You must allot at least 10% of the total written points. The Department must include at least one interview question on the topic. Remember some federal rules require a DBE Plan instead, so seek FAS advice on federally-funded projects.

1. All firms must attach and fill out the Inclusion Plan, or you must reject them as "non responsive."
2. You need not develop a matrix for point assignments. Score points based on your total assessment of the Plan:
    - **a.** How much the firm intends to subcontract. Greater subcontracting, particularly in scopes of work where there is reasonably well known WMBE availability, shows a good-faith effort and/or intention.
    - **b.** Greater voluntary goals show a stronger good-faith effort. These aspirational goals become material to the contract. There is no required mandatory goal that the respondent must meet to be eligible; these are voluntary and aspirational indicators of good faith efforts.
    - **c.** Strong past performance.
    - **d.** Training and mentoring programs.
    - **e.** A team that presents WMBE firms already engaged and committed for subcontracting is a strong good faith effort.
    - **f.** If the project requires hiring of new staff, diversity in employment should be considered.
    - **g.** The WMBE work should be meaningful. If it is all secondary work with little relation to the true scope of the contract, that may well indicate lesser effort at utilizing the WMBE administrative, technical and professional experts. If all WMBE is auxiliary, such as office supplies for an engineering contract, that would not be a meaningful WMBE outreach on its own.
3. Important:

a. Do not use the voluntary utilization goal as a single measure. It is only one measure as a good-faith indicator of effort, but is not the only measure of the good faith efforts taken or intended

b. Remember the spirit of the Inclusion Plan is seeking a responsive, good-faith effort to include WMBE firms. It is not a requirement or "set aside" goal.

4. For assistance, please call your Contracting Office, Miguel Beltran, Steven Larson or Presley Palmer.

Sidebar – Supplement for Federal Transit Administration (FTA) Consultant Contracts

Purpose.

This section supplements other City policies and procedures for selecting consultants. The purpose of this supplemental section is to outline the federal requirements for contracts funded with Federal Transit Administration (FTA) dollars.

Note: This Supplement is not intended to substitute requirements that are specified elsewhere within these Guidelines. However, there may be instances where some activities are duplicated. Departments are advised to use this Supplement in conjunction with the rest of the Guidelines to ensure compliance with every requirement, both federal and city. The required Checklists and Forms are listed in 2.90.

Thresholds.

Consistent with federal regulations, this Supplement covers the requirements for three threshold areas as follows:

1) Micro-Purchases: Consultant services estimated to cost $10,000 or less.
2) Small Purchases (Informal Solicitation): Consultant services estimated to cost between $10,001 and $250,000.
3) Competitive Proposals (RFP/RFQ): Consultant services estimated to cost above $250,000.

NOTE: These thresholds are different than the City's thresholds and departments must follow the more stringent threshold requirement in administering the solicitation processes. If the City's thresholds are lower than the federal threshold, departments must comply with the Ctiy's lower threshold. If the City's thresholds are higher than the federal threshold, departments may not exceed the federal threshold.

2 CFR 200.320; FTA Circular 4220.1F, Ch VI; FAST Act

Compliance with Federal Laws and Regulations

Applicable Laws and Regulations: In addition to applicable state and city laws and regulations (outlined elsewhere in these Consultant Guidelines or on the City's Inweb), the requirements listed herein are in compliance with applicable federal laws and regulations, which include, but are not limited to, the following:

- FTA MASTER AGREEMENT
- FTA CIRCULAR 4220.1F
- 2 CFR §200.317 - §200.326 (Procurement Regulations)
- FTA Best Practices Manual
- Fixing America's Surface Transportation (FAST) Act
- 49 CFR Part 26 (Disadvantaged Business Enterprise Requirements)
- City's FTA DBE Plan

Finance and Administration/Purchasing and Contracting Division Responsibilities.

a) Establish policies and procedures and standard solicitation documents to be used throughout City.

b) Establish, manage, and maintain the City's Consultant Roster Program and On-Line Business Directory.

c) Chair the City's Consultant Advisory Group.

d) Provide technical advisory services to Departments as needed in administering their consultant contracting processes.

Department Responsibilities: Departments manage the selection processes for consultant services, which include the following responsibilities.

a) Departments are responsible for securing the appropriate funding for the project.

b) Departments are responsible for making the determination regarding contract type for professional services designation. Departments are advised to ensure the services falls within consultant services as defined in SMC 20.50. See also definition included within these Guidelines on page 8.

c) Departments are responsible for administering the solicitation process, including but not limited to distribution of the solicitation materials to the consultants, issuing addenda, receiving and evaluating proposals, and preparing the written record of the procurement history. As part of this responsibility, Departments must identify the position(s) authorized to complete various activities, such as the initiation and completion and approval of the procurement records. This information will be demonstrated through the departmental review and approval process.

d) Departments are responsible for ensuring compliance with the City's DBE Program. For SDOT see also DBE Info and Reporting.

e) Departments are responsible for ensuring that its staff develop appropriate content to include in the solicitation materials, including but not limited to:

- Sufficiently detailed, clear, and accurate scope of work, including the appropriate federal provisions and federal forms, such as the Anti-Lobbying Certificate.

2 CFR §200.319(c)(1): "…all solicitations [shall] incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured."; FTA Circular 4220.1F, Ch VI.

- Evaluation criteria, including weighting of each criterion.

CFR §200.319(c)(2): Procurement procedures will ensure that all solicitations "identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals."; FTA Circular 4220.1F Ch VI

- List of items to be submitted with the proposal.

f) For contracts greater than $250,000 or for any change order issued on contracts exceeding $250,000, Departments shall ensure that an Independent Cost Estimate is developed prior to receipt of any proposals and a Cost/Price analysis is completed prior to award. See Ensuring Reasonable Costs for more information. 2 CFR 200.323(a).

g) Departments are responsible for appointing a consultant evaluation committee of at least three qualified members to review and rate proposals received.

h) Departments are responsible for ensuring that they are contracting with only responsible firms. (2 CFR 200.318(h); FTA Circular 4220.1F Ch VI (8)b)

i) Departments are responsible for preparing the recommendation for selection and negotiating the contract with the successful consultant.

j) Departments are responsible for administering the contract, including issuing payments, issuing change orders, closing out the project, and preparing the performance evaluation report.

k) Departments are responsible for reviewing and deciding on any protests and/or appeals to the solicitation process.

l) Departments are responsible for establishing appropriate retention procedures for the procurement and contract files.

Planning Activities.

Prior to initiating any procurement, department staff are advised to consult with its internal contracting staff and/or grant manager to discuss project and identify the appropriate processes that will need to be used in administering the procurement.

Micro-Purchases - Consultant Services of $10,000 or Less

a) Departments are allowed to solicit one quote (direct select) for consultant services estimated to cost $10,000 or less. (2 CFR 200.320(a); FTA Circular 4220.1F, Ch VI (a); FAST Act)
Note: This threshold is different and more stringent than the City's direct select threshold of $71,000 for non-A/E services (departments must use the Roster or advertise for A/E services).

b) There is no formal requirement for departments to complete an independent cost estimate or cost/ price analysis for a micro-purchase transaction. However, departments shall describe how it

determined that the consultant quote/price received is fair and reasonable. 2 CFR 200.320(a); FTA Circular 4220.1F, Ch VI (a) 2a.

c) The contract must contain the appropriate federal provisions.

d) The procurement file should adequately document the history of the procurement, including but not limited to the following:

- Appropriate internal authorization/approval of the transaction
- Written request for quote detailing the scope of work to be performed
- Witten response from the consultant
- Executed contract

e) When feasible, departments are required to 'distribute micro-purchases equitably among qualified suppliers." (2 CFR 200.320(a); FTA Circular 4220.1F, Ch VI (a) 2a.)

Small Purchase (Informal) Solicitation Requirements – General.

a) Small Purchases Solicitation Threshold: The solicitation process outlined in this section may be used only for those Consultant services that will cost $250,000 or less over the life of the contract (including change orders). Based on selection through a small purchase solicitation process, no contract may be awarded where the contract amount exceeds $250,000, and payments during the life of the contract may not exceed $250,000. In the event that additional services are required under a contract that was based on an informal solicitation, such that the amount of payments would exceed $250,000, a competitive selection process must be conducted for those additional services and a contract executed.

b) When to Use Small Purchase Solicitation Process: While procurements of $250,000 or less may be conducted under less formal selection procedures, competition, including the use of price as one of the evaluation criteria, represents good public policy and is required for all Consultant services more than $10,000 for FTA funded projects, unless it is an A & E consultant service in which case, price may not be used as an evaluation criterion, regardless of price. Note: Because the City's competitive threshold is $71,000, unless the Department utilizes the City's Consultant Roster Program up to $250,000, they must follow the competitive proposal solicitation procedures.
The City's Consultant Roster Program is another informal solicitation tool available to departments for small purchases. The listing of roster consultants is accessible through the Online Business Directory (OBD) http://fas/registration/. In using the Roster, departments are encouraged to rotate through the list to the extent possible to facilitate equitable distribution of the opportunities among the roster consultants. For more information regarding use of the roster, click here.

c) For A & E Services: A & E services must use a qualifications based selection process (QBS) whereby selection is determined only the qualifications and expertise of the consultant. 2 CFR 200.320 (5); FTA Circular 4220.1F VI 2 (f) Consistent with State law, RCW 39.80, when using a small purchase solicitation

process for A/E services, if the department elects not to use the Consultant Roster Program, they must follow the competitive proposal solicitation procedures.

Solicitation Requirements.

a) Number of Firms: In order to ensure adequate and sufficient competition in obtaining consultant services, at least two consultants must be solicited. 2 CFR 200.320(d)(s) "Proposals must be solicited from an adequate number of qualified sources."; FTA Circular 4220.1F, Ch VI (3)b;

b) The solicitation will include the appropriate federal provisions, including but not limited to the Anti-lobbying Certification as appropriate and the DBE requirements in compliance with the City's DBE Program. For SDOT projects, see also DBE Info and Reporting. The sample contract also containing the required contract clauses shall be included in the solicitation. (See the Required Contract Clauses Checklist on the Inweb for a complete listing of these required clauses) 2 CFR 200.326; FTA Circular 4220.1F

c) The solicitation shall specify the type of contract to be awarded. Generally, contracts shall normally be based on a fixed- price, cost plus fixed fee, or lump sum price model. The Cost Plus Percentage of Cost model may not be used and use of a Time and Materials contract may only be used under certain circumstances (see Ensuring Reasonableness of Costs for more information). FTA Circular 4220.1F ch VI

Note: While it is already against City policy to allow for advance payments, the FTA also prohibits their use without express FTA approval. As such, departments shall ensure no changes are made to this standard provision. FTA Circular Ch IV 5(b)

d) The solicitation will specify the contract period.

Note: Long-term contracts of more than five years in duration must be justified in advance of solicitation issuance. Departments are advised to consult with their grant manager to ensure that they can demonstrate sound business reasons for wanting to issue a contract for more than five years. FTA Circular Ch VI

e) The requirements and responses relating to informal solicitations shall be communicated in writing between the City and the consultants.

f) The solicitation should be available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals.

g) The solicitation shall outline requirements for receipt of proposals, including, but not limited to, addressing to whom proposals should be submitted, whether there will be a pre-proposal conference, the means of solicitation and proposal submission (electronic, hard copy, or oral), and deadlines for submission.

Evaluation Criteria.

Every solicitation shall include the evaluation criteria and the associated weighting for each criterion. In drafting the evaluation criteria, Departments shall not include requirements that would be viewed as restricting competition, such as *placing unreasonable requirements on firms in order for them to qualify to do business*. 2 CFR 200.319 a; FTA Circular 4220.1F Ch VI 2

Examples of restrictive competition:

a) Overly burdensome or overly specific geographic preferences (e.g. when a qualification is so specific that only an existing contractor to the City would be eligible to compete for the work, while a contractor, who has not previously worked for the City, but may have performed comparable work, would otherwise not be eligible).

   Note: Geographic location is an example of a requirement that may not be used for solicitations except for A& E Services and it may only be used for A & E Services provided that "its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.".

b) Bundling identifiably unique services. (e.g. competing vastly different services in a singular contract, running a singular competition for provision of "cradle to grave" services on a project).

c) Overly burdensome or overly specific qualifications (e.g. contractor must have 20 years' project management experience, for a relatively simple project)

d) Overly burdensome or overly specific requirements (e.g. contractor must use specific brand name equipment when accomplishing work)

e) Adding a scope of work to an existing contract, that should be competed for (e.g. new scope of work is not an applicable fit with scope of work of existing contract)

> 2 CFR §200.319(b) : "The non-Federal entity (CITY) must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws." FTA Circular 4220.1F Ch. VI2.a (4)(g)

Standard evaluation criteria include the following criteria:

1.) Price:

For non A & E Services: Price Shall be used as an evaluation criterion.
For A & E Services: Price may not be used as an evaluation criterion.
2 CFR 200.320; FTA Circular 4220.1F Ch VI

2.) **Experience:**
Experience of the consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria. **Note:** Departments shall ensure that its solicitations do not include excessive restrictive experience requirements, such as *placing unreasonable requirements on firms in order for them to qualify to do business*. 2CFR 200.319(a); FTA Circular 4220.1F, Ch VI (2) a (4) (a).

3.) **Technical Approach**

4.) **Past Performance**

Evaluation and Award.

a) Evaluation criteria shall be included in the solicitation, along with the weighting to be assigned to each criterion.

b) Departments shall ensure all proposals received are responsive to the solicitation requirements.

c) **Note:** If only one proposal is received, departments are required to conduct an analysis to determine if competition was adequate. See 2.20 for more information.

d) The evaluation panel shall evaluate proposals received based only on the established criteria. FTA Circular 4220.1F, Ch VI (7)a

e) Consistent with federal and city requirements, Departments shall only award a contract to a responsible firm. Per federal regulations this means the firm *possesses the ability, willingness, and integrity* to perform the contract. In verifying responsibility the Department shall perform responsibility checks including but not limited to the following activities:

- Ensuring registration of the firm on the federal System of Award Management (SAM)
- Verifying through SAM that the firms are not debarred or suspended from receiving award of a federally assisted contract. 2 CFR §180.220(b)(1); FTA Circular 4220.1F, Ch VI (8)b.
- Ensuring compliance with any licensing and tax requirements.

f) Generally, the highest ranking consultant shall be selected, consistent with the federal requirement that award be made to the firm *"….whose proposal is most advantageous to the program…."* 2 CFR 200.320d(4); FTA Circular 4220.1F

g) The Department shall enter into negotiations with the highest ranking consultant in an effort to execute a Contract. In the event that negotiations are unsuccessful, the Department may proceed to select and negotiate with the next highest ranked Consultant.

h) The Department shall obtain proof of insurance as may be required prior to executing the contract.

i) The Department shall use the City's template for the contract, ensuring all the appropriate federal clauses are included in the contract. See the Required Contract Clauses Checklist on the Inweb for the

provisions. For SDOT see their Boilerplate Template on the Inweb.

Competitive Proposals -Request for Proposals/Qualifications—For Consultant Services estimated more than $250,000.

Departments must formally advertise for FTA funded projects estimated above $250,000. The use of the Consultant Roster Program is not allowed. Except as noted below, the solicitation preparation, issuance, and selection procedures described above for Small Purchases shall also apply in administering the Competitive Proposal process.

a) The Department shall complete an Independent Cost Estimate prior to receipt of any proposals. See Ensuring Reasonable Costs for more information. 2 CFR 200.323(a).

b) Competitive Proposals (hereinafter referred to as "RFPs" and "RFQs") will be publicly advertised at a minimum in the City's Official Newspaper, Seattle Daily Journal of Commerce newspaper, the City's Official Newspaper for the time specified elsewhere in these Guideline. 2 CFR §200.320(d)(1), FTA Circular 4220.1F Ch VI 3(d)2

c) RFPs and RFQs should be advertised and available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals. The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, the degree to which City is requesting consultants to develop a proposal or project approach versus merely providing information about qualifications, experience, and availability. FTA Circular 4220.1F Ch VI, (3) 2

Note: If only one proposal is received, Departments must perform a Single Bid Analysis to determine if competition is adequate. See 2.20 of this Supplement for more information.

d.) The Department shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Ensuring Reasonableness of Costs for further information). 2 CFR 200.323(a).

Note: For SDOT projects, staff must complete the Template-Cost Comparison Memo.

Single Bid Analysis.

When a department only receives one proposal in response to a solicitation, it must conduct a single bid analysis to determine if there was adequate competition. Departments should evaluate factors such as a survey of the bidders as to their reasons for not bidding and a review of the specifications to ensure they weren't overly restrictive. The FTA requires that the reasons for a single response were outside of the City's control in order to make a determination that there was adequate competition and move forward with an award evaluation. Departments shall complete a sole source justification as their evaluation of the procurement. FTA Circular 4220.1F Ch VI

All other requirements shall apply to the procurement, including but not limited to the completion of the cost analysis.

Protests.

Departments shall resolve all procurement-related (solicitation, award, and contractual) disputes, protests, and appealsinternally without outside review by either FTA or the court system. However, Departments are required to notify the FTA whenever a protest is received and to keep them apprised of the status of such protests. FTA Circular 4220.1F Ch VII (1)2(a). See the City's protest procedures outlined in these Guidelines for more information.

The City's protest must be exhausted prior to a Protestor appealing a protest decision to the FTA. (FTA Circular 4220.1F Ch VII (4)b(1) b.) FTA will consider an appeal of a protest based on the City's failure concerning its protest procedures or Violations of Federal Law or Regulations. (FTA Circular 4220.1F Ch VIIb)

Written Record of Procurement.

Departments shall have a written record of the procurement history for each procurement transaction. The extent of the documentation in the procurement record should align with the size and complexity of the procurement. The record shall include the following information: FTA Circular 4220.1F 3(d)1

a) The rationale for the procurement method
b) The reason for the selection of the contract type
c) The reason for the contractor selection or rejection
d) The basis for the contract price

Payments.

The contract should include the maximum amount of compensation to be paid and any other consideration to be provided, together with a description of the timing and method(s) of such payment. These terms shall govern the payments made on the contract.

As part of the negotiation of the payment terms, Departments are expected to ensure that only allowable costs, including for overhead and fringe benefits are included in the final contract. The City's standard boilerplate includes prompts for departments to use in developing this provision in the contract.

In processing payments, Departments should obtain sufficient documentation from the consultant demonstrating completion of the contract work as specified. **Note:** As a reminder, Advance payments are not allowed. FTA Circular 4220.1F, Ch IV (5)

Contract Change Orders and Modifications.

Departments may amend contracts only under limited circumstances as outlined further in these Guidelines on pages 15 and 43. These circumstances are further supported by FTA's conditions that the cost changes "…must be allowable, allocable, within the scope of the grant or cooperative agreement, and reasonable for the completion of the project scope." FTA Circular 4220.1F VII 2

For any change order issued on contracts greater than $250,000, Departments must prepare an Independent Cost Estimate and Cost Analysis and shall require a cost breakdown from the consultant as part of this process. 2 CFR 200.323(a). For SDOT projects, staff must complete the Template-Cost Comparison Memo.

Close-Out.

Departments shall close-out the project consistent with any internal procedures as well as these Guidelines, including completion of the required consultant performance evaluation form.

Retention.

Departments shall develop retention procedures ensuring proper handling and storage of the procurement record in accordance with FTA requirements. As part of this procedure, departments shall identify the staff position(s) responsible for managing the retention activities and where the files will be located, addressing any coordination of these activities if the files are maintained in different locations.

Checklists and Standard Forms

Departments must use the following checklists in administering an FTA funded procurement, including change orders. Please make sure the appropriate staff sign these checklists.

Checklists:

- Checklist for Contracts
- Checklists for Amendments
- Checklist for Final Review

Forms:

- Template-Independent Cost Estimate
- Template-Cost Analysis
- Template-Price Analysis
- Template-Cost Comparison Memo
- Template-Certification Regarding Debarment
- Template-Certification Regarding Lobbying
- Template-Disclosure of Lobbying Activities
- Template-DBE Plan
- Template-DBE Written Confirmation
- Template-DBE Closeout
- Template-Notice to Proposers DBE

- Template-Proposers List

Sidebar – Ensuring Reasonable Costs in FTA Funded Procurements

Purpose and Definitions.

General: As a public agency accountable to both the public and governmental funding agencies, the City is committed to ensuring that the costs paid for obtaining necessary goods and services are reasonable and that the City's interests are adequately protected.

Independent Cost Estimate: An estimate of the anticipated costs of a contract or Change Order prepared by the City staff or other independent party to assist the City in evaluating the reasonableness of costs proposed by bidders/proposers.

Price Analysis: A written review and evaluation of competitive prices received by the City to determine whether the proposed price of a Contractor is reasonable when compared with prices provided by others in the market.

Cost Analysis: A written review and evaluation of whether the proposed cost of a contract, Purchase Order, or Change Order, not based on competitive prices received, is reasonable.

Thresholds for Application of This Chapter.

The requirements of this Chapter for written Independent Cost Estimates, Cost Analysis, or Price Analysis shall apply if the estimated or actual dollar amount of the contract exceeds $250,000 and for change orders or amendments issued on contracts exceeding $250,000. City staff is nevertheless expected to exercise prudent and conservative judgment in evaluating the reasonableness of a proposed expenditure of less than the applicable threshold. The Department may require the completion of an Independent Cost Estimate, Cost Analysis, or Price Analysis on procurements valued at less than the required threshold if it determines the procurement warrants it.

Independent Cost Estimates.

Purpose: The purpose of developing an Independent Cost Estimate is to assist the City in evaluating:

a) The reasonableness of prices obtained through competition where price *was* used as a selection criterion, or

b) The reasonableness of prices proposed through a selection process where price *was not* used as a selection criterion.

When Required: Before soliciting bids or proposals, or prior to starting contract negotiations after making a selection based on a Request for Qualifications process, City staff must develop an independent estimate of costs. 2 CFR §200.323(a) requires that the Independent Cost Estimate be done "before receiving bids or proposals." FTA Circular 4220.1F Ch VI (6)

Independence of Estimate: The Independent Cost Estimate may be prepared by qualified City staff or by an independent consultant engaged for the purpose of preparing such an estimate.

See the Inweb for a sample template

Price Analysis.

Purpose: The purpose of a Price Analysis is to ensure that the price that the City will be paying is reasonable based on competition in the market.

When Required: A Price Analysis is performed when the City staff compares prices submitted as part of a competitive selection process. When price *is* used as the only selection criterion and competition exists, the City must, prior to award of a contract, evaluate the price proposed for acquiring goods and services against responses received from competing firms. 2 CFR §200.323(a); FTA Circular 4220.1F Ch VI (6)

For further clarification, the FTA explains that a *"price analysis" will be the usual procedure followed in a competitive situation and in situations where items are being procured which are sold in the commercial marketplace to the general public. A "price analysis" is an evaluation of the offeror's price relative to the prices being offered by other vendors and being paid by the general public for the same or similar items. The essential factors, which must be present in order to make a "price analysis," are as follows:*

- *The product must be a "commercial product" (i.e., one for which there is a basis of comparison in the commercial marketplace). Price analysis would not be suitable, for example, for research and development items, or for one-of-a-kind items for which there was no basis of comparison.*
- *It is not necessary that competing products be exactly identical to the product being offered, but you must be able to compare the products' capabilities and their respective price differences in light of those varying capabilities. By such comparisons one is able to make value judgments that a particular product's performance capabilities warrant a higher or lower price than a competing product.*

Cost Vs. Price Analysis FAQ. See the Inweb for a sample template.

Cost Analysis.

Purpose: The purpose of the Cost Analysis is to ensure that the proposed price is reasonable, and shall include an analysis of individual components of the cost.

When Required: When price *is not* used as the only selection criterion, the City must, prior to award of a contract or execution of a Change Order, conduct a Cost Analysis. 2 CFR §200.323(a); FTA Circular 4220.1F Ch VI (6)

The following situations require that a Cost Analysis be performed:

a.) Sole source selections

b.) Emergency selections

c.) Single response to a solicitation

d.) Contracts based on a Request for Qualifications (e.g. A & E contracts)

e.) Change orders or other modifications that change the contract amount.

f.) Contracts based on Formal (RFP) or Informal Solicitations where price is one of the evaluation criteria.

For further clarification, the FTA explains that a *"cost analysis" will be required whenever a price analysis cannot be performed. A cost analysis entails the review and evaluation of the separate cost elements and the proposed profit of an offeror's cost proposal. A cost analysis is conducted to perform an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract 'should cost', assuming reasonable economy and efficiency. A cost analysis will be appropriate in the following situations:*

- *The product or service being offered is not susceptible to being evaluated against other commercially available items of similar products or services. Examples would include a procurement for professional services where no competing price proposals are submitted, as in a procurement for architectural-engineering services where only one cost proposal is solicited from the highest ranking firm, or a sole-source procurement for other types of services.*
- *When change orders are issued to contracts requiring the contractor to do work whose cost can only be evaluated by examining the various cost elements, such as labor, materials, travel, etc.*

Cost Vs. Price Analysis FAQ. See Inweb *for Template*

Level of Specificity: In evaluating the reasonableness of a particular cost, department staff with the necessary experience and knowledge should conduct the Cost Analysis. In documenting such an analysis, there must be a level of specificity and independence appropriate to the contract or Change Order under review that describes what was analyzed.

Breakdown of Costs Required: For any contract or Change Order subject to a Cost Analysis, the department must require that the firm submit to the City a cost breakdown of their price. The Cost Breakdown can be a valuable tool for the City in evaluating the factors that make up the proposed price and in determining whether those prices are reasonable.

Specific Situations.

Extent of Analysis: The requirements for ensuring reasonable costs in contracting apply to all procurement activities (goods, supplies, construction, consultant, services), including changes to contracts. The "method and degree of analysis is dependent on the facts surrounding the particular procurement situation." 2 CFR 200.323(a) Thus, there is some degree in which each analysis is treated on a case-by-case basis depending on the size, nature, and complexity of the contract or change order.

Negotiation of Profit: Profit shall be negotiated separately in all cases where there is no price competition. "To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work." 2 CFR §200.323(b), FTA Circular Ch VI (6)

Federal Cost Principles: the costs or prices based on estimated costs for contracts under Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City under 2 CFR 200 Subpart E. 2 CFR 200.323 (c)

Cost Practices Prohibited: "The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used." 2 CFR 200.323 (d)

Time-and-Materials Contracts: 2 CFR 200.318(j) A time-and-materials contract may be used only:

a.) After a determination that no other contract payment type is suitable, and

b.) If the contract includes a ceiling price that the contractor exceeds at its own risk.

Time and material type contract means a contract whose cost to The City is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, generaland administrative expenses, and profit.

This calculation generates an open-ended contract price which provides no incentive to the contractor for cost control or labor efficiency. Each time and material contract must, therefore, set a ceiling price that the contractor exceeds at its own risk. Further, in awarding such a contract, the contract must provide a high degree of oversight to assure that the contractor is using efficient methods and effective cost controls.

Sidebar – Protests

Respondents can protest decisions in a solicitation, selection and award. The Project Manager and/or City Department may receive protests directly to their office, or send protests to Purchasing and Contracting. Please clarify within your solicitation document what you intend.

Grounds for Protest.

Only protests alleging an issue concerning the following subjects shall be considered:

1. A matter of bias, discrimination, or conflict of interest;
2. Errors in computing score; and/or
3. Non-compliance with procedures described in the solicitation or City policy.

Inquiry or Intention does not constitute a Protest.

A notice from a company does not reserve the right to protest. Formal protests must be received within the required deadlines and follow proper format. A casual inquiry, complaint, or a statement of the intention to protest does not necessarily get interpreted as a protest.

Late Protest.

The City does not have responsibility to consider or reply to protests or complaints received after the protest deadlines.

Protest Form and Content.
All protests shall be in writing and state the respondent is submitting a formal protest. Protests must be filed with the City at the address below, unless an alternative designee is named within the solicitation. Deliveries by hand, mail, e-mail or fax are acceptable. The City is not responsible for lost or misplaced protests, or to assure the protest is received by the respondent within the protest deadlines. If the City designee does not receive the protest in a timely manner, the protest may be rejected. The designated address, unless modified within the solicitation document, is:

Purchasing and Contracting
Attention: Presley Palmer, Division Director
mailto:presley.palmer@seattle.gov

Delivery:
700 5th Avenue, 43rd Floor
Seattle, WA 98104

Postal Mail:
P.O. Box 94687
Seattle, WA 98124-4687

When to Submit a Protest

Pre-Submittal:
Certain concerns must be filed before submittals are due. Any matter known – or that should have been known - before the submittal deadline, must be submitted to the City in writing when practical and three business days prior to the submittal deadline.

Such matters include, but are not limited to:

- Complaints about decisions or events that occurred before the submittals were due;
- Complaints about the submittal specifications, minimum qualifications, or any aspect of the submittal alleged to unduly constrain competition;
- Complaints that the pre-submittal conference was not fair or accessible;
- Complaints that questions were not fully or properly addressed by the City;
- Complaints that the submittal process did not provide adequate information or contained improper criteria; or
- Any other matter known or that should have been known, to interested responders by reading the solicitation.

Protests over such matters need not be accepted after the submittal deadline.

Post-Submittal:
Respondents have the right to protest:

- Rejection of a respondent as Nonresponsive or Not Responsible;
- Rejection of a respondent into a "short list" for interviews if applicable;
- Notice of Intent to Award

After the submittal deadline, only respondents that applied are eligible to protest.

Protests must be filed within three business days after the Intent to Award announcement by the City, to assure City consideration.

- The City will announce rejection of an application for responsiveness or responsibility. This announcement will go to the affected respondent. Protests concerning rejection must be filed with the City designated recipient (Purchasing and Contracting, Director Presley Palmer unless specified otherwise within the solicitation), within three business days after the City announcement that the respondent has been rejected to assure consideration.
- When solicitations intend to "short list" respondents for interviews and/or demonstrations, the City will announce which respondents have been selected to proceed. Protests concerning those decisions must be made within three business days after the City announcement to assure consideration.
- The "Intent to Award" announcement shall be made by the City. Protests regarding award decisions must be made within three business days of the City announcement.

The City shall try to distribute the Intent to Award announcement to the affected respondent(s), such as posting on the City website, e-mailing and/or mailing the notice to the affected respondent(s). However, it is the respondent's responsibility to obtain the announcement from the City in a timely manner. The City is not responsible for assuring the affected respondent(s) have learned of the announcement in time to file a protest.

Protest Process.

The Director will review the protest. All available facts will be considered and the Director shall issue a final decision. This decision shall be delivered in writing by e-mail to the protesting respondent. Each written determination of the protest shall either:

1. Find the protest lacking in merit and uphold the City action; or
2. Find only immaterial or harmless errors in the City solicitation, selection and award process and therefore reject the protest; or
3. Find merit in the protest and proceed with appropriate action, which may include but is not limited to rejecting all bids or re-tabulating applications.

If the City finds the protest without merit, the City may continue with the solicitation process or enter into a contract with the apparent successful contractor, if the contract has not been previously signed. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

Nothing shall diminish the authority of the City to enter into a contract, whether a protest action or intention to protest has been issued or otherwise.

FTA Officials to Notify. When the City receives a bid protest on an FTA funded project, FTA requires the City to inform the FTA Regional Administrator for the region administering a regional project, or the FTA Associate Administrator for the program office administering a headquarters project directly. FTA also encourages the City to keep its FTA project manager informed about protests with which it is involved. The recipient should contact its project manager about any unusual activity.

Access to Information. FTA expects the City to disclose information about any third party procurement protest to FTA upon request. FTA reserves the right to require the City to provide copies of a protest or all protests, and any or all related supporting documents as FTA may determine necessary.

Prepare Contract for City Approval.

1. Collect insurance coverage documents from the Consultant if needed.

2. If necessary, the PM or Department Contracting Office will contact the Consultant to obtain a current overhead audit. If the project is Federal Highways Administration (FHWA) funded, the audit may need to be sent to the WSDOT Audit Office to ensure it meets all FHWA standards. If this is the case, the contract will contain provisional rates until the Washington State Department of Transportation (WSDOT) Audit Office replies. Note: Audits must be sent to only WSDOT if the project is FHWA funded (not Federal Transit Administration (FTA) or Federal Emergency Management Agency (FEMA)). Other funding agencies may have similar requirements.

Process Tip

When you send the contract to the Consultant for the firm's signature, send a W-9 along. This prevents delays in case the Consultant is not in PS 9.2 or has updated information.

3. Make sure the company has a City business license. You can check: http://www.seattle.gov/licenses/find-a-business. The Consultant can obtain a business license at: http://www.seattle.gov/licenses/get-a-business-license. A Consultant can expect a three to six week delay if the Consultant mails the application.

4. A Consultant must usually have a Washington State Unified Business Identifier (UBI) number. The UBI may be obtained by the Consultant online by completing a Master Application at http://bls.dor.wa.gov/file.aspx. There are exceptions to the requirement that the consultant have a UBI, such as business revenues less than $12,000 or if the business is a sole proprietor. For more information, see http://bls.dor.wa.gov/faq.aspx.

   To determine whether a Consultant has a UBI, you can check the State of Washington Department of Revenue at https://secure.dor.wa.gov/gteunauth/_/.

5. Verify Equal Benefits Declaration form on the Consultant Questionnaire they submit.

6. Check the Federal Debarment website to ensure your Consultant is not debarred, and keep a printout for the contract file. This is mandatory for any project with federal funds, and a best practice for others. https://www.sam.gov/

7. Be sure to again double-check the Consultant Questionnaire that the company gave you. Check for any "red flags" such as convictions or bankruptcy. If your scope of work merits, pursue a background check or criminal history check. These are the departments responsibility, if your unique scope of work suggests that to be appropriate.

Route Contract.
When the contract is in the final form, it is routed for signature. Below are the recommended steps for contract review, approval and signature.

1. Follow your Department procedures for obtaining consultant and Department signatures. The Consultant should sign before the Department Director.

2. After the Department Director (or designee) signs the contract(s), one original signed contract is sent to the Consultant and another original is sent to City Clerk (see below).

3. The Department must keep a copy of the contract under the City Contracts Retention Schedule. Contract managers are not required to keep any contract materials but, it is recommended that the contract manager keep an electronic copy to help guide them, manage and pay the Consultant.

4. All changes to the executed contract are handled through the amendment/supplement process (see below).

Why Contracts are Delayed

1. Problems with Consultant Insurance Requirements.
2. Negotiations with Consultant lasting longer than planned.
3. Delays in submitting Scope of Work and cost estimates.

Acceptable Types of Signatures for Consultant Contracts:
The administering department may accept the following alternative types of signatures in lieu of original, wet/inked signatures:

1. Scanned to PDF signatures: The administering department may accept a signed contract that has been scanned to PDF and emailed back to the City as their original copy. The email should originate from the Consultant's known email account and saved for record.

2. Digital/Electronic Signatures: The administering department may accept an affixed digital or electronic signature from the Consultant.

   If the signature is affixed through a digital or electronic signature developer (i.e. from AdobeSign or DocuSign) the signature should display the authorized signee's name and be verified through the digital or electronic signature developer.

If the signature is affixed via other methods, such as through a touchscreen or mobile device, the administering department is responsible for verifying that the signature originated from the Consultant.

3. Departments electing to adopt or purchase digital/electronic software (i.e. from AdobeSign, DocuSign or other approved by Seattle IT) for the purpose of sending/receiving digital documents with affixed digital/electronic City signatures on Agreements must seek approval through Seattle IT and follow City Clerk guidelines.

Resources

City Clerk: Please follow the City Clerk's filing instructions for Consultant Contracts, found here: http://legapps/inweb/clerk/filing/. You may also contact Janet Polata for filing questions, Janet.Polata@seattle.gov or 6-4087.

Seattle IT: Please follow Seattle IT's e-signature policy and guidelines, found here: https://seattlegov.sharepoint.com/:w:/s/itd/src-old/OIS/EeD6OZUBwChJjqEtsauT4xIBUNGnHmrgOaw-FP5VYCIY5A?e=hc8Ajp . You may also contact Ram Biyani for policy questions, Ramanuj.biyani@seattle.gov or 5-1265.

Redact your Contract

Each contract gets posted for public viewing through the PeopleSoft 9.2 system. Review the contract to ensure it contains no confidential information. Through your Consultant Questionnaire, your consultant has had the opportunity to declare what the consultant would regard to be confidential information. That should be redacted from the version you post into PeopleSoft 9.2.

Enter the Contract in PeopleSoft 9.2.

Your Department will enter the contract into the PeopleSoft 9.2 system using a Purchase Order that records the total authorized and encumbered contract amounts. See the PO Policy for further details. You must attach a PDF of the contract, unless it is inappropriate given redaction requirements. In that case, post the summary page instead. Enter all amendments within the same PO -- do not create a new PO.

This obligation is not discretionary. If you are concerned about special sensitivities such as public security, seek guidance from Krista Díaz, Purchasing Manager. If you are not encumbering funds (i.e. a Master On-call contract), we advise you to simply utilize an immaterial amount (such as $1) to ensure the contract can be posted even without a specific work order prepared.

File with City Clerk per SMC 20.50.070.

Contracts must be filed with City Clerk within 14 business days from the last signature date on the contract. The Department or PM, under Department procedures, prepares and attaches the City Clerk Transmittal form with an original contract to send the City Clerk's Office.

See "Acceptable Types of Signatures for Consultant Contracts" for more information.

Manage the Contract and Process Invoices.

The Consultant prepares an invoice and documentation required, such as a progress report and narrative. Consultant contracts commonly allow Consultants to submit an invoice monthly or after each major work task. The Consultant submits payment requests to the Department staff named in the Contract Cover Letter.

The City pays the prime Consultant; the City does not make payments to subconsultants.

The City is legally obligated to pay within 30 days of invoice receipt. Date stamp and review the invoice. If the PM identifies a problem, the PM should contact the Department Contracting or Accounts Payable office or the Consultant. Check the invoice to ensure that:

1. The work and billing period on the invoice is within the start and end dates of the contract.
2. There are enough contract dollars remaining in the project to pay the invoice in full.
3. Individual rates are equal to or less than the contract allowable rates.
4. Dollars on the invoice are properly calculated.
5. The work has been completed in a satisfactory manner.
6. The Consultant has provided the proper progress reporting on material/deliverables.
7. Indicate on the Invoice coversheet if the contract will expire soon. If the PM expects that the work will continue beyond the contract expiration date, a new end date will require amendment/supplement processing and approval.
8. Charges are allowable, reasonable, and necessary.
9. The charges included on the invoice are for work included in the contract or an amendment.
10. Any reimbursable expense claimed is permitted by the terms.

If the Consultant submits an incomplete invoice, the start of a 30-day window is delayed until the invoice and all back up documentation is complete. If the PM will be gone so the invoice would not be approved timely, the PM must arrange for an alternate invoice reviewer.

Prompt Pay

The City has adopted a prompt pay policy. This requires that you pay all primes within 30 days of a properly prepared invoice; and that all primes pay subcontractors within 30 days (regardless of owner payment to the prime). You are responsible for tracking and creating internal processes and responsibilities that can ensure prompt payment to your prime. This will eventually include assuring that invoices are arriving properly prepared, so that the Department will also assume responsibilities for ensuring instructions and access to support and assistance are also sufficiently robust.

You are also responsible for clearly communicating the contract provisions that require prompt payment by primes to subs. This is a flow-down provision as well, to other subcontractor tiers.

Amendments.

Amendments are for limited purposes. See page 14. If you make an expansion, it must fit within the competitive procurement laws. If a Consultant contract cost is amended to exceed the maximum thresholds

($71,000 for direct selections; $420,000 for Roster contracts per SMC 20.50.110 (C.2), the Department must either:

- Undergo an appropriate new competition and selection process for the new work OR,
- Determine that a sole source or adverse impact exemption is appropriate (See page 26).

Special Notification Requirements to City Budget Office (CBO) and City Council

Reference: Ordinance 125417, September 29, 2017

City Council requires departments to provide advanced notification to the City Budget Office and to City Council when Consultant Contracts reach $250,000 and $750,000 or when contracts require City Council approval.

1) For contracts requiring City Council approval, the Contract Notification Form must be submitted to the Coucnil President or Chair of the appropriate Council committee, and the City Clerk within 30 days following a Department's determination to procure or amend a contract requiring City Council approval.
2) For contracts that are valued at $250,000 or more (including amendments), , the Contract Notification Form must be sent to your department City Budget Office liason. The Form is submitted to CBO upon the determination to procure or amend a contract or when the amendment need becomes apparent.
3) When contract costs (original amount plus amendments) reach $750,000 or more, the Contract Notification Form must be submitted to both the CBO and City Council to offer a briefing about issues, solicitation strategies, and WMBE inclusion strategies. Departments should schedule the briefing when possible and expect to modify the proposed contracting process based on the review by CBO and City Council.

   After the briefing, the Department Director is encouraged to forward to the appropriate City Council committee chair a copy of the Contract Notification Form or other information about the contract and offer to brief the appropriate City Council committee chair.

Contract Close Out.

When a contract is complete, the PM should notify their Department Contracting Office and/or Accounts Payable. This notification is when the Consultant submits a "FINAL INVOICE" and when the PM determines all work is complete. The PMs starts the close out process.

After receiving the final invoice, the PM or the Department Contracting Office, per your Department procedures, prepares a Letter of Completion for the PM to sign. The PM (per SMC 20.50.080) completes a consultant performance evaluation. See INWEB for the most current version. Contract Closeout Guide. For convenience, the evaluation is combined with the Letter of Completion.

The Department files a copy and sends to the Consultant. This letter indicates to the Consultant that the contract closure is imminent and if they have any outstanding charges they need to submit them before the Department closes the contract.

Performance Evaluation.

SMC 20.50.080 requires the City to provide a written performance evaluation under PC procedures. The standard form is available on INWEB although a Department can customize the form to a project or Department. The completed Performance Evaluation should be provided to the Consultant and filed with your Contract. The City's performance evaluation process helps manage Consultant performance. It can:

1. Promote direct and honest communications between you and a consultant; facilitate discussion of expectations about cost/budget, schedule, technical concerns, communications/reporting and management.
2. Motivate performance because evaluation will be used for future reference checks. A good rating makes it more likely the City would choose the consultant again.
3. Track good performance and issues as they arise
4. Reestablish performance expectations when the consultant or City project managers change or work phases are completed; and serve as a vehicle to discuss project concerns, prior progress, and future expectations.
5. Document and serve as notice to consultants of concerns with poor performance and should document poor performance that could lead up to debarment of the consultant from doing further work with the City. (See Debarment for grounds for debarment and a description of the debarment process.)

More about Consultant Contracting.

Archiving.

Maintain the project contract files under the State Retention Schedule. The contract file will contain a copy of the contract and contract related documentation, any back-up materials to advertising, Consultant selection and project close-out documents. Besides the contract documents, the Department invoice file should contain all invoices, all backup documentation, and a copy of every invoice cover sheet received from the Consultant.

Records Retention - The Consultant must archive information generated due to contract work as required by the contract. This information must be available for City or other audits and reviews. The contract boilerplate states the archiving timeline requirements. For more information regarding the retention requirement refer to the Contracts Retention Schedule on the City Records Management Program website. The City Retention Schedule dictates how long public records must be stored. Some grants may require additional archival years.

Type of Record	Retention Schedule
Contracts	6 years after completion of the contract
Invoices	6 years after completion of the contract
Advertising Materials	6 years after completion of the contract
RFQ/RFP Submittals	6 years for the selected firm, 3 years for the non-selected firms
Note: Grants may require additional retention time. Also, PMs should be aware their other project materials might be subject to the General Records Retention Schedule.	

When a Consultant is New to the City.

New Consultants may have their first checks delayed for a variety of reasons, such as:

1. The Consultant has not been added to PeopleSoft 9.2, the City's Accounting System. The IRS W-9 must be completed and submitted to PC before submitting to Accounts Payable to process the invoice for payment. The Department Contracting Unit or Accounts Payable Office usually works with the Consultant to submit this form, but the PM may want to assure this has been submitted by the Consultant before the first invoice is submitted. See Practice Tip 1.
2. The Consultant does not provide enough or the right back up information in their first invoice submittal.
3. Consultant's overhead rate has not been reviewed, audited and approved.

PC recommends that all Consultants new to the City receive an orientation session from the Department. This orientation will help new Consultants understand deadlines, requirements, acceptable documentation and resources available to them.

Debarment.

A debarment is an extremely rare event, and should be approached with great care. SMC Ch. 20.70 provides a criteria and procedures related to debarment. Debarment means a formal process that prevents a Consultant from entering into a contract with the City or acting as a subconsultant on any City contracts, for a period not to exceed five years. This is a serious action, and often impacts the Consultant in all work, not only that with the City.

Seattle Municipal Code Ch. 20.70 authorizes the Director of FAS the authority to debar Consultants. The Director, through PC shall implement the debarment procedures for FAS. In lieu of invoking the Debarment process, the Director may, but is not required to, enter into a voluntary agreement with the Consultant will not submit a proposal for any City contract, and will not act as a subconsultant on any City contract, for a period not to exceed five years.

Updates to Consultant Guidelines

August 8, 2011	Ethics – Former Employees Added more detail about former employees, for both the 12-month and the 24-month criteria of conflict.	Page 19
January 23, 2012	Removes requirement for City Budget Office approval prior to initiating a consultant contract	
February 2, 2012	Clarifies public-benefit non-profit as exempt from competition	Page 24
June 30, 2012	Consultant Contract redaction guidelines inserted	Page 37
	EB approvals now streamlined	Page 11
	Importance of Consultant Questionnaire	Page 27, 36, 29
	Federal funding instructions for D/WMBE emphasized	Page 10, Page 15, 35
	Clarifies a 501-3-c is the only allowed type of public-benefit non-profit per RCW.	Page 24
7/3/12	Clarifies that an RFQ or an RFP can be used for licensed A&E, just don't ask for price.	Page
8/1/12	FTA	Pages 15,28-29, 37
	Protests	Page 38 - 40
	Background Check reminders	Page 21, 23
9/1/13	Updates to names, bid thresholds	multiple
	Ethnic Media	Page 10
	Clarification on Equal Benefits	Page 11

	Consultant Conflicts of Interest	Page 18
	Consultant Roster screening	Page 22
	Redaction	Page 41
8/18/2014	Bid Limits & Thresholds Updated	Where referenced throughout the document
2/6/2015	Ethnic Media language – DELETED	
	Roles, Responsibilities & Contacts - UPDATED	
	Bid Limits & Thresholds Updated	Where referenced throught the document
2/10/2015	Hyperlinks to forms on the InWeb were updated	All hyperlinks were updated
2/22/2016	Updated bid limits & threshold amounts per the new CPI adjustments	Where referenced throughout the document
	Department Contact Information Updated	
	Acquisition of IT Consulting Services policy, added	
11/2/2016	Added Prompt Pay Section, updated contact information, moved update section to the bottom,	
	Added two sidebars: Supplement for FTA-funded Consultant Contracts and Ensuring Reasonable Costs	
2/24/2017	Adjusted the Bid Limits & Thresholds for 2017 CPI inflation	Changes made throughout the document
3/23/2018	Updated Bid Limits & Thresholds, Updated City contacts, Updated links on Seattle.gov and InWeb.	Changes made throughout the document

12/19/2019	Changed City Purchasing & Contracting Services (CPCS) to Purchasing and Contracting (PC). Updated Bid Limits & Thresholds, Updated City Contacts, Updated links on Seattle.gov and InWeb. Updated Special Notification Requirements to CBO/Council. Added digital/e-signature guidelines.	Changes made throughout the document
6/2/2020	Updated threshold amounts	Changes made throughout the document
11/20/2020	Updated threshold amounts for federally funded contracts	Changes made throughout the document
11/3/2021	Updated PC Staff. Added guidance regarding nonprofit exemption.	Changes made through the document and pages 26-27.
1/4/2022	Updated links.	Changes made throughout the document.
3/23/2022	Updated threshold amounts	Changes made throughout the document
2/14/2023	Updated threshold amounts	Changes made throughout the document
3/10/2023	Updated PC Staff and other minor changes	Changes made throughout the document