

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**LOCAL AGENCY PROGRAM CHECKLIST FOR FEDERALLY FUNDED
PROFESSIONAL SERVICES CONTRACTS**
(FEDERAL AND STATE REQUIREMENTS)

525-010-49
PROGRAM MANAGEMENT
1/18

Local Agency Name: City of Key West Project Description: Cultural Resources Assessment

FPN: 440023-1 Federal No. (FAIN): D617-050-B Federal-Aid Participating Amount: \$383,781.00

Procurement Method: Competitive Negotiation: Simplified Acquisition:

Contract type: Project Specific: Project Specific- Bundled: Multi-Phase: Continuing Contract:

Project Information: State Highway System (SHS): National Highway System (NHS): Off-system critical project:

Requirement No. 1: Fair, open and competitive selection of qualified consultants. Solicitations, Requests for Qualifications (RFQ), and Requests for Proposals (RFP).

References: 287.055(3)(a)1, and 287.001, 287.055(4), F.S., 119.071 F.S. (public meetings), 120.57(3) F.S. and 287.042(c) F.S.; 40 USC 1101-1104 ("Brooks Act"), 23 USC 112(b)(2)(A), 23 CFR 172.7(a)(1); Ch 14-75.003, F.A.C. ([FDOT prequalification work types and requirements](#)); LAP Manual Ch 18 and Ch 19 (off-system critical project definitions) (FDOT Topic No. 525-010-300)

Local Agency Compliance Documentation:

- 1) Solicitation publicly announced in uniform and consistent manner not less than **14 days**?
- 2) For longlist process (two-step process includes shortlist): Solicitation is published regionally and defines the request for qualifications including project description, scope, qualifications, selection process, evaluation criteria, and selection schedule?
- 3) For shortlist process (one step or combined process): Solicitation is published regionally; defines the general project description, scope and qualifications; and provides access to the RFP for all interested consultants?
- 4) Solicitation LAPIT Document No. 7859641

5) **RFP includes:**

Full definitions for each element below are provided in LAP Manual Chapter 18.6.3.

- Detailed project description. Page # 4
 - Scope- includes but not limited to services on page #11, deliverables on page # 32-35, project schedule on page #10, applicable standards, specifications and policies on page #30-31.
 - Verify the scope of services is limited to one phase of work. General services or "umbrella" contracts are not allowed under the federal requirements.
 - Qualifications. Page # 37-39
 - FDOT Pre-Qualification Required: Identify Major and Minor Work Types: Work Group 2 PD&E
Ensure work types are appropriate and not overly restrictive.
 - Qualifications-based evaluation criteria with relative weight of importance. Page # 27
 - Procurement process, including tie breaker procedures and protest procedures per 120.57(3) F.S. Page # 14
 - Estimated schedule for the procurement process, including meeting dates. Page # 10
 - All special provisions and contract requirements. Attaching boilerplate contract to RFP satisfies requirement. Page/Attachment # 62/Appendix #14
 - Payment method(s). Page# 67
 - All forms, terms and conditions in Checklist Requirement Nos. 2-7.
- 6) RFP LAPIT Document No. 7639367

- 7) Agency verification of consultant and subconsultant qualifications was performed for each proposal received.

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District Monitoring Responsibilities:

- 1) District concurrence with the procurement package (includes Checklist Items 1-7). Date: July 20, 2018

Requirement No. 2: Disadvantaged Business Enterprise (DBE) and Bid Opportunity Reporting

References: 49 CFR 26.51; 337.139, F.S.; LAP Manual Ch. 14; FDOT Std Spec 7-24; FDOT Contract Compliance Manual (FDOT Topic No. 275-020-005); Florida Unified Certification Program DBE Directory; FDOT Equal Opportunity Compliance (EOC) Application

Local Agency Compliance Documentation:

- 1) Provisions for compliance with the FDOT DBE Program Plan included in the RFP and contract. Attaching FDOT Form #375-040-84 LAP Terms for Federal-Aid Contracts satisfies requirement. RFP Page/Attachment #50/Appendix #6 and/or Contract Page/Attachment # 62/Appendix #14
- 2) FDOT currently has a race neutral program goal of 10.65%. DBE participation **shall not be required** for contract award.
- 3) Provide bid opportunity instructions to consultants in RFP. Attach FDOT Form No. 275-030-11 to RFP or incorporate provisions. Page/Attachment # 59/Appendix #13

District Monitoring Responsibilities:

- 1) Verify DBE participation is not required by the agency for contract award.
- 2) Verify consultants entered bidder's opportunity information in EOC or paper form is retained by agency per LAP Manual Chapter 14.3.

Requirement No. 3: Compliance with State and Federal Contracting Requirements

References: Chapters 119, 337.106, 287.133, 287.055, 287.017 F.S.; Florida Governor's Executive Order 11-116; 2 CFR 200, 23 CFR 172, 49 CFR Part 21, 49 CFR 26.13 (b), 49 CFR Part 26, USC 18 Section 1020, 49 CFR 26.51 48 CFR Part 31 - Contract Cost Principles and Procedures; FDOT Topic 375- 030-002-I (1); LAP Manual Ch 18; FDOT Form No. 525-010-40 LAP Agreement

Local Agency Compliance with STATE REQUIREMENTS:

Include all provisions in the RFP and final contract.

- 1) Tangible assets are identified, if applicable. Page # N/A
- 2) Professional Liability Insurance limits as required by *337.106 F.S.* Prime provides proof of insurance to agency. Page # 6
- 3) Public Entity Crimes Statement 287.133 F.S. provision. Page # 7
- 4) Drug Free Workplace must not be used as a tie breaker per federal requirements. Do not use preference language for Drug Free Workplace as allowed by 287.087 F.S in the RFP.
- 5) Local Government Prompt Payment Act provisions per Ch. 218, Part VII. Page # 7
- 6) Public Access to Public Records Language per Ch. 119 F.S. Page # 7
- 7) Indemnification and Hold Harmless Clause required by LAP Agreement, Section 15. Page # 72
- 8) Records retention for a minimum of 5 years from date of final payment. Page # 9

Local Agency Compliance with FEDERAL REQUIREMENTS:

Include all provisions in the RFP and final contract.

- 9) FDOT Form #375-040-84 LAP Terms for Federal-Aid contracts incorporated. Page # 50
Includes required contract provisions for Suspension/debarment; Title VI Appendices A & E (DOT Order 1050.2A); DBE; EEO; E-verify; copyrights and rights in data; and access to records by Federal, State and Local governments.
- 10) Termination provisions for cause and convenience including manner and basis for settlement. Page # 9
- 11) Administrative, contractual, and legal remedies for breach or violation of contract terms and conditions, and provide for sanctions and penalties as may be appropriate. Page # 9
- 12) Performance evaluation of the consultant and conditions thereof. Page # 9

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- 13) Exclusionary preference programs are **not allowed** and are not incorporated. See Checklist Item No. 8 for a sample list of preference programs.
- 14) Statement by the agency that a “determination of allowable costs in accordance with the Federal cost principles” will be performed for services rendered under the contract. Page# 6
- 15) Contracting agency requirements pertaining to consultant errors and omissions. Page# 6

District Monitoring Responsibilities:

- 1) Verify state and federal requirements are incorporated in both the RFP and contract documents. The agency may attach their boilerplate contract to the RFP to meet the requirements. Conversely, the RFP may be included as an attachment to the final contract in order to meet the requirement.

Requirement No. 4: Truth In Negotiation Certification

References: FDOT Topic 375- 030-002-I (1)]; LAP Manual Ch 18; 287.055(5)(a), 287.017 F.S.

Local Agency Compliance Documentation:

- 1) Applicable to lump sum and cost plus fixed fee contracts above \$195,000. or N/A
- 2) Provision and FDOT Truth-in-Negotiations Form, Form No. #375-030-30 or equivalent included in RFP and contract. Page/Attachment # 43/Appendix #1
- 3) Upload executed form to LAPIT with final contract package. LAPIT Document No. 7644722

District Monitoring Responsibilities:

- 1) Verify required form is attached to the RFP and the consultant executed form is attached to the final contract package.

Requirement No. 5: Conflict of Interest/Confidentiality Certification

References: FDOT Topic 375- 030-002-I (1)]; FDOT Procedure #375-030-006; LAP Manual Ch 18; 2 CFR 1201.112, 2 CFR 200.318(C), 23 CFR 1.33, 23 CFR 172.7(b)(4); 112.317 F.S.

Local Agency Compliance Documentation:

- 1) Include a provision specifying contracting agency requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of 23 CFR 172.7(b)(4). Page# 5
- 2) FDOT Conflict of Interest/Confidentiality Certification Form #375-030-50 included in RFP and contract. Page/Attachment # 44/Appendix #2
- 3) Verify responsive firms execute and submit form with proposal.
- 4) Verify all members of the local agency selection committee execute form prior to evaluating firms. The agency procurement officer may not serve on the selection committee. LAPIT Document No. 7750359
- 5) Upload executed forms to LAPIT with final contract package. LAPIT Document No. 7644728

District Monitoring Responsibilities:

- 1) Verify required form is attached to the RFP and the consultant executed form is attached to the final contract package.
- 2) Verify the agency’s (selection committee) executed form(s) are uploaded to LAPIT.

Requirement No. 6: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal-Aid Contracts

References: FDOT Topic 375- 030-002-I 1)]; LAP Manual Ch 18; 2 CFR 180 and 1200, 23 CFR 172.5(c)(4), 23 CFR 172.7(b)(3), 2 CFR 200.213 23 CFR 630.112(c)(4)

Federal verification website: <https://www.sam.gov/portal/SAM/>; DMS state and federally disqualified vendors link: http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information

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Local Agency Compliance Documentation:

- 1) Provision (included in FDOT Form# 375-040-84) and FDOT Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Form, Form #375-030-32 included in RFP and contract. Page/Attachment # 45/Appendix #3
- 2) Verify responsive firms execute and submit form with proposal.
- 3) Verify consultant and subconsultant firms utilizing the state and federal weblinks. Provide proof of verification to District. May use FDOT Vendor Eligibility Check Prior to Contract Award Form, Form No. 375-030-91. LAPIT Document No. 7861466
- 4) Upload executed form to LAPIT with final contract package. LAPIT Document No. 7644734

District Monitoring Responsibilities:

- 1) Verify required forms are attached to the RFP and the consultant executed form is attached to the final contract package.
- 2) Verify the agency uploaded documentation of the vendor eligibility check to LAPIT.

Requirement No. 7: Certification for Disclosure of Lobbying Activities on Federal-Aid Contracts

References: FDOT Topic 375-030-002-I 1]; LAP Manual Ch 18; 49 CFR 20.100, 23 CFR 630.112, 2 CFR 200.450, 23 CFR 172.9 (c)(2)

Local Agency Compliance Documentation:

- 1) Provision and FDOT Certification for Disclosure of Lobbying Form, Form No. 375-030-33 and FDOT Disclosure of Lobbying Activities Form, Form No. 375-030-34 included in RFP and contract. Page/Attachment # 47-48/Appendix #4 & #5
- 2) Verify responsive firms execute and submit form(s) with proposal.
- 3) Standard Form-LLL, Disclosure of Lobbying Activities (FDOT Form No. 375-030-34) is only executed by the firm as needed.
- 4) Upload executed form(s) to LAPIT with final contract package. LAPIT Document No. 7644741 & 7644758

District Monitoring Responsibilities:

- 1) Verify required forms are attached to the RFP and the consultant executed form(s) is attached to the final contract package.

Requirement No. 8: Evaluation Criteria and Shortlist

References: 287.055(4)(b), F.S.; 40 U.S.C. 1101, 23 CFR 172.7(a)(1); <http://www.fhwa.dot.gov/programadmin/172qa.cfm>

Local Agency Compliance Documentation:

- 1) A minimum of three (3) responses were received.
- 2) If three (3) responses were not received, was the solicitation period extended?
- 3) If three (3) responses were not received, was the project re-advertised?
- 4) If three (3) responses were not received, was a justification prepared and submitted to the State Local Program Administrator for approval to move forward? LAPIT Document No. _____
- 5) Evaluate and score a minimum of three (3) shortlisted firms. Number of responses received: 3 Number of firms disqualified: 0 Number of responses evaluated: 3
- 6) Evaluation criteria **shall not** include the following factors:
 - Price or cost elements.
 - In-state or local business preference.

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- Preference for consultant office location in proximity to the agency offices or jurisdictional boundaries.
- Preference for consultant office location in proximity to the project (unless approved by FHWA).
FHWA Approval LAPIT Document No. _____
- Purchasing or materials preferences.
- Disadvantaged, Minority or Small Business Enterprise requirements.
- Hiring preferences (e.g. homeless, welfare-to-work, veterans).
- Exclusionary business preferences.
- Equal distribution or rotating of work.
- Any other **non**-qualifications based factor.

- 7) Raw, individual, and summary score sheets for the written technical evaluation submitted to the District for review. LAPIT Document No. 7750359
- 8) Raw, individual, and summary score sheets for discussion, presentations, or interviews submitted to the District for review. LAPIT Document No. _____
- 9) Selection committee meetings were recorded or minutes taken as applicable. Minutes
- 10) If requested by the District, provide meeting minutes for review. LAPIT Document No. 7750359

District Monitoring Responsibilities:

- 1) Review the agency's raw, individual and summary score sheets. Verify agency shortlisted, scored and ranked a minimum of three firms, unless they received pre-approval to move forward from FHWA.
- 2) Review agency's meeting minutes or recordings of selection committee meeting minutes as needed.
- 3) Provide District concurrence to proceed to negotiations with number 1 ranked firm provided to agency in writing. Date: 10/22/2018

Requirement No. 9: Independent Staff Hour Estimates

References: 23 CFR 172; 2 CFR 200.323; 216.3475 F.S.; [Consultant Wage Rate Averages Report](#), [FDOT Negotiation Handbook](#)

Local Agency Compliance Documentation:

- 1) Submit agency independent staff hour estimate prior to negotiations. LAPIT Document No. 7859660
 - Estimate must be prepared by local agency staff.
 - Estimate must be submitted for Department review prior to review of the highest qualified consultant's cost proposal.
 - Estimate must include appropriate breakdown of the work or labor hours, job classifications, direct and fixed fee for the defined scope of work.
 - Agency uses independent staff hour estimates to check reasonableness of consultant estimate.

District Monitoring Responsibilities:

- 1) Provide concurrence with the agency's independent staff hour estimate prior to the start of negotiations between the agency and the consultant. Date: 10/19/2018

Requirement No. 10: Negotiations

References: 40 USC 1103; 40 USC 1104; 23 CFR 172; 287.055 (5), F.S.; [FDOT Negotiation Handbook](#); Chapter 2011-140, Laws of Florida; 2 CFR 200.333-337; 48 CFR Part 31 - Contract Cost Principles and Procedures

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- 1) Use all resources available to conduct effective negotiations, including but not limited to, the refined scope of work, the evaluation factors and their relative importance, and the agency's independent estimate.
- 2) Request consultant audit package to verify costs. Date received consultant audit package. 01/22/2019
Audit Package includes:
 - Verification of wage rates in the form of payrolls or other supporting documentation of direct wages. Direct salary rates are not negotiated per 23 CFR 172.11(b)(2).
 - Overhead rates (indirect rates)
 - Facilities Capital Cost of Money (FCCM) rates
 - Direct Expense rates
 - Department Consultant Pre-Qualification Letters, as applicable. *Department Pre-qualification Letters may be used to establish overhead, FCCM, and direct expense rates whether or not the qualifications of the RFP require Department pre-qualified consultants. The agency may request information from the State Procurement Office as needed per LAP Manual Chapter 18.7.2.*
 - Agency must protect confidentiality of consultant's cost data in compliance with 23 USC 112(b)(2)(E) and 23 CFR 172.11(d). **DO NOT SHARE, TRANSMIT or UPLOAD CONFIDENTIAL COST DATA via non-secure methods.**
 - The establishment of fixed fee shall be contract or task specific and must not exceed 15% of the total direct labor and indirect costs unless justification and approval is received.
 - Verify the operating margin was paid as a lump sum or fixed fee, not included in the limiting amount.
- 3) Perform a detailed cost analysis of costs proposed by consultant using audit package submitted by the consultant. Date(s) of analysis 2/5/2019

- 4) If negotiations falter, notify the District LAP Team. Upon concurrence from the District, terminate negotiations and undertake negotiations with the next most qualified consultant firm based on the original order of final rankings as determined by the selection process.

- 5) Maintain records of negotiations documenting all negotiation activities in accordance with the provisions of 2 CFR 200.333-337 and 23 CFR 172.7(a)(1)(v). LAPIT Document Nos. 8183163

Oral presentations, negotiations, vendor Q & A sessions, and discussions of negotiations strategies are all exempt meetings under Florida laws- see Chapter 286.0113 F.S. (*exempt meeting records*). A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording is exempt until such time as the agency provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever occurs earlier. Meeting minutes or recordings must be available to auditors upon request.

District Monitoring Responsibilities:

- 1) Provide concurrence if negotiations falter and agency moves to next most qualified consultant, as applicable.
Date: n/a
- 2) Verify the agency documented its negotiations process and request agency records as needed.

Requirement No. 11: Overhead Rates (indirect rates) and Direct Salary Multipliers

References: 23 USC 112(b)(2)(C)-(D); 23 CFR 172.11(b)(1); FDOT prequalified consultants include their letter of approved overhead rates at negotiation.

Agency must protect confidentiality of consultant's cost data in compliance with 23 USC 112(b)(2)(E) and 23 CFR 172.11(d). DO NOT SHARE, TRANSMIT or UPLOAD CONFIDENTIAL COST DATA via non-secure methods.

Local Agency Compliance Documentation:

- 1) Verify that consultant overhead rates (indirect rates) as established by the consultant firm's audit package were not capped as defined in LAP Manual Ch. 18.7.2.

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2) Verify that consultant's direct salary multipliers as established by the consultant firm's audit package were not capped.

- Any limitation on direct salary multipliers would have the effect of creating an administrative or de facto ceiling on the indirect cost rate, which is not in accordance with Federal-Aid Highway Program requirements.

District Monitoring Responsibilities:

1) Verify the agency documented its negotiations of consultant costs and request agency records as needed.

Requirement No. 12: Contract

References: 23 CFR 172.5; 287.055 F.S.; LAP Manual Ch 14 and Ch 18. Agency must protect confidentiality of consultant's cost data in compliance with 23 USC 112(b)(2)(E) and 23 CFR 172.11(d). DO NOT SHARE, TRANSMIT or UPLOAD CONFIDENTIAL COST DATA via non-secure methods.

Local Agency Compliance Documentation:

- 1) Verify executed contract incorporates all provisions as specified in Requirement Nos. 1-7 of this checklist.
Attachments or exhibits to the contract must be stated in the body of the contract.
- 2) Verify executed contract **does not** include special provisions and contract terms **excluded** from the original solicitation/RFP. Agency may not add items to the final contract that were not identified in the RFP.
- 3) Department concurrent and federal authorization are required prior to final execution of agency professional services contracts or task work orders.
- 4) Final Contract Package LAPIT Document No. 8270099
 - Final contract package must include all attachments, exhibits, executed forms, and other items incorporated into the contract physically or by reference.
 - Create local agency contract screen in LAPIT. Date: 2/14/2019. Contract screens are required for consultants to report DBE Commitments in EOC.

District Monitoring Responsibilities:

- 1) Review and provide District concurrence to execute final contract. Date: _____
- 2) Verify agency uploaded final contract package with all attachments and created LAPIT contract screen.

Requirement No. 13: Continuing Services or Indefinite Quantity/Indefinite Delivery (IDIQ) Contracts

References: 23 USC 112(a); 23 CFR 172.9(a)(3); Chapter 287.55(2)(g) F.S.; LAP Manual Ch 18.7

Local Agency Compliance Documentation:

Continuing services follow Requirement Nos. 1-12 of this Checklist. In addition, the following provisions, terms, and conditions are required for compliance with state and federal requirements for procurement of continuing services contracts. **Include provisions in both the RFP and contract documents.**

- 1) Verify maximum limiting amount of contract does not exceed \$1.5 million. Page# _____
- 2) Verify maximum contract term does not exceed five (5) years. Page# _____
- 3) Verify the scope of services is limited to one phase of work. General services or "umbrella" contracts are not allowed under the federal requirements. Page# _____
- 4) Verify services are restricted in use for projects in which the estimated construction cost does not exceed \$2 million, as applicable. Page# _____
- 5) Verify services are restricted in use for projects in which the study activity does not exceed \$200,000, as applicable. Page# _____
- 6) Verify the solicitation/RFP identifies the maximum number of contracts to be awarded. Page# _____

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- 7) If more than one contract may be awarded, the RFP must specify procedures for how the task work orders will be assigned among the selected, qualified consultant firms. Page # _____
- Task work orders cannot be awarded among consultants based on cost or price, or on a rotational basis.
 - Task work orders must be awarded through an additional qualifications-based selection procedure or on a regional basis whereby the jurisdiction is divided into regions and consultants are assigned work orders by region.
 - Each task work order requires development of a detailed scope of services by the agency.
- 8) Each task work order requires development of a man hour estimate by the agency based on the detailed scope of services

District Monitoring Responsibilities:

- 1) Forward draft RFP with the draft contract to the State Local Program Administrator for review and concurrence. Concurrence Date: _____
- 2) Verify agency completed and complied with each Checklist Item, as applicable. *Note: Bid opportunity must be collected via paper forms as EOC will not be available for LAP Continuing Contracts during the solicitation period.. DBE commitments are reported for each task work order. The agency will create local agency contract screens each time a task work order is issued for a LAP project.*

Local Agency: I hereby certify that the above mentioned LAP project professional services RFP and associated contract contains the provisions set forth in this checklist.



Signature

Engineering Director

Procurement/Purchasing Position Title

Steven McAlearney

Name (Printed)

14 February 2019

Date

District LAP Administrator/Designee: I hereby certify that the Checklist is complete as indicated and that the provisions set forth in this checklist are contained in LAP project professional services RFP and associated contract.

Signature

Position Title

Name (Printed)

Date