



London Breed
Mayor

Micki Callahan
Human Resources Director

Date: July 31, 2020

To: The Honorable Civil Service Commission

Through: Micki Callahan
Human Resources Director

From: Joan Lubamersky, GSA
Alexander Burns, DPW
Amy Nuque, MTA
Bill Irwin / Daniel Kwon, PUC
Cynthia Avakian, AIR

Subject: **Personal Services Contracts Approval Request**

This report contains seven (7) personal services contracts (PSCs) in accordance with the revised Civil Service Commission (CSC) procedures for processing PSCs that became effective on November 5, 2014.

The services proposed by these contracts have been reviewed by Department of Human Resources (DHR) staff to evaluate whether the requesting departments have complied with City policy and procedures regarding PSCs. The proposed PSCs have been posted on the DHR website for seven (7) calendar days. CSC procedures for processing PSCs require that any appeal of these contracts be filed in the office of the CSC, Executive Officer during the posting period.

No timely appeals have been filed regarding the PSCs contained in this report. These proposed PSCs are being submitted to the CSC for ratification/approval.

DHR has prepared the following cost summary for personal services contracts that have been processed through the Department of Human Resources Fiscal Year 20/21 to date:

Total of this Report	YTD Expedited Approvals FY2020-2021	Total for FY2020-2021
\$14,365,000	\$36,034,916	\$370,788,990

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POSTING FOR**August 17, 2020****PROPOSED PERSONAL SERVICES CONTRACTS – REGULAR****Commission Hearing Date**

2020-08-17

APPLY

PSC No	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
46765 - 19/20	GENERAL SERVICES AGENCY - CITY ADMIN	\$215,000.00	<p>The contractor will provide software and hardware maintenance for the automated lighting system for the newly constructed SF Permit Center at 49 So. Van Ness Street opening in June 2020. The SF Permit Center is a 460,000 square foot building that facilitates the relocation of over 1,600 employees from the Departments of Public Works, Building Inspection, Planning, Department of Public Health Environmental Health Services, Board of Appeals, Entertainment Commission, Office of Short-Term Rentals and others. The project will provide enhanced customer service as San Francisco's new one-stop permit center improving operational efficiencies and making permitting processes easier.</p> <p>The lighting system will automatically adjust the lighting levels in response to the available daylight in each area of the building. Dynamically and on a continuous basis, as the sun rises and more daylight becomes available on the floors, this system will be alerted through photo sensors and will dim the lighting and reduce energy usage. Also, this system allows automated building lighting schedules to be implemented to turn lighting on and off according to that planned usage of each space.</p>	September 1, 2020	August 31, 2025	REGULAR
47945 - 19/20	GENERAL SERVICES AGENCY - PUBLIC WORKS	\$4,000,000.00	Consultants will perform highly specialized civil engineering tasks that include data collection and designing compliant curb ramps per City standards and Americans with Disability Act (ADA) requirements, related land surveying, roadway, sewer, drainage design, and other curb ramp related consultation services.	July 20, 2020	July 20, 2026	REGULAR
48731 - 19/20	GENERAL SERVICES AGENCY - PUBLIC WORKS	\$4,300,000.00	The contract targets licensing/subscription and delivery of configured off-the-shelf software to support Construction and Capital Project Management activities within Public Works, including interactions with construction contractors. The work includes meetings and project management activities to agree upon and deliver the configured and functional solution. The contract also sees as needed customization and integration support to fill gaps in off-the-shelf functionality or integration with related systems. Depending on the subscription or licensing and hosting model, the contract may also include hosting services. Estimated costs for software subscription and module fees are approximately \$3.2 million over ten years. The remaining \$1.1 million are estimated for implementation and as needed support services with over 70% estimated for the initial phase and major component rollouts in the first two years.	July 14, 2020	July 14, 2028	REGULAR
47595 - 19/20	MUNICIPAL TRANSPORTATION AGENCY	\$1,000,000.00	To provide a mobile on-site facility to collect random, follow-up, reasonable suspicion, and post-accident breath and urine collection in compliance with Department of Transportation/Federal Transit Administration (DOT/FTA) Drug and Alcohol Testing Regulations.	September 1, 2020	August 30, 2025	REGULAR
40551 - 19/20	PUBLIC UTILITIES COMMISSION	\$3,100,000.00	Contract Work will consist of designing, manufacturing, and installation of hydro-generators including stator core, windings, frame, field rotor poles for two (2) hydro-generation units at Moccasin Powerhouse. Each	January 8, 2021	May 2, 2024	REGULAR

PSC No	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
			generator is rated at 50 MVA, 13.8kV, three-phase, 60 Hz, .9 power factor, 300 RPM (24 field poles). This Design-Build contract is estimated to require \$3,100,000 for design services and \$28,000,000 for construction costs			
42930 - 19/20	AIRPORT COMMISSION	\$1,600,000.00	Services include software licensing, customization, maintenance, support services and training for the Airport's continuity and response software system used by various Airport divisions including: 1) Airfield Operations, 2) Safety Management, and 3) Emergency Management. Services will also include software development solutions and provision of development/design solutions for integrating the system with external systems such as the Federal Aviation Administration (FAA) and National Weather Service. Approximately \$900,000 of the total requested amount will be used for the software license/subscription, and \$700,000 for professional services.	September 1, 2020	December 31, 2025	REGULAR

TOTAL AMOUNT \$14,215,000

CSV

Published on *Personal Services Request Database* (<http://apps.sfgov.org/dhrdrupal>)[Home](#) >

Posting For August 17, 2020

Proposed Modifications to Personal Services Contracts

Commission Hearing Date

2020-08-17

APPLY

PSC Number	Commission Hearing Date	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
38642 - 19/20 - MODIFICATIONS	August 17, 2020	GENERAL SERVICES AGENCY - CITY ADMIN -- ADM	\$150,000	\$200,000	<p>In October 2018, the Board of Supervisors passed an ordinance to create the Cannabis Oversight Committee to advise the Board of Supervisors and the Mayor regarding the implementation and enforcement of City laws and regulations relating to cannabis. . The Cannabis Oversight Committee is expected to begin in Fall 2019 and will be active for a three-year period. The committee is comprised of 18 members. Seven seats are held by non-voting government bodies, including Planning, Fire, Police, Building Inspection, and Health departments, San Francisco Unified School District and the Entertainment Commission. .</p> <p>The remaining committee seats are held by voting members from various sectors, including advocacy, applicants for licenses, equity applicants, business and unions. The proposed work for this group will include preparation and facilitation of the monthly Task Force meetings. Committee members may have strong, differing, yet equally legitimate, viewpoints. There is a need for strong skills in facilitation, writing, meeting preparation, recording and synthesis of meeting minutes, and presentation</p>	12/01/2019	11/29/2024	REGULAR

TOTAL AMOUNT \$150,000

Regular/Continuing/Annual Personal Services Contracts

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Automated Lighting System Service and Maintenance

Funding Source: General Fund

PSC Duration: 5 years

PSC Amount: \$215,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide software and hardware maintenance for the automated lighting system for the newly constructed SF Permit Center at 49 So. Van Ness Street opening in June 2020. The SF Permit Center is a 460,000 square foot building that facilitates the relocation of over 1,600 employees from the Departments of Public Works, Building Inspection, Planning, Department of Public Health Environmental Health Services, Board of Appeals, Entertainment Commission, Office of Short-Term Rentals and others. The project will provide enhanced customer service as San Francisco's new one-stop permit center improving operational efficiencies and making permitting processes easier.

The lighting system will automatically adjust the lighting levels in response to the available daylight in each area of the building. Dynamically and on a continuous basis, as the sun rises and more daylight becomes available on the floors, this system will be alerted through photo sensors and will dim the lighting and reduce energy usage. Also, this system allows automated building lighting schedules to be implemented to turn lighting on and off according to that planned usage of each space.

B. Explain why this service is necessary and the consequence of denial:

Without this service the lighting system warranty will be voided and the proprietary system can not be maintained and software updates will not be available leading to disruption of the building lighting operation.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These have not been provided in the past.

D. Will the contract(s) be renewed?

Yes, since this system is a proprietary system and service and maintenance can only be provided by factory authorized service providers.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

B. Explain the qualifying circumstances:

While not a legal requirement, it would invalidate the warranty for this lighting system if individuals other than those authorized were to work on it.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: This is a proprietary system and only factory authorized service providers and service this system

B. Which, if any, civil service class(es) normally perform(s) this work? 7238, Electrician Supervisor 1; 7276, Electrician Supervisor 2; 7345, Electrician;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

These services are not available from other City resources.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil service series classes are not authorized to work on the lighting system because it is a proprietary system.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Civil service classes would not be able to work on this proprietary system.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

No. No training will be provided

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 06/10/2020, the Department notified the following employee organizations of this PSC/RFP request:
Electrical Workers, Local 6

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place, Room 362 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 46765 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/17/2020

Receipt of Union Notification(s)

From: dhrrpscordinator@sfgov.org on behalf of joan.lubamersky@sfgov.org
To: [Lubamersky, Joan \(ADM\)](#); oashworth@ibew6.org; khughes@ibew6.org; [Lubamersky, Joan \(ADM\)](#); [DHR-PSCCoordinator, DHR \(HRD\)](#)
Subject: Receipt of Notice for new PCS over \$100K PSC # 46765 - 19/20
Date: Wednesday, June 10, 2020 12:02:24 PM

RECEIPT for Union Notification for PSC 46765 - 19/20 more than \$100k

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a request for a Personal Services Contract (PSC) 46765 - 19/20 for \$215,000 for Initial Request services for the period 09/01/2020 – 08/31/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrrupal/node/15024> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW

Dept. Code: DPW

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: As-Needed Civil Engineering Services (Curb Ramp Design)

Funding Source: Inter-Departmental work orders

PSC Duration: 6 years 1 day

PSC Amount: \$4,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Consultants will perform highly specialized civil engineering tasks that include data collection and designing compliant curb ramps per City standards and Americans with Disability Act (ADA) requirements, related land surveying, roadway, sewer, drainage design, and other curb ramp related consultation services.

B. Explain why this service is necessary and the consequence of denial:

Services are as-needed to assist Public Works on difficult or unique projects that require specialized curb ramp design expertise beyond the capabilities of existing staff, and to meet scheduling demands when the workload exceeds Department resources. Denial to this service could result in failure to meet client department requirements and project delays that would increase construction costs.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Previous contracts for As-Needed Civil Engineering Services (Curb Ramp Design) were awarded to: Design & Construction Management Services, LEE Incorporated, Benjamini Associates Inc., and Water Resources Engineering (WRE) under PSC #4102-10/11 approved on 05/02/2011.

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The additional time in the PSC Duration is to allow for any delays in processing and awarding the contracts. All contracts will have 5 year term.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

☒ Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

☒ Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

B. Explain the qualifying circumstances:

This service will only be required on an as-needed basis when either City staff don't have the capacity to fulfill all project requests, causing delays, or if specialized services are required. Certain federal or state grants require utilization of specialized contract services.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Requires licensed Civil Engineers with expertise and familiarity with public works projects; expertise in curb ramp design, related roadway, sewer, and drainage design; experience in writing reports and studies; ability to provide services to the City on short notice; and experience in City standards and ADA requirements.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5203, Asst Engr; 5207, Assoc Engineer; 5211, Eng/Arch/Landscape Arch Sr; 5241, Engineer;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The Contractor will provide appropriate land survey equipment.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

The City does not have resources available to perform all required work. The Department has recruited and hired more people for above civil service classes. As-needed contract services will only be utilized when and if the work cannot be prudently performed by internal staff.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil Service classifications are applicable and City staff will be utilized when feasible. Consultants will only be contacted to meet abrupt scheduling demands when the workload exceeds City resources, or during the occurrence of emergency events.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Civil Service Classes already exist. The as-needed services are required to augment City staff during peak workload periods, for those projects that require specialized expertise and knowledge, and emergency situations, such as those that may occur during an earthquake.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. Not applicable.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
Yes. The Independent Assurance Program and Advisory Circular documents attached is referring to the need for independent engineering, cost estimating, observation, inspection, and testing.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 06/16/2020, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Alexander Burns Phone: 415-554-6411 Email: alexander.burns@sfdpw.org

Address: 49 South Van Ness Ave. Suite 1600 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47945 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/17/2020

Receipt of Union Notification(s)

From: dhrrpscordinator@sfgov.org on behalf of alexander.burns@sfdpw.org
To: [Burns, Alexander \(DPW\)](mailto:Burns,Alexander@DPW); ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; [Macaranas, Belle \(DPW\)](mailto:Macaranas,Belle@DPW); [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator,DHR@HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 47945 - 19/20
Date: Tuesday, June 16, 2020 1:34:01 PM

RECEIPT for Union Notification for PSC 47945 - 19/20 more than \$100k

The GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW has submitted a request for a Personal Services Contract (PSC) 47945 - 19/20 for \$4,000,000 for Initial Request services for the period 07/20/2020 – 07/20/2026. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/15058> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

TechBrief

The Construction and Materials Quality Assurance Program is an integrated, national effort to improve the effectiveness of the State acceptance of materials both in the inspection, sampling and testing. The program is designed to provide tools and guidance in implementing Quality Assurance programs. The program is designed to provide tools and guidance in implementing Quality Assurance programs.



U.S. Department of Transportation
Federal Highway Administration

Office of Pavement Technology

Publication No.
FHWA-HIF-12-001

October 2011

INDEPENDENT ASSURANCE PROGRAMS

This Technical Brief provides information regarding independent assurance as it relates to activities for the evaluation of the sampling and testing procedures used in a materials and quality acceptance program.

Introduction

23 CFR 637 defines an Independent Assurance Program as: Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program.

An Independent Assurance Program ensures the sampling and testing is performed correctly and the testing equipment used in the program is operating correctly and remains calibrated. It involves a separate and distinct schedule of sampling, testing and observation.

Qualified sampling and testing personnel, other than those performing the verification and quality control (QC) sampling and testing, should perform the Independent Assurance (IA) tests. Likewise, equipment other than that used for verification and QC should be used for IA sampling and testing. By regulation IA sampling and testing is conducted by agency personnel or an accredited laboratory designated by the agency.

The regulation requires IA specifically be designed to include testing performed on project produced materials. Since the testing of project produced materials are tested in multiple locations and by multiple personnel it is necessary to have some assurance the testing is being performed accurately.

Manufactured products are typically tested in the State's central laboratory or by a designated consultant laboratory. Testing in the central laboratory is considered to be covered by the laboratories accreditation and participation in proficiency testing.

Background

In the early sixties Congressional investigation uncovered improper testing and fraud in some of the federally funded highway projects. To address the issue of improper testing a separate sampling and testing program was developed. The program was operated by personnel different than project personnel on different equipment. The samples were split with project personnel and the test results were compared. In addition, testing procedures were also observed. This was done to ensure sampling procedures were performed correctly and equipment stayed in calibration. In later rewrites of the regulation this program became the Independent Assurance program.

Scope

The regulation, 23 CFR 637, only covers projects that are on the National Highway System (NHS). The regulation requires testing personnel that perform any verification testing or QC testing used in the acceptance decision be covered by an IA program regardless of the agency, including a local agency or a toll authority administering a project.

Some States have IA testing personnel perform other duties such as: (1) instructing other testers, (2) obtaining samples for the verification of manufactured products,(3) obtaining samples of aggregate, cement, binder samples at production facilities for purposes other than IA, (4) inspecting precast or other facilities. Even though these functions are a necessary part of an overall Quality Assurance (QA) program they will not be discussed in this Tech Brief since the purpose of this Tech Brief is to discuss the IA functions as defined in the regulation.

Regulation 23 CFR 637

The text of the entire regulation can be found at this website:

http://www.access.gpo.gov/nara/cfr/waisidx_03/23cfr637_03.html

The following is a summary of the elements of the IA program:

1. Establish IA sampling and testing frequencies;
2. Evaluate testing equipment by using one or more of the following: calibration checks, split samples, or proficiency samples.
3. Evaluate testing personnel by observations and results from testing split samples or proficiency samples.
4. Prompt comparison and documentation of test results obtained by the tester being evaluated and the IA tester.
5. Develop guidelines including tolerance limits for the comparison of test results.

6. Provide an annual report to the FHWA when the system approach is used.

The rest of the Tech Brief will discuss best practices for each of the above requirements.

System versus Project Approach

The Independent Assurance Program can be set up on a project basis, which is the traditional approach, or on a system basis. The difference in the two approaches is the basis of the frequency of testing (cover all projects versus cover all personnel).

Some States have moved away from having testing personnel on all projects and are moving toward centralizing testing away from the project level. As this occurs testers may perform testing on several projects and it becomes more efficient to have a frequency based on the testers instead of projects quantities. In addition, the project approach does not always include all the testing personnel.

As States have moved toward the system approach they have also incorporated the IA program results as part of the technician qualification program.

Frequency of Independent Assurance Testing

Project Approach - The State establishes the frequency for the IA testing based on the testing frequency performed on the project or on a time frequency on a project. Typically, the States use a frequency of 10 percent of the verification/acceptance testing. For example if the verification testing is performed at the rate of 1 per 500 tons the IA frequency would be 1 per 5000 tons.

System Approach - An alternative method to basing frequency on project testing frequencies is to base the IA frequency on a time basis for all testers and equipment. In this case, the personnel and equipment would be verified on a "system" basis. The purpose is to cover all the testers and equipment over a period of a year. While States strive to reach all testers, it is not always possible. States typically set a goal of reaching 90% of the active testers. Active testers are defined as those testers that are performing testing in a given year, in most States this is a subset that is smaller than all "qualified" testers since some qualified personnel may have retired, move to other jobs or resigned. The system approach can be a more effective means of performing IA since it ensures that most testers are reviewed and that the same testers are not continually reviewed.

One challenge is to determine the active testers. For States that have an electronic materials management system it is very easy to determine the active testers since these systems indicate who is performing a given test. The IA testers will run reports periodically (monthly) to

determine the testers that need to be reviewed. For those States that do not have an electronic materials management system it becomes more challenging to determine the active testers. A good practice under these circumstances is to require the project personnel to identify the personnel that are going to perform testing, state, consultant, and contractor, at the beginning of the project along with any changes to the IA personnel. The IA testers will then know the active testers along with the testers that they have already been reviewed and will thus know the testers that need to be reviewed in the future.

Mixed Approach - It is permissible to separate the verification of equipment and personnel, i.e., one method to check equipment is to require a calibration and inspection frequency. Personnel can be checked by sending out proficiency samples. It is permissible to use a mixed approach, i.e. where some test procedures and or some testers are covered by a project approach where the remaining procedures are covered by a system approach.

Equipment and Personnel

Testing equipment may be evaluated by using one or more of the following: calibration checks, split samples, or proficiency samples.

Testing personnel may be evaluated by observations and split samples or proficiency samples.

The typical approach for performing IA is to check equipment and personnel at the same time. This is performed by IA personnel visiting a job site to observe the sampling and testing on site and to also test a split of the sample on site with equipment the IA personnel brought or to take the split to another laboratory for testing. When the test results are compared it checks both the equipment and tester. If a set of samples do not compare further analysis is required to determine if the source of the error is in procedure or equipment.

Some States send out proficiency samples to district, other subsidiary laboratories as well as consultants and contractors. Some of these States develop their own samples, while others require the laboratories to subscribe to the AASHTO Materials Reference proficiency samples. Proficiency samples are a way to address equipment and test procedures. Some States are preparing enough proficiency samples for all the active testers. In cases where all the testers are covered by the proficiency samples additional IA work would only need to review those that did not compare. If the proficiency program did not cover all the testers additional IA work would also be required.

Another method that covers just the equipment is performed by frequent standardization and or calibration. The frequency for standardization and/or calibration differs by equipment due to the unique nature of each testing device. AASHTO R-18 and some of the test procedures contain a frequency for standardization/calibration of the testing equipment. However, if standardization/calibration is the only check on the equipment (no split samples or proficiency samples) the standardization/calibration should probably be run frequently.

As some States move toward the system approach the States are checking testers in a central location. This allows the IA inspectors to cover numerous testers at one time. This has worked especially effectively in States where the projects and or laboratories are spread across a large geographic area. The States that use this approach are also including this data for requalification of testing personnel. When this approach is used the equipment needs to also be covered by standardization/calibration, split sample or proficiency sample testing.

Some States will suspend and/or revoke a technician's qualification/certification for repeated poor performance on IA evaluations. These are in addition to suspensions and/or revocation due to fraudulent activities. Some States will also perform testing on 3 way split-samples. In this approach one split is tested by project personnel, one split is tested by the contractor personnel and the third split is tested by the IA personnel. This is typically performed at the beginning of production to ensure that all testing personnel and equipment are performing correctly.

Prompt Comparison and Documentation

It is essential the IA Program compare results and detect deficiencies in State or contractor testing procedures in a timely manner. This improves the reliability of sampling and testing. The timely comparison of data may be restricted by the resources of an agency including personnel, facilities, and geographical constraints. These resource needs must be considered in an agency program.

Deviations from the established tolerances will require an engineering audit of the respective sampling and testing procedures, and the equipment used. When comparison of QC and verification data reveals significant differences in test values, the variables involved should be evaluated by the IA personnel to determine whether further testing and investigation is needed to establish the source of the discrepancy.

Corrective actions should be incorporated as appropriate under the direction of IA personnel.

Tolerances for Comparison of Test Results

A common place to start in establishing comparison tolerances are the D2S limits in the published test procedures. However, as States reduce the options in published test procedures and as testers become more proficient, the tolerances should be reduced. When split samples are used, the materials and sampling variability are eliminated from the analysis and only the variability due to the testing procedures and the equipment are included.

The comparison of split sample test results should be based on established deviation values or tolerances that are representative of the testing procedures and materials used. AASHTO and ASTM have published precision statements for some test methods. However, many of these procedures have multiple methods and or options inside the procedure. In order to reduce

testing variability most States have specified the particular options within the test procedures. Therefore the agency should develop Independent Assurance tolerances based on their specific options that the State is requiring. Care must be taken when historical data are used in establishing these limits to ascertain that the data are not biased; i.e., they were obtained in a random manner and that all test results have been reported. Otherwise, the variability may be underestimated and the limits too restrictive.

Many States distribute proficiency samples to their district laboratories. This data can be analyzed to determine IA tolerances. The formula for D2S is $D2S = 2\sqrt{2}(1S)$ where

1S = the standard deviation of the results .

Established tolerances should be periodically evaluated and modified to ensure that the goals of IA are being met; that is, it assures the reliability of contractor and agency test results. Some States are evaluating their tolerance every year. As a minimum the tolerances should be evaluated every 5 years.

In situations where multiple split tests are performed on a project a paired t-test can also be used to analyze data.

Annual Reports

The regulation requires those States that use a system approach to prepare and submit an annual report to the FHWA Division Office.

The annual report should include the following information: the number of certified technicians, the number of active technicians, the number of technicians covered by the IA program, the number of IA reports that had deviations, and a summary of how the deviations were addressed along with the potential systematic solutions to reoccurring deficiencies.

Alternate Approach

One State is statistically analyzing State and Contractor data in an innovative manner to accomplish both verification and IA.

An example of this approach is shown in Figure 1. In this approach the contractor performs sampling and testing at the rate of 4 samples per lot. The State takes verification samples, at the beginning of production; a minimum of 4 samples are taken the first week of production and at least 1 per lot. The State's verification samples are taken at the plant by contractor personnel under the direction of the State personnel. The verification samples are split and one split is given to the contractor. Analysis is performed in two ways. First, for IA, the split results are compared using IA comparison tolerances. In the figure below; IA1 is compared to the contractor split of that sample, sample 4 of lot 1. For validation, the State verification

samples are made independent by removing the corresponding contractor splits. In the figure below samples 1, 2, 3 from lot 1; samples 1, 2, 4 from lot 2; samples 1, 2, 3 from lot 3; and samples 1, 3, 4 from lot 4 are compared to the State's IA1, IA2, IA3, and IA4 with the F& t tests.

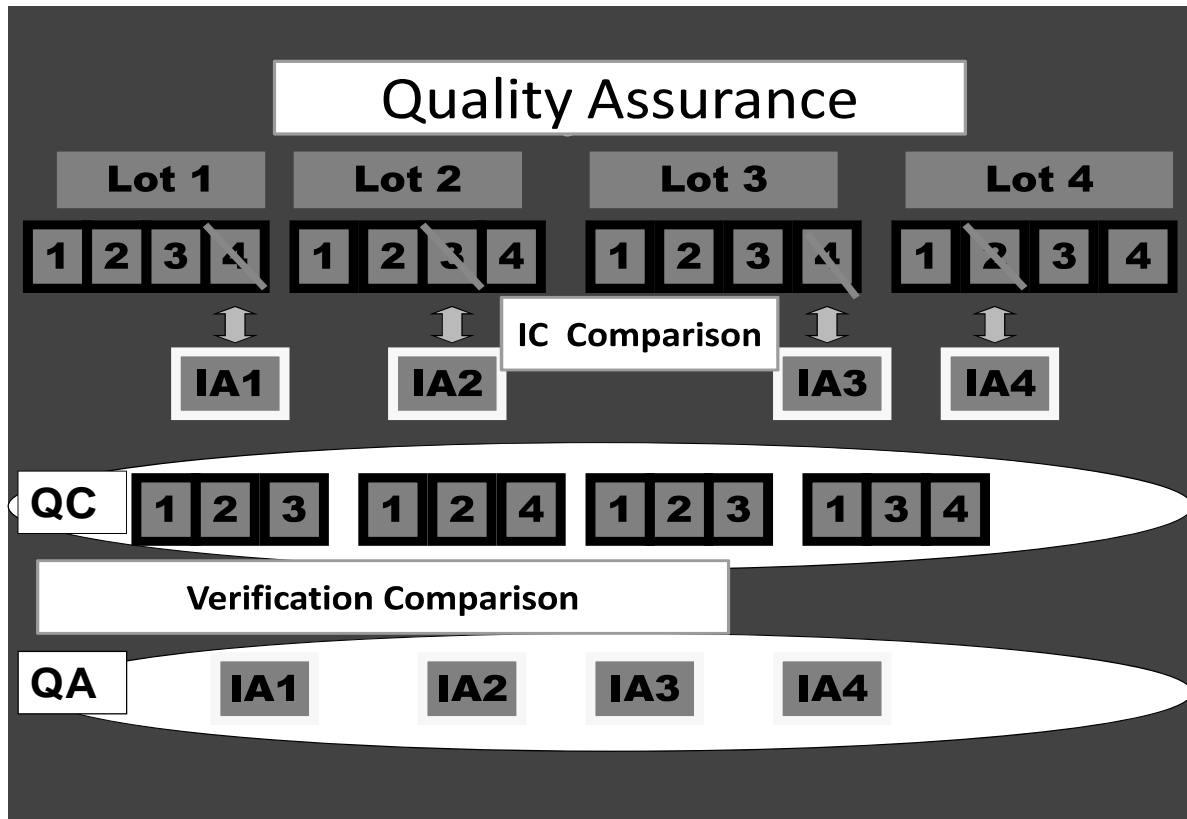


Figure 1. Example of Alternate Approach.

Conclusion - Commonly Noted Areas of Concern

- Test results from the IA program should only be compared to split test results or results from others testing the same set of proficiency samples.
- IA results are not to be used in the acceptance decision.
- IA should be based on split samples or proficiency samples not independent samples so that data can be compared without material variability.
- All tests that are performed in the field to determine the final acceptability of the materials should be covered by the IA program.

- All technicians that are performing testing that is used in the acceptance decision need to be covered by the IA program.
- Observation of sampling and testing procedures should be included as part of an IA system to evaluate sampling and testing personnel and ensure that testing and sampling procedures are performed correctly.

Further Information:

- "23 CFR Part 637," Subpart B - Quality Assurance Procedures for Construction, Federal Highway Administration, *Federal Register*, Washington, DC published on June 29, 1995, and amended on December 10, 2002, and September 24, 2007, http://www.access.gpo.gov/nara/cfr/waisidx_03/23cfr637_03.html
- Non-regulatory supplement for 23 CFR Part 637, Subpart B - Quality Assurance Procedures for Construction, Federal Highway Administration. The non-regulatory supplement was updated on July 19, 2006. <http://www.fhwa.dot.gov/legregs/directives/fapg/0637bsup.htm>
- Frequently asked questions (FAQ) on the Quality Assurance Regulation. The FAQs were updated on November 26, 2006. <http://www.fhwa.dot.gov/pavement/materials/matnote11.cfm - gaa>
- AASHTO Standard Practice R 44, "Independent Assurance Programs" has been published in the 2007 AASHTO Standards. This guide will assist the States in developing Independent Assurance Programs
- NHI Course 134042, "Materials Control and Acceptance –Quality Assurance." The course is four days long and covers the basic essentials of QA. A two-day version of the course is also available. http://www.nhi.fhwa.dot.gov/training/brows_catalog.aspx
- NHI Course 134064 – "Transportation Construction Quality Assurance"

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This **TechBrief** was developed as part of the Federal Highway Administration's (FHWA's) Materials Quality Assurance Program.

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U.S. Department
of Transportation
**Federal Aviation
Administration**

Advisory Circular

Subject: Architectural, Engineering, and Planning
Consultant Services for Airport Grant Projects

Date: 9/30/2014

AC No: 150/5100-14E

Initiated By: AAS-100

1 **Purpose.**

This advisory circular (AC) provides guidance for airport sponsors in the selection and engagement of architectural, engineering, and planning consultants. It also discusses services that normally would be included in an airport grant project, types of contracts for these services, contract format and provisions, and guidelines for determining the reasonableness of consultant fees.

2 **Cancellation.**

This AC cancels AC 150/5100-14D, *Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects*, dated August 30, 2005.

3 **Application.**

A Sponsor is required to award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Chapter 11, Selection of Architects and Engineers), or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport. See 49 U.S.C. § 47107(a) (17) and the grant assurances.

Title 2 of the Code of Federal Regulations (C.F.R.), part 200, establishes uniform administrative rules for Federal grants. The FAA prepared this guidance to assist Sponsor compliance with the procurement requirements of §§200.317-200.326.

This AC does not apply to airport projects that are fully funded with passenger facility charge (PFC) funds.

4 Principal Changes.

The AC incorporates the following principal changes:

1. Clarified Independent Fee Estimates processes.
2. Clarified multiple consultant selection process.
3. Added “Specific Rates of Compensation” method of contracting.
4. Revised and expanded discussion of Alternative Project Delivery Methods, moved to Appendix G.
5. Updated the advisory circular format to the decimal numbering system.
6. The Office of Management and Budget published the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule, in 78 Federal Register Notice 78590, December 26, 2013. This final guidance contains the administrative requirements formerly contained in (A-110 and A-102), cost principles (A-21, A-87, and A-22), and audit requirements (A-50, A-89, and A-133) for federal awards. As of December 26, 2014, a Sponsor must implement applicable the requirements of 2 CFR §200 to remain allowable for federal assistance.



Michael J. O'Donnell
Director of Airport Safety and Standards

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CHAPTER 1. INTRODUCTION

1.1 Overview.

This advisory circular (AC) provides guidance for airport sponsors in the selection and engagement of architectural, engineering, and planning consultants. This AC discusses services normally included in an airport grant project, types of contracts for these services, contract format, and guidelines for determining the reasonableness of consultant fees.

1.2 Definitions.

Definitions of the terms used in this AC are listed in Appendix A.

1.3 Referenced Documents.

Documents and regulations referenced throughout this circular are listed in Appendix B.

1.4 Types of Consultant Services.

There are two separate and distinct categories of consultant services that are utilized for projects conducted under airport grant programs. The first category involves planning services. The second involves Architectural/ Engineering (A/E) services for the design and construction administration/inspection of airport projects. These two categories of consultant services are discussed below.

1.4.1 Aviation Planning Services.

This category includes studies under the broad headings of airport system and master planning, airport noise compatibility planning and environmental assessments and related studies. These studies include, but are not limited to, the following activities:

1. Design study to establish the framework and detailed work program.
2. Airport data collection and facility inventories.
3. Aeronautical activity forecasts and demand/capacity analyses.
4. Facility requirements determination.
5. Airfield modeling for capacity and delay.
6. Airport layout and terminal area plan development.
7. Airport noise studies under 14 CFR Parts 150 and 161.
8. Compatible land-use planning in the vicinity of airports.
9. Airport site selection studies.
10. Airport development schedules and cost estimates.
11. Airport financial planning and benefit cost analysis.

12. Participation in public information and community involvement programs and/or public hearings relating to airport development and planning projects.
13. Environmental Assessments (EA), Environmental Impact Statements (EIS), and other studies in accordance with FAA Orders 5050.4 and 1050.1.
14. Airspace analysis.
15. GIS data collection, entry, and analysis and other electronic graphical/mapping efforts.

1.4.2 Architectural/Engineering Services for Airport Development Projects.

This category includes the basic A/E services normally required for airport development projects. It involves services generally of an architectural, civil, geotechnical, structural, mechanical, and electrical engineering nature. In addition, there may be some services outside those normally considered basic that are discussed in paragraph 1.5. The basic services are usually conducted in, but are not limited to, the four distinct and sequential phases summarized below:

1.4.2.1 **Preliminary Phase.**

This phase involves those activities required for defining the scope of a project and establishing preliminary requirements. Some examples of activities within this phase of a project include, but are not limited to:

1. Coordinating with the sponsor on project scope requirements, finances, schedules, operational safety and phasing considerations, site access and other pertinent matters.
2. As applicable, coordinating project with local FAA personnel and other interested stakeholders to identify potential impacts to their operations.
3. Planning, procuring, and/or preparing necessary surveys, geotechnical engineering investigations, field investigations, and architectural and engineering studies required for design considerations.
4. Developing design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost estimates.
5. Preparing project design criteria and other bridging documents commonly used for alternative project delivery methods such as design-build contracting.

1.4.2.2 **Design Phase.**

This phase includes all activities required to undertake and accomplish a full and complete project design. Examples include, but are not limited to, those below:

1. Conducting and attending meetings and design conferences to obtain information and to coordinate or resolve design matters.

2. Collecting engineering data and undertaking field investigations; performing geotechnical engineering studies; and performing architectural, engineering, and special environmental studies.
3. Preparing necessary engineering reports and recommendations.
4. Preparing detailed plans, specifications, cost estimates, and design/construction schedules.
5. Preparing Construction Safety and Phasing Plan (CSPP).
6. Printing and providing necessary copies of engineering drawings and contract specifications.

1.4.2.3 **Bidding and Negotiation Phase.**

These activities are sometimes considered part of the construction phase. They involve assisting the sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.

1.4.2.4 **Construction Phase.**

This phase may include all basic services rendered after the award of a construction contract, including, but not limited to, the following activities:

1. Providing consultation and advice to the sponsor during all phases of construction.
2. Representing the sponsor at preconstruction conferences.
3. Inspecting work in progress periodically and providing appropriate reports to the sponsor.
4. Reviewing and approving shop and erection drawings submitted by contractors for compliance with design concept/drawings.
5. Reviewing, analyzing, and accepting laboratory and mill test reports of materials and equipment.
6. Assisting in the negotiation of change orders and supplemental agreements.
7. Observing or reviewing performance tests required by specifications.
8. Determining amounts owed to contractors and assisting sponsors in the preparation of payment requests for amounts reimbursable from grant projects.
9. Making final inspections and submitting punch-lists and a report of the completed project to the sponsor.
10. Reviewing operations and maintenance manuals.

1.4.2.5 **Project Closeout Phase.**

This phase includes all basic services rendered after the completion of a construction contract, including, but not limited to, the following activities:

1. Making final inspections and submitting punch-lists and a report of the completed project to the sponsor.
2. Providing record drawings.
3. Preparing summary of material testing report
4. Preparing summary of project change orders
5. Preparing grant amendment request and associated justification, if applicable.
6. Preparing final project reports including financial summary.
7. Obtaining release of liens from all contractors.

1.5 **Special Services.**

1.5.1 The development of some projects may involve activities or studies outside the scope of the basic design services routinely performed by the consultant. These special services may vary greatly in scope, complexity, and timing and may involve a number of different disciplines and fields of expertise.

1.5.2 Consultants performing special services may be employed directly by the sponsor to implement one or more phases of a project or may be employed by the principal consultant via a subcontract agreement. In certain instances, these services may be performed by the principal consultant. Some examples of special services that might be employed for airport projects include, but are not limited to, the following:

1. Soil investigations, including core sampling, laboratory tests, related analyses, and reports.
2. Detailed mill, shop, and/or laboratory inspections of materials and equipment.
3. Land surveys and topographic maps.
4. Field and/or construction surveys.
5. Photogrammetry surveys.
6. Onsite construction inspection and/or management involving the services of a full-time resident engineer(s), inspector(s), or manager(s) during the construction or installation phase of a project. This differs from the periodic inspection responsibilities included as part of the basic services.
7. Special environmental studies and analyses.
8. Expert witness testimony in litigation involving specific projects.
9. Project feasibility studies.

10. Public information and community involvement surveys, studies, and activities.
11. Preparation of record drawings.
12. Assisting the sponsor in the preparation of necessary applications for local, State, and Federal grants.
13. Preparation of or updating of the airport layout plan.
14. Preparation of property maps.
15. Preparation of quality control plan.
16. Preparation of final report.

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CHAPTER 2. PROCEDURES FOR SELECTION OF CONSULTANTS

2.1 General.

The procedures included in this chapter provide guidance for sponsors in the selection and engagement of architectural, engineering, environmental, and planning consultants on projects funded wholly or in part under Federal airport grant programs. Adherence to these procedures will assure a sponsor of compliance with the requirements of 49 USC § 47107(a) (17) and 2 CFR §200.320, as amended.

2.1.1 49 USC § 47107(a) (17) states: “Each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 or an equivalent qualifications based requirement prescribed for or by the sponsor.” In addition to the services described in this statute, the professional and incidental services listed under A/E Services in Appendix A, must also be procured using qualifications based procedures.

2.1.2 2 CFR § 200.320 establishes that procurement by competitive proposal, where price is not a factor, may only be used for procurement of architectural/engineering (A/E) services. It may not be used for other services even though an A/E firm may be a potential source to perform the service. If a conflict exists between 49 USC § 47107(a) (17) and 2 CFR 200, the statute will prevail.

2.1.3 Title IX of the Federal Property and Administrative Services Act of 1949 requires that qualifications based selection procedures be used for the selection of firms to perform architectural and engineering services. Qualifications based procedures require that a contract for A/E services be awarded pursuant to a fair and open selection process based on the qualifications of the firms. The fees for such services are established following selection of a firm through a negotiation process to determine a fair and reasonable price.

2.2 Procurement Standards.

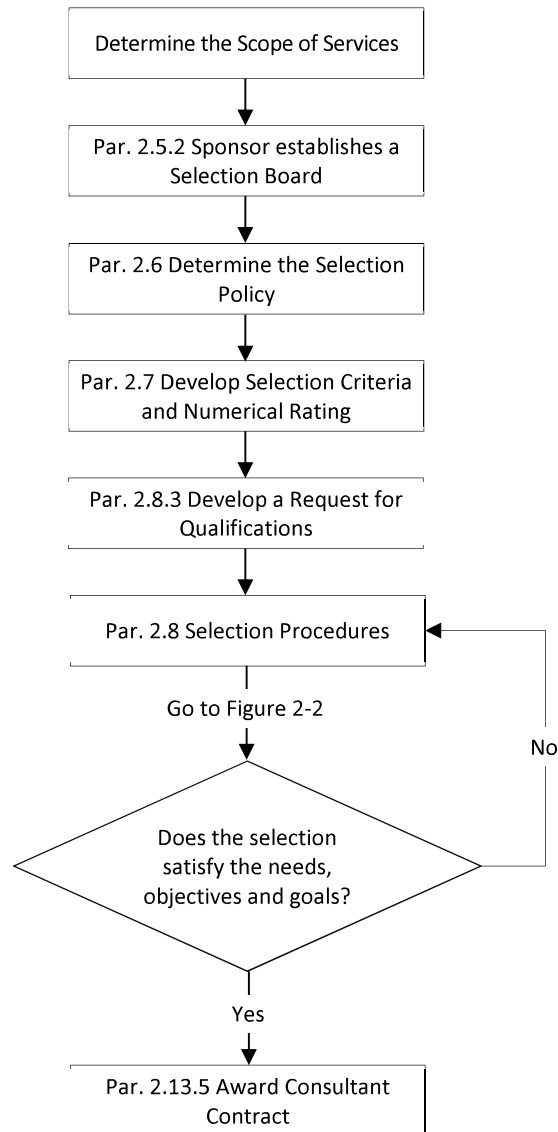
2.2.1 The selection of qualified consultants must be made on the basis of fair negotiations and equitable fees and through selection procedures that are professionally acceptable, ensure maximum open and free competition, and avoid any suggestion of unfair or unethical conduct.

2.2.2 Consultants employed for work on projects involving airport grants must be responsible and possess the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration should be given to such matters as integrity, record of past performance, extent of experience with the type of services required by the sponsor, technical resources, and accessibility to other necessary resources.

- 2.2.3 The Sponsor's procurement action must be void of individual and organizational conflicts of interests both real and/or perceived.
 - 2.2.3.1 Individual conflicts of interest may exist whenever a Sponsor's employee, officer, agent or family member thereof has a financial or other interest in the firms competing for the work.
 - 2.2.3.2 Organizational conflicts of interest may exist when there is a lack of impartiality, impaired objectivity or an unfair advantage with one or more of the firms competing for the work.
- 2.2.4 Sponsors must maintain sufficient records, made available at the FAA's request, to detail the significant history of their procurement action. This includes the rationale for the procurement method; the selection considerations; contract type and basis for contract price.
- 2.2.5 Per § 200.319, all procurement transactions must be conducted in a manner providing full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, entities that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.

2.3 **Qualifications Based Selection Procedures.**

Consultants must be selected on the basis of their qualifications and experience, with fees determined through negotiations following selection. The qualifications of consultants are evaluated and the best qualified consultant is selected, subject to a mutual understanding of the scope of services and negotiation of a fair and reasonable fee. Figure 2-1 is an overview of the recommended Qualifications Based Consultant Selection process.

Figure 2-1. Qualifications Based Selection Process

2.4 Other Services.

- 2.4.1 Where services are to be performed in conjunction with the architectural, planning, environmental, or engineering services, they must be contracted for in the course of procuring the A/E services.
- 2.4.2 Where services such as feasibility studies, construction management, program management and other services as defined in 49 USC § 47107(a) (17) and A/E services as defined in Appendix A are to be performed, they must be procured using qualifications based procedures.

- 2.4.3 Where services are to be performed that are not in conjunction with A/E services and do not require performance by a licensed architect or engineer, the services should be acquired using local procurement procedures. An example of this type of special service would be soil borings, whereby the boring layout plan and interpretations of tests are not performed by the boring contractor. Soil borings conducted as part of a geotechnical engineering investigation or for which an independent engineer is responsible must be procured either in the course of procuring A/E services or by using qualifications based procedures.
- 2.4.4 Where services are to be performed in assisting the FAA in preparing an Environmental Impact Statement (EIS), they must be procured using qualifications based selection procedures (see paragraph 2.10).
- 2.4.5 Where a sponsor decides to utilize an Alternative Project Delivery System (APDS) such as design-build (DB) or construction manager-at-risk (CMAR), the Sponsor may use the competitive proposal approach (as defined in 2 CFR §200.320) for selection provided price and other factors such as qualifications, skill, experience, and design approach are considered when selecting a firm to perform this service. The selection of an A/E services firm is the only instance where prices must be excluded as a consideration under a competitive proposal selection. Please reference Appendix G, Alternative Project Delivery Systems, of this Advisory Circular for guidance in procuring these types of services.

2.5 **Selecting Organization.**

- 2.5.1 Within the sponsor's organization, an administrative policy should be established for designating persons authorized to select or recommend consultants for various assignments. The persons designated may include the administrator or the department head to be supplemented by others making up a selection board. The persons empowered to make the selection of one consultant over another must be kept free of pressures, both internal and external. 2 CFR § 200.318(c) requires that sponsors maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. They must not participate in selection or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- 2.5.2 The typical procedure for selecting a consultant is to use a selection board composed of at least three persons, with at least one being an engineer, airport planner, or other professional knowledgeable of the service required. For projects that have special design requirements or are particularly complex, the selection board should have additional technical members with the appropriate expertise in those required disciplines. The board should be prepared to evaluate potential consultants, i.e., conduct interviews and inquiries as desired and make recommendations to the governing body in accordance with Paragraph 2.8.14.

2.6 Policy for Selection.

2.6.1 The selection of a consultant must be based on a comparative analysis of the professional qualifications necessary for satisfactory performance of the service required. Moreover, the selection process must satisfy requirements for open and free competition.

2.6.2 Sponsors may procure a consultant for several projects through one procurement action provided the following conditions are met:

1. The consultant is selected using the qualifications based selection procedures described in paragraph 2.8.
2. The parties competing for the work must be advised that the work may be accomplished during the course of multiple grants. The expected schedule of projects must be defined, together with a statement of work and the required services. The statement of work must be described in sufficient detail so that all parties may adequately establish the type of services required to accomplish the work. Avoid generic statements of work.
3. All parties are advised that some of the services may not be required and that the sponsor reserves the right to initiate additional procurement action for any of the services included in the initial procurement.
4. The services are limited to those projects that can reasonably be expected to be initiated within five (5) years of the date the initial contract is signed by the consultant. With the understanding that not all projects can be foreseen, with mutual agreement between the sponsor and the FAA, new projects may be added after the original selection is made. Otherwise, sponsors that want to add projects not included in the original procurement action must conduct a separate and new procurement action.
5. If more than one party is selected, the expected projects to be performed by each party must be defined, together with the statement of work and the required services, at the time of the initial procurement action. The sponsor must provide notification to each firm of the projects they were awarded. Sponsors must avoid the practice of selecting multiple firms and assigning project responsibility at a later date.
6. The negotiation of the fee is limited to the services expected to be performed under the first grant or project after the initial procurement action. The contract must be limited to the services covered by the negotiated fee. The negotiation of the fee for subsequent services, i.e., services included in the procurement action but not in the initial contract, must occur at the time those services are needed. A fee estimate must be performed for each of these negotiations. (See paragraph 2.12 for information on fee estimate.) If a fee cannot be agreed upon between the sponsor and the selected firm, then negotiations are terminated with that firm. If the sponsor identified and ranked multiple firms for the project at the time of the initial procurement action, then the sponsor may enter into negotiations with the firm ranked next. If no additional firms were identified and ranked or agreement is not reached with any selected firms, then the sponsor must initiate a new procurement action.

7. In the case of an unforeseen project as in Paragraph 4, the Sponsor and the FAA may mutually agree on the ranking of the selected consultants by evaluating their capabilities and the scope of the unforeseen project. However, if the scope of the unforeseen project does not match the capabilities of the selected consultants, a new procurement action must be conducted.

2.6.3 Unless there is a convincing reason to combine eligible and ineligible projects in a single solicitation, sponsors are discouraged from doing so (Order 5100.38).

2.7 **Selection Criteria.**

2.7.1 Based on the proposed scope of service(s) and prior to evaluating consultants, a sponsor(s) must develop a list of selection criteria to be used in evaluating potential consultants. Numerical rating factors (ranges) should be assigned to each criterion on the basis of the sponsor's priorities and conception of the importance of each factor in the attainment of a successful project. The sponsor(s) should include the criteria with a Request for Qualifications (RFQ) in advance of the selection process.

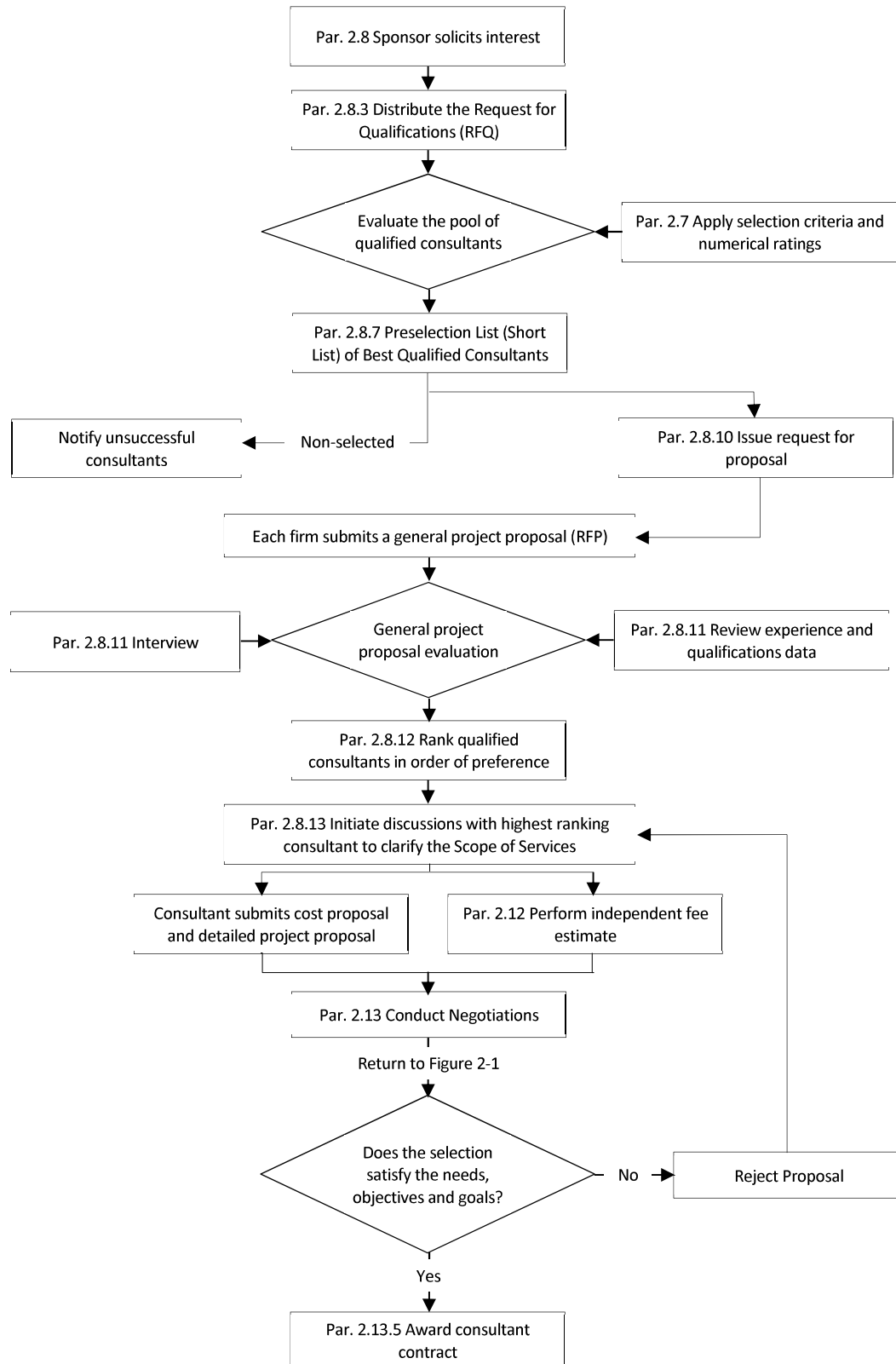
2.7.2 Based on a sponsor's goals/objectives for each project, the list of selection criteria will vary for each RFQ and must be appropriate for the proposed scope of services. Suggested selection criteria include, but are not limited to, the following:

1. Capability to perform all or most aspects of the project and recent experience in airport projects comparable to the proposed task.
2. Key personnel's professional qualifications and experience and availability for the proposed project; their reputation and professional integrity and competence; and their knowledge of FAA regulations, policies, and procedures.
3. Capability to meet schedules or deadlines.
4. Quality of projects previously undertaken and capability to complete projects without having major cost escalations or overruns.
5. Qualifications and experience of sub-consultants regularly engaged by the consultant under consideration.
6. Capability of a branch office that will do the work to perform independently of the home office, or conversely, its capability to obtain necessary support from the home office. The use of geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
7. Ability to furnish qualified inspectors for construction inspection if applicable.
8. Understanding of the project's potential challenges and the sponsor's special concerns.
9. Degree of interest shown in undertaking the project and their familiarity with and proximity to the geographic location of the project.

10. Capability to incorporate and blend aesthetic and architectural concepts with the project design while accomplishing the basic requirements that transportation facilities be functional, safe, and efficient.
11. In meeting the Disadvantaged Business Enterprise (DBE) contract goal, evidence documenting that the consultant met the DBE goal, or by documenting that it made adequate good faith efforts to meet the DBE goal. (See 49 CFR, § 26.53)
12. Capability to conduct a Value Engineering (VE) study for projects that are particularly complex or have unique features. Order 5100.38, Chapter 3, Subsection 3-57; AC 150/5300-15, *Use of Value Engineering for Engineering and Design of Airport Grant Projects*; and AC 150/5370-10, *Standards for Specifying Construction of Airports*, contain additional guidance on VE studies.

2.8 **Selection Procedures.**

The sponsor must use the following selection procedures or equivalent State/sponsor qualifications based selection for individual project selections involving Federal airport grants (see Figure 2-1 and Figure 2-2). However, the requirement for both an RFQ and an RFP should be evaluated based on the complexity of the project as these steps may be combined into a single request.

Figure 2-2. Consultant Selection Process for a Single Project

- 2.8.1 The selection board should review the nature of the proposed project and the general scope of services to be procured in order to ensure an understanding of the project requirements and the qualifications needed by the consultant.
- 2.8.2 As discussed in paragraph 2.7, the selection board must develop the selection criteria and the evaluation system used in preparing a pre-selection short-list of consultants who are best qualified for the project as well as in determining the final selection.
- 2.8.3 To obtain experience and qualification data from potentially qualified consultants, the sponsor should issue an RFQ inviting consultants to submit their experience and qualifications data relating to the proposed project usually in the form of a Statement of Qualifications (SOQ). To ensure the broadest publicity concerning sponsor interest in obtaining consultant services, public announcements for all projects should be advertised in local newspapers with a wide circulation, national trade journals and magazines, and through electronic media. Public announcements should include information such as a description of the proposed project and its location, a description of the services, and the estimated range of construction costs. The public announcement should allow sufficient time for submission of the statement of qualifications.
- 2.8.4 Sponsors may also send the public announcements directly to known, potentially qualified consultants to determine their interest in the project and to request their experience and qualification data.
- 2.8.5 Affirmative steps pursuant to 2 CFR §200.321 and good faith efforts should be taken to assure that small and minority firms are used whenever possible, consistent with 49 CFR part 26. These steps and efforts should include, but not be limited to, the following:
1. Include qualified small business and minority firms on solicitation lists.
 2. Assure that small business and minority firms are solicited whenever they are potential sources. Consultation with regional Airports Divisions, Office of Civil Rights, and/or State transportation offices is encouraged.
 3. Divide the total requirements into small tasks, when economically feasible, to permit maximum small business and DBE firm participation.
 4. Use the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Minority Resource Center Regional Centers of the Department of Transportation (<http://osdbu.dot.gov>).
 5. Arrange solicitations, time for presentation of offers and delivery schedules to facilitate DBE and other small business participation.
 6. Encourage consultants to subcontract portions of the work, even when they might otherwise perform the work with their own forces.
- 2.8.6 FAA Airports field offices may also furnish the names of consultants who have engaged in projects of similar nature in their areas of jurisdiction. However, with the exception

of an EIS, FAA personnel will not recommend consultants or participate in the selection process. The addresses of FAA Airports Regional/District Offices having jurisdiction over specific geographic areas are available at:

http://www.faa.gov/airports/news_information/contact_info/regional/

- 2.8.7 From the experience and qualification data obtained from consultants, the selection board should prepare a pre-selection short-list of the best qualified consultants for further consideration. With adequate response to the RFQ, the typical pre-selection short-list should consist of between three and five consultants.
- 2.8.8 At this point, consultants who expressed an interest in the project but were not included on the pre-selection short-list should be notified that they were unsuccessful.
- 2.8.9 Detailed information on the qualifications and performance data of each of the consultants on the pre-selection short-list should be obtained. This can be achieved by contacting former clients identified by the consultant in their statement of qualifications to ascertain the quality of work, ability to meet schedules, cost control, and consultant-client relationship.
- 2.8.10 At this point, the selection organization may elect to obtain a general project proposal from each of the firms on the pre-selection short-list, typically by issuing a Request for Proposal (RFP) to each consultant on the pre-selection short-list. The RFP should include a detailed description of the project and the proposed scope of services required. The selection criteria, including their relative importance that will be used to evaluate the proposals must also be made available to each of the firms on the pre-selection short-list. The RFP shall not contain a request for any cost information, such as total cost, cost per hour, work hours, or other pricing data. Requests for cost or pricing information, prior to discussions with the best qualified firm, to define the scope of services is contrary to 49 USC § 47107 (a) (17) and 2 CFR § 200.320(d). The general project proposal will help the selection board recommend a consultant who can achieve design excellence, while successfully controlling time and costs and who has the ability to understand and accomplish the specialized requirements of the project. The elements of a typical general project proposal should include, but are not limited to, the following:
 1. Team members, other key personnel, previous experience, and the role they will fill on the project. The qualifications and time commitment of the project manager proposed for the project.
 2. Current workload.
 3. Proposed project schedule, including major tasks and target completion dates.
 4. Technical approach – a brief discussion of the tasks or steps that the consultant will take to accomplish the work described in the scope of services.
 5. Value engineering – when a value engineering study is included in the selection criteria, a brief discussion of the consultant’s capability, training, and experience to carry out such a study.

- 2.8.11 Conduct interviews with each consultant on the pre-selection short-list. On small projects, a telephone interview may be sufficient. Careful consideration of time and cost should be given to the need for formal interviews. If sponsor has received sufficient information included in the qualification submission to make a selection, then formal interviews may not be necessary.
- 2.8.12 Review the experience and qualifications data, the general project proposal, the interview results, and other relevant data. Using the selection criteria developed for the project; rank the qualified consultants in order of preference.
- 2.8.13 Initiate discussion with the first-ranked consultant to fully define the scope of work and services to be provided (see paragraph 2.11). After agreement on a detailed scope of services has been reached, the consultant should submit their cost proposals together with a detailed project proposal. Negotiations should then be conducted to reach a fair and reasonable fee, subject to the procedures indicated in paragraphs 2.12 and 2.13.
- 2.8.14 Prepare a report that documents the Sponsor's procurement actions and the selection of the consultant they deem most qualified. The report must contain sufficient detail to indicate the extent of the review and the considerations used for the recommendations. The report should be forwarded to the sponsor's administrator or governing body authorized to review the recommendations of the selection board. The recommendations of the selection board should normally be accepted unless the report does not adequately support the recommendations. This will help to ensure complete fairness and open competition. If the recommendations are not accepted, the selection board should reconvene until acceptable recommendations have been agreed upon.

2.9 **Alternate Selection Procedures.**

2.9.1 Proposals Requested with Qualification Data.

The selection procedure recommended in paragraph 2.8 should normally be followed in the procurement of consulting services. For small projects where the scope of work and services can be clearly defined or the sponsor anticipates receipt of less than four proposals, the sponsor may wish to solicit proposals at the time of advertising for experience and qualification data. In this case, the announcement must contain a detailed scope of services and indicate where the selection criteria can be obtained. The advertisement cannot request pricing information.

2.9.2 Informal Procedures.

- 2.9.2.1 Informal Qualifications Based Selection procedures may be used for A/E procurements estimated to be less than \$100,000. However, this does not relieve the sponsor from the obligation to perform a cost analysis and prepare an independent fee estimate (see paragraph 2.12). Sponsors must consult with FAA Airport personnel before using informal procedures to assure that the circumstances justify their use.

2.9.2.2 Under this procedure, a sponsor must contact at least three firms and discuss their qualifications to perform the work. Negotiations must then be conducted with the best-qualified firm to arrive at a fee. These negotiations may be conducted via telephone or e-mail. After selection, using this procedure, the sponsor must document their procurement action and then submit a statement to the FAA explaining the basis for the selection and method used to determine reasonableness of the fee.

2.9.2.3 The informal selection process may not be used to select a firm for multiple projects.

2.9.3 Non-competitive Procedures.

The FAA may authorize non-competitive negotiation for services if the cost of the contract is not expected to exceed \$10,000 and the services are incidental to the grant project. When this procedure is used, the sponsor must submit a statement to the FAA explaining the basis used to determine reasonableness of cost as discussed in 2.9.2 above.

2.10 **Selection Procedures for Environmental Impact Statement (EIS) Preparation.**

The procurement of consultant services to assist the FAA in preparing an EIS is somewhat unique because the regulations implementing the National Environmental Policy Act (NEPA) (42 USC § 4321 et seq.), require Federal agencies to prepare the EIS or select the contractor that prepares the EIS (Orders 5050.4 and 1050.1 provide additional guidance). Selection of a consultant must, therefore, be made by the FAA from a short-list of qualified consultants submitted by the sponsor. The sponsor and the FAA must follow the selection procedures recommended in paragraph 2.8 with the following exceptions:

1. The proposed scope of work is to be provided by the FAA.
2. The FAA must concur with the selection and evaluation criteria prepared by the sponsor.
3. The FAA will be invited to participate with the sponsor in the interviews with consultants on the pre-selection short-list.
4. The sponsor may indicate to the FAA their ranking of the consultants on the pre-selection short-list after the interview process has been concluded. The FAA, however, is under no obligation to make a selection based on this ranking.
5. Using the previous sponsor/FAA agreed upon selection and evaluation criteria, the FAA will independently evaluate and rank the consultants on the pre-selection short-list in order of preference, based on qualifications.
6. The FAA must advise the sponsor of the FAA's ranking in order of preference, and the sponsor must advise and initiate discussions with the consultant ranked first.
7. The FAA will be invited to discussions on the scope during any IFE process conducted by the Sponsor or their consultant, as necessary.

8. The FAA's involvement in the negotiation of the project cost must be limited to making a reasonableness determination once a satisfactory cost proposal has been reached between the sponsor and the consultant.
9. The FAA must prepare a selection report for its records.

2.11 **Scope of Services.**

- 2.11.1 An important step in the negotiation process is to reach a complete and mutual understanding of the scope of services to be provided. The general scope of services developed during initiation of the procurement process is of necessity too broad to serve as the basis for a contractual agreement. A well-defined project description and scope of services should be developed between the sponsor and first-ranked consultant prior to negotiating a project design fee. This may be accomplished in a scoping meeting or separate investigation or study to clearly define the extent of the project. The sponsor's engineer or independent consultant (see paragraph 2.12) should attend the meeting so they will have a complete understanding of the scope of services prior to developing a detailed fee estimate. Such a meeting offers the opportunity for refinement, amendment, and complete definition of the services to be rendered.
- 2.11.2 The scope of service(s) must be sufficiently detailed so that the consultant can make a reasonable fee estimate (see Appendix E). Although the scope of service(s) will vary from project to project (see samples in Appendix C), the following items are typical of those that should be considered in developing the scope of services:
 1. List of meetings the consultant is expected to attend.
 2. Design schedule.
 3. Special services required.
 4. Complexity of design.
 5. Safety and operational considerations.
 6. Environmental considerations.
 7. Survey and geotechnical testing requirements.
 8. Sponsor representation services during construction.
 9. Quality control during construction.
 10. Preparation of forms, letters, documents, and reports.
 11. Airport Layout Plan updates.
 12. Property map preparation.
 13. Quality control during design.
 14. Coordination with other consultants and agencies.
 15. Deliverables.
 16. Data and material furnished by the sponsor.

17. Testing and commissioning requirements.
18. City/county requirements.
19. Number of bid packages.
20. Complexity of construction phasing to minimize impacts on airport operations.
21. Public Outreach.

2.12 **Independent Fee Estimate.**

- 2.12.1 A sponsor must perform a price or cost analysis for every A/E contract (2 CFR § 200.323). The method and degree of analysis is dependent on the facts surrounding the contract. To properly evaluate the cost of professional services an independent fee estimate (IFE) is required, prior to receiving the consultant's proposal, as part of the cost analysis for all A/E contracts and contract modifications. The word "independent" does not imply that the IFE has to be performed by someone other than the sponsor. Preparation of an IFE can be completed in a number of ways, such as the following, or as approved by your local ADO:
 1. A sponsor having a staff with experience in estimating the professional services and negotiating contracts for these services can develop its own IFE for the services, based on the scope of services agreed upon in paragraph 2.11.
 2. Sponsors having no staff with this expertise or having minimal or no previous experience may engage the services of a consultant on retainer for preparation of the IFE provided the consultant has experience with the services involved and who is not being considered for the project.
 3. Alternatively, an independent engineering, architecture, or planning consultant may be retained to prepare an IFE provided this consultant was not on the pre-selection short-list. The consultant must have recent experience in airport work similar to that proposed and be familiar with FAA requirements and procedures. The sponsor should request evidence that the consultant meets the above requirements.
- 2.12.2 State aviation personnel who have experience with the services involved may also prepare the IFE for the sponsors use.
- 2.12.3 The level of detail needed to satisfy the requirements of an IFE varies and is dependent on the anticipated value of the A/E contract. For contracts with an anticipated value less than \$100,000 the sponsor can satisfy the IFE requirement by comparing the A/E contract with previous contracts of a similar nature, or preparing a detailed fee/cost analysis (see Appendix E). At a minimum, the independent estimate must address direct labor work hours, labor rates, general and administrative overhead, non-salary expenses and a reasonable profit. For contracts anticipated to be greater than \$100,000 a detailed fee/cost analysis is required.
- 2.12.4 If the sponsor hires a consultant to perform any of these functions, that consultant may be retained using informal or non-competitive qualifications based procedures (see

paragraphs 2.9.2 and 2.9.3) as applicable; however, the IFE consultant will not be eligible for consideration to perform work on the project.

- 2.12.5 Another source on estimating consultant's cost can be found in ASCE Manuals and Reports on Engineering Practice No. 45, "How to Work Effectively with Consulting Engineers." However, these graphs must be used with judgment and within their stated limitations. Other resources include project history files, previous contracts, etc.
- 2.12.6 Sponsors have an obligation to obtain a fair and reasonable fee in all cases. Prior to initiating further discussions with the first-ranked consultant, the sponsor must accept the IFE and retain it for their records. Appendices D and E present sample formats for consultant services fee/cost and detailed fee/cost analysis respectively, however any format that meets this purpose is acceptable. The FAA retains the right to disallow negotiated fees that the FAA determines to be unreasonable.
- 2.13 **Negotiations.**
 - 2.13.1 After developing a detailed scope of services and after the IFE requirements have been satisfied per Par. 2.12, the sponsor may enter into negotiations with the consultant given first preference by the selection board. Once the rankings have been established, the sponsor shall inform the other firms on the pre-selection shortlist that negotiations have been initiated with the first ranked firm. If an independent firm has been retained by the sponsor for the purpose of preparing an independent fee estimate, the firm may be consulted by the sponsor during negotiations, to clarify problem areas, but not to review the consultant's fee proposal or attend any negotiating sessions.
 - 2.13.2 Based on the scope of services agreed upon in paragraph 2.11, the sponsor must request the consultant to submit the proposed fee and supporting cost breakdown. The consultant must prepare a detailed estimate of the hours and cost required for each of the major tasks. In addition to charges for labor, the consultant should, if appropriate, indicate the costs for subcontractors, travel, living expenses, reproduction, and other out-of-pocket expenses expected to be incurred.
 - 2.13.3 When evaluating the reasonableness of a consultant's fee proposal, a general review standard used within the FAA and industry is whether the total fee proposal, as well as individual tasks within the proposal, is within 10% of the IFE. When differences exceed 10%, the sponsor and IFE preparer should review those areas with the consultant to determine if there is a misunderstanding of the scope of services or level of effort required to complete the work. While this should not be construed as policy, the use of the 10% standard is one method to help identify areas of significant difference between the consultant's fee proposal and the IFE.
 - 2.13.4 Negotiations should be based upon the data submitted by the consultant and an evaluation of the specific work hours required for each task. The sponsor should subject the consultant's data to a technical/engineering analysis. Based on this analysis, the sponsor should identify differences in the work-hour estimates. Significant differences, either positive or negative, between the estimate submitted by the

consultant and the estimate developed by the sponsor should be resolved, and revisions should be made to the work hours or scope of services as required. The fee should then be evaluated, taking into consideration the experience level required by the engineer working on each task. A sample fee/cost analysis form is shown in Appendix E.

- 2.13.5 If a mutually satisfactory contract cannot be negotiated with the first-ranked consultant, the negotiations must be terminated and the consultant notified. Negotiations must then be initiated with the consultant given second preference by the selection board. This procedure must be continued with recommended consultants in the sequence of ranking established by the selection board until a mutually satisfactory contract has been negotiated. Once negotiations have been terminated with a firm and begun with another, they cannot be reopened with the former firm.
- 2.13.6 A record of negotiations must be prepared by the sponsor and included in the contract file. This record must contain sufficient detail to reflect any changes in the scope of services controlling the establishment of the cost and other terms of the contract. An explanation must be provided for any significant differences between the sponsor's original estimate and the final fee agreed upon. The scope of services, draft contract, sponsor's independent fee estimate, consultant's fee proposal with any revisions, and detailed fee analysis must be attached to the report. A sample Record of Negotiations is contained in Appendix F.
- 2.13.7 Upon completion of successful negotiations, all consultants interviewed by the selection board should be informed of the consultant selected for the project.
- 2.13.8 FAA personnel will not be present and will not participate in the negotiation process. The FAA's role is to make a judgment on the reasonableness of the compensation for the services to be furnished and to ensure that all services required for a particular project have been included in the proposal.
- 2.13.9 If requested by the FAA, the sponsor must submit the record of negotiations and all attachments to the FAA for a reasonableness of cost determination (Order 5100.38, Chapter 3, Section 14).

2.14 **Sponsor Force Account Projects.**

Proposals to accomplish airport engineering with the sponsor's own personnel or by its agent must be approved by the FAA. Proposals must be submitted in writing and subjected to a review similar to that for engineering contracts. Most of the factors considered in the selection of a consultant would be applicable to approval of services to be done by force account. The sponsor's proposal to use force account rather than contract-engineering services must be fully documented and should contain as a minimum:

1. Justification for doing the work by force account rather than by contract;
2. Estimate of costs, including detailed data on estimated work hours, hourly rates, non-salary expenses, and indirect costs;

3. Names and engineering qualifications of personnel that will be accomplishing specific tasks;
4. Statements concerning the capability of the sponsor to perform the various tasks of design, supervision, inspections, testing, etc., as applicable to the project with arguments to support the decision to use force account;
5. Summary of sponsor's experience with airport engineering pertaining to projects with similar design scopes; and
6. Statement by the sponsor on the ability of its personnel to integrate the project into their workload, with a schedule of accomplishment of tasks, date by which the work will be completed, or dates within which it will take place.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW

Dept. Code: DPW

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Construction Management System Software

Funding Source: Public Works Overhead Fund

PSC Amount: \$4,300,000

PSC Est. Start Date: 07/14/2020

PSC Est. End Date 07/14/2028

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contract targets licensing/subscription and delivery of configured off-the-shelf software to support Construction and Capital Project Management activities within Public Works, including interactions with construction contractors. The work includes meetings and project management activities to agree upon and deliver the configured and functional solution. The contract also sees as needed customization and integration support to fill gaps in off-the-shelf functionality or integration with related systems. Depending on the subscription or licensing and hosting model, the contract may also include hosting services. Estimated costs for software subscription and module fees are approximately \$3.2 million over ten years. The remaining \$1.1 million are estimated for implementation and as needed support services with over 70% estimated for the initial phase and major component rollouts in the first two years.

B. Explain why this service is necessary and the consequence of denial:

The department does not have an existing system and these implementation services and the related software are necessary to support our operations, reporting needs of our and other departments, and collaboration with the contractors that work on the City's street and building portfolios. Denial of this item would result in unnecessary administrative costs and risks around our portfolio's project and construction management and remove an opportunity for savings due to potential reduction in errors and delays.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

No

D. Will the contract(s) be renewed?

Yes

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

While the implementation/configuration includes working with City staff, training, and handoff to IT staff, some occasional services may be needed for the selected product in order to support upgrades, escalation of defects, integration, or customization. Beyond that, the licensing and subscription options vary by vendor, but would be ongoing until another system is acquired or built. As this is a major system impacting hundreds of staff and construction contractors, and it has a multi-year roadmap, it is common to have a term beyond five years.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

- ☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

In the short term, the department needs experienced resources to lead implementation of the vendor's software. Beyond that and given the lifecycle of software products and that multiple products support the Capital Project domain: Occasional upgrade support may be needed for the specialized software. Regular decisions and upgrades or patches for other products (from Peoplesoft to other systems) may require additional work to occur in the selected tool and need expertise or changes. Resource availability may be a problem given the specialized nature of our needs as we support our own and other department capital projects as well as more operational work.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The selected contractor will need to have experience in the selected product, implementation of the selected product, and experience with public sector implementations in the construction and capital project management domain.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1051, IS Business Analyst-Assistant; 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1061, IS Program Analyst-Assistant; 1062, IS Programmer Analyst; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal; 1070, IS Project Director; 1824, Pr Administrative Analyst;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Public Works does not have resources available with the necessary product expertise and has not been able to obtain them through other departments or the hiring process.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
A mix of IT classifications from 105X series (or 104X) and some 1070 series work. However, we are not aware of any City civil service staff that have the product and domain expertise needed to provide the services required for this engagement.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. The majority of consulting costs are expected in year one and two, supporting the initial configuration and rollout and phased rollout of additional modules in the second year, the 105X and 104X series are appropriate for continued enhancements to the system, with some escalation and outside support for upgrades and integrating additional systems or products on our roadmap.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. Contractor will produce training documentation for all users of the system (~500) which span architect, engineering, construction, inspector, and analyst, roles. (2 hours) Contractor will provide admin training (16+ hours) and hand-off support to 2-3 IT staff.
- C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes. There is a chance that the firms selected after an RFP may currently have or may have had contracts with Public Works.

7. Union Notification: On 06/09/2020, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Alexander Burns Phone: 415-554-6411 Email: alexander.burns@sfdpw.org

Address: 49 South Van Ness Avenue, Suite 1600 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48731 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/17/2020

Receipt of Union Notification(s)

Macaranas, Belle (DPW)

From: dhr-psccordinator@sfgov.org on behalf of alexander.burns@sfdpw.org
Sent: Tuesday, June 9, 2020 11:19 AM
To: Burns, Alexander (DPW); WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; pkim@ifpte21.org; amakayan@ifpte21.org; L21PSCReview@ifpte21.org; Macaranas, Belle (DPW); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 48731 - 19/20

RECEIPT for Union Notification for PSC 48731 - 19/20 more than \$100k

The GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW has submitted a request for a Personal Services Contract (PSC) 48731 - 19/20 for \$4,300,000 for Initial Request services for the period 07/14/2020 – 07/14/2028. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/14986> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Back up Onsite Collection Services

Funding Source: Operating Funds

PSC Duration: 4 years 52 weeks

PSC Amount: \$1,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

To provide a mobile on-site facility to collect random, follow-up, reasonable suspicion, and post-accident breath and urine collection in compliance with Department of Transportation/Federal Transit Administration (DOT/FTA) Drug and Alcohol Testing Regulations.

B. Explain why this service is necessary and the consequence of denial:

Urine and breath collection is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) Rules. Denial of this service will jeopardize continued transit agency Federal funding assistance.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The service was provided in the past through PSC No. 4136-12/13 that was approved by the Civil Service Commission on June 17, 2013. At this time the SFMTA wishes to proceed to solicit proposals for collection service with the goal of establishing a new contract.

D. Will the contract(s) be renewed?

Yes. At the end of this contract, the SFMTA will issue a Request for Proposal for breath and urine collection services.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Plan for immediate and/or unexpected service needs to address unanticipated or transitional situations, or services needed to address Covid or other emergency situations. "Transitional situations" are those instances when contracting out is needed to bridge relatively short periods of time, such as during organizational restructuring that may be mandated by law or policy, or to facilitate a department's efforts to contract in services.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Immediately needed services to address unanticipated or transitional situations, or services needed to address emergency situations.

- ☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- ☒ Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

COVID-19 impacted incumbent vendors' ability to consistently provide the necessary arrangements for the health and safety of testing equipment and staff. FTA required SFMTA to complete annual testing at 50% for drugs and 10% alcohol of the total number of safety-sensitive employees. Onsite mobile testing is required.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The collection personnel must be trained in procedures designed to comply with 49 Code of Federal Regulations (CFR) Part 40, Subparts C and J, and shall demonstrate proficiency in complying with these procedures. Collection procedures for urine samples should be designed to comply with 49 CFR Subparts C, D, and E. The collection of breath samples must be designed to comply with 49 CFR Part 40, Subparts J, K, L, M, and N.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, the contractual services will include all necessary facilities and/or equipment for the collection of specimens and collection sites must comply with all requirements specified in 40 CFR Part 40, Subparts D and K. The firm selected must have the appropriate off-site facilities and personnel dedicated to SFMTA's drug and alcohol testing program to provide a clean, secure and private environment.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

These services are not provided by the City.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classes are not applicable because the knowledge and experience required for this type of work require knowledge, experience, and training related to the collection of urine and breath samples as specified by 49 CFR Part 40, Subpart C, D, E, J, K, L, M, and N.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class, because adopting a new civil service class may result in a recruitment and retention problem and consequently affect the required services under DOT/FTA rules. There are legal mandates (49 CFR Part 40) requiring contractors to meet specific standards and adhere to specific procedures. Contracting is the most effective way to provide this service.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. Training does not apply. The vendor will provide services as described.
- C. Are there legal mandates requiring the use of contractual services?
Yes. Yes, 49 CFR Part 40 (see attached DOT Rule, 49 Code of Federal Regulations Rule (CFR) Part 40)
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 06/19/2020, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 S Van Ness Ave HR ELR, 6th Fl, 6029

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47595 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/17/2020

Receipt of Union Notification(s)

Nuque, Amy

From: dhr-psccordinator@sfgov.org on behalf of amy.nuque@sfmta.com
Sent: Friday, June 19, 2020 11:48 AM
To: Nuque, Amy; Criss@SFMEA.com; Meyers, Julie (HSA); seichenberger@local39.org; Camaguey@SFMEA.com; ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Basconcillo, Katherine (PUC); Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; ramonliuna261@gmail.com; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA); smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@SFMEA.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfsmsa@gmail.com; mshelley@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; Osha Ashworth; L21PSCReview@ifpte21.org; LiUNA.local261@gmail.com; local200twu; speedy4864@aol.com; Christina@SFMEA.com; ecdemvoter@aol.com; thomas.vitale@seiu1021.org; Nuque, Amy; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 47595 - 19/20

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 47595 - 19/20 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 47595 - 19/20 for \$1,000,000 for Initial Request services for the period 09/01/2020 – 08/30/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/15059> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

ELECTRONIC CODE OF FEDERAL REGULATIONS**e-CFR data is current as of June 11, 2020**

Title 49 → Subtitle A → Part 40

Title 49: Transportation

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

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Subpart C—Urine Collection Personnel

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§40.31 Who may collect urine specimens for DOT drug testing?

(a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.

(b) A collector must meet training requirements of §40.33.

(c) As the immediate supervisor of an employee being tested, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.

(d) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (e.g., as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.

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§40.33 What training requirements must a collector meet?

To be permitted to act as a collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) *Basic information.* You must be knowledgeable about this part, the current “DOT Urine Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, the DOT Urine Specimen Collection Procedures Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590, 202-366-3784, or on the ODAPC Web site (<https://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: <https://www.transportation.gov/odapc/get-odapc-email-updates>.

(b) *Qualification training.* You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;

(2) “Problem” collections (e.g., situations like “shy bladder” and attempts to tamper with a specimen);

(3) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;

(c) *Initial Proficiency Demonstration.* Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.

(1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—

- (i) Regularly conducting DOT drug test collections for a period of at least a year;
- (ii) Conducting collector training under this part for a year; or
- (iii) Successfully completing a “train the trainer” course.

(d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(f) *Error Correction Training.* If you make a mistake in the collection process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were “error-free.”

(g) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[65 FR 79526, Dec. 19, 2000; 66 FR 3885, Jan. 17, 2001, as amended at 66 FR 41950, Aug. 9, 2001; 82 FR 52244, Nov. 13, 2017]

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§40.35 What information about the DER must employers provide to collectors?

As an employer, you must provide to collectors the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

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§40.37 Where is other information on the role of collectors found in this regulation?

You can find other information on the role and functions of collectors in the following sections of this part:

§40.3—Definition.

§40.43—Steps to prepare and secure collection sites.

§§40.45-40.47—Use of CCF.

§§40.49-40.51—Use of collection kit and shipping materials.

§§40.61-40.63—Preliminary steps in collections.

§40.65—Role in checking specimens.

§40.67—Role in directly observed collections.

§40.69—Role in monitored collections.

§40.71—Role in split specimen collections.

§40.73—Chain of custody completion and finishing the collection process.

§40.191—Action in case of refusals to take test.

§40.193—Action in “shy bladder” situations.

§40.199-40.205—Collector errors in tests, effects, and means of correction.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52244, Nov. 13, 2017]

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Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

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§40.41 Where does a urine collection for a DOT drug test take place?

(a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.

(b) If you are operating a collection site, you must ensure that it meets the security requirements of §40.43.

(c) If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.

(d) Your collection site must include a facility for urination described in either paragraph (e) or paragraph (f) of this section.

(e) The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.

(1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.

(2) You must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (*e.g.*, water faucets, soap dispensers) and providing moist towelettes outside the closed room.

(f) The second type of facility for urination that a collection site may include is a multistall restroom.

(1) Such a site must provide substantial visual privacy (*e.g.*, a toilet stall with a partial-length door) and meet all other applicable requirements of this section.

(2) If you use a multi-stall restroom, you must either—

(i) Secure all sources of water and other substances that could be used for adulteration and substitution (*e.g.*, water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or

(ii) Conduct all collections in the facility as monitored collections (see §40.69 for procedures). This is the only circumstance in which you may conduct a monitored collection.

(3) No one but the employee may be present in the multistall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.

(g) A collection site may be in a medical facility, a mobile facility (*e.g.*, a van), a dedicated collection facility, or any other location meeting the requirements of this section.

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§40.43 What steps must operators of collection sites take to protect the security and integrity of urine collections?

(a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.

(b) As a collector, you must do the following before each collection to deter tampering with specimens:

(1) Secure any water sources or otherwise make them unavailable to employees (*e.g.*, turn off water inlet, tape handles to prevent opening faucets);

(2) Ensure that the water in the toilet is blue;

(3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;

(4) Inspect the site to ensure that no foreign or unauthorized substances are present;

(5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;

(6) Ensure that undetected access (*e.g.*, through a door not in your view) is not possible;

(7) Secure areas and items (*e.g.*, ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and

(8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.

(c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:

(1) Access to collection materials and specimens is effectively restricted; and

(2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.

(d) As a collector, you must take the following additional steps to ensure security during the collection process:

(1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "shy bladder" situation (see §40.193(b)), you may conduct a collection for another employee.

(2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.

(3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.

(4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.

(5) Maintain personal control over each specimen and CCF throughout the collection process.

(e) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.

(1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (*e.g.*, employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).

(2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.

(3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.

(4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.

(f) If you are operating a collection site, you must minimize the number of persons handling specimens.

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§40.45 What form is used to document a DOT urine collection?

(a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. You may view this form on the Department's Web site (<http://www.transportation.gov/odapc>) or the HHS Web site (<http://www.workplace.samhsa.gov>).

(b) You must not use a non-Federal form or an expired CCF to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF.

(c) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:

(1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.

(2) The CCF must include the names, addresses, telephone numbers and fax numbers of the employer and the MRO, which may be preprinted, typed, or handwritten. The MRO information must include the specific physician's name and address, as opposed to only a generic clinic, health care organization, or company name. This information is required, and it is prohibited for an employer, collector, service agent or any other party to omit it. In addition, a C/TPA's name, address, fax number, and telephone number may be included, but is not required. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone number, and fax number.

(3) As an employer, in Step 1-D of the CCF you may preprint the box for the DOT Agency under whose authority the test will occur.

(4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event.

(5) When using an electronic CCF, you must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form.

(d) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number (SSN) or other employee identification (ID) number) to a laboratory.

(e) As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.

(f) An employer who uses an electronic CCF must ensure that the collection site, the primary and split laboratories, and MRO have compatible systems, and that the employee and any other program participants in the testing process will receive a legible copy of the CCF.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 75 FR 59107, Sept. 27, 2010; 76 FR 59577, Sept. 27, 2011; 80 FR 19553, Apr. 13, 2015; 82 FR 52244, Nov. 13, 2017]

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§40.47 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?

(a) No, as an employer, you are prohibited from using the CCF for non-Federal urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations.

(b) (1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (*e.g.*, post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.

(2) The use of the non-Federal form is a “correctable flaw.” As an MRO, to correct the problem you must follow the procedures of §40.205(b)(2).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001]

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§40.49 What materials are used to collect urine specimens?

For each DOT drug test, you must use a collection kit meeting the requirements of Appendix A of this part.

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§40.51 What materials are used to send urine specimens to the laboratory?

(a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.

(b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

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Subpart E—Urine Specimen Collections

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§40.61 What are the preliminary steps in the collection process?

As the collector, you must take the following steps before actually beginning a collection:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for

testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test (see §40.191(a)(1)).

(b) Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT alcohol test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

Example to paragraph (b)(1): An employee enters the test site for both a drug and an alcohol test. Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (e.g., by moving the employee to the head of the line for alcohol tests).

(2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.

(3) You must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner.

(4) If, as an employee, you normally void through self-catheterization, and decline to do so, this constitutes a refusal to test.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name, but does not have to include your picture, address, or telephone number.

(e) Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.

(f) Direct the employee to remove outer clothing (e.g., coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. You must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with you or in a mutually agreeable location. You must advise the employee that failure to comply with your directions constitutes a refusal to test.

(1) If the employee asks for a receipt for any belongings left with you, you must provide one.

(2) You must allow the employee to keep his or her wallet.

(3) You must not ask the employee to remove other clothing (e.g., shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).

(4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items

back into his or her pockets. As the employee, you must allow the collector to make this observation.

(5) If, in your duties under paragraph (f)(4) of this section, you find any material that could be used to tamper with a specimen, you must:

(i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, conduct a directly observed collection using direct observation procedures (see §40.67); or

(ii) Determine if the material appears to be inadvertently brought to the collection site (e.g., eye drops), secure and maintain it until the collection process is completed and conduct a normal (i.e., unobserved) collection.

(g) You must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medications on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)

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§40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

As the collector, you must take the following steps before the employee provides the urine specimen:

(a) Complete Step 1 of the CCF.

(b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to you. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.

(c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.

(d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to you with the specimen as soon as the employee has completed the void.

(1) Except in the case of an observed or a monitored collection (see §§40.67 and 40.69), neither you nor anyone else may go into the room with the employee.

(2) As the collector, you may set a reasonable time limit for voiding.

(e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If you detect such conduct, you must require that a collection take place immediately under direct observation (see §40.67) and complete Step 2 by noting the conduct in the "Remarks" line of the CCF and the fact that the collection was observed by checking the "Observed" box. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 59107, Sept. 27, 2010]

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§40.65 What does the collector check for when the employee presents a specimen?

As a collector, you must check the following when the employee gives the collection container to you:

(a) *Sufficiency of specimen.* You must check to ensure that the specimen contains at least 45 mL of urine.

(1) If it does not, you must follow “shy bladder” procedures (see §40.193(b)).

(2) When you follow “shy bladder” procedures, you must discard the original specimen, unless another problem (*i.e.*, temperature out of range, signs of tampering) also exists.

(3) You are never permitted to combine urine collected from separate voids to create a specimen.

(4) You must discard any excess urine.

(b) *Temperature.* You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.

(1) The acceptable temperature range is 32-38 °C/90-100 °F.

(2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.

(3) If the specimen temperature is within the acceptable range, you must mark the “Yes” box on the CCF (Step 2).

(4) If the specimen temperature is outside the acceptable range, you must mark the “No” box and enter in the “Remarks” line (Step 2) your findings about the temperature.

(5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new collection using direct observation procedures (see §40.67).

(6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(7) In a case where the employee refuses to provide another specimen (see §40.191(a)(3)) or refuses to provide another specimen under direct observation (see §40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.

(c) *Signs of tampering.* You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (*e.g.*, if you notice any unusual odor).

(1) If it is apparent from this inspection that the employee has tampered with the specimen (*e.g.*, blue dye in the specimen, excessive foaming when shaken, smell of bleach), you must immediately conduct a new collection using direct observation procedures (see §40.67).

(2) In a case where a specimen is collected under direct observation because of showing signs of tampering, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(3) In a case where the employee refuses to provide a specimen under direct observation (see §40.191(a)(4)), you must discard any specimen the employee provided previously during the collection procedure. Then you must notify the DER as soon as practicable.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001]

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§40.67 When and how is a directly observed collection conducted?

(a) As an employer, you must direct an immediate collection under direct observation with no advance notice to the employee, if:

(1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result;

(2) The MRO reported to you that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or

(3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

(b) As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

(c) As a collector, you must immediately conduct a collection under direct observation if:

(1) You are directed by the DER to do so (see paragraphs (a) and (b) of this section); or

(2) You observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (see §§40.61(f)(5)(i) and 40.63(e)); or

(3) The temperature on the original specimen was out of range (see §40.65(b)(5)); or (4) The original specimen appeared to have been tampered with (see §40.65(c)(1)).

(d)(1) As the employer, you must explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.

(2) As the collector, you must explain to the employee the reason, if known, under this part for a directly observed collection under paragraphs (c)(1) through (3) of this section.

(e) As the collector, you must complete a new CCF for the directly observed collection.

(1) You must mark the "reason for test" block (Step 1) the same as for the first collection.

(2) You must check the "Observed, (Enter Remark)" box and enter the reason (see §40.67(b)) in the "Remarks" line (Step 2).

(f) In a case where two sets of specimens are being sent to the laboratory because of suspected tampering with the specimen at the collection site, enter on the "Remarks" line of the CCF (Step 2) for each specimen a notation to this effect (*e.g.*, collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.

(g) As the collector, you must ensure that the observer is the same gender as the employee. You must never permit an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.

(h) As the collector, if someone else is to observe the collection (*e.g.*, in order to ensure a same gender observer), you must verbally instruct that person to follow procedures at paragraphs (i) and (j) of this section. If you, the collector, are the observer, you too must follow these procedures.

(i) As the observer, you must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show you, by turning around, that they do not have a prosthetic device. After you have determined that the employee does not have such a device, you may permit the employee to return clothing to its proper position for observed urination.

(j) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.

(k) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.

(l) As the collector, when someone else has acted as the observer, you must include the observer's name in the "Remarks" line of the CCF (Step 2).

(m) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.

(n) As a service agent, when you learn that a directly observed collection should have been collected but was not, you must inform the employer that it must direct the employee to have an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35970, June 25, 2008; 73 FR 50223, Aug. 26, 2008; 73 FR 62910, Oct. 22, 2008; 73 FR 70284, Nov. 20, 2008; 74 FR 37952, July 30, 2009; 82 FR 52244, Nov. 13, 2017]

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§40.69 How is a monitored collection conducted?

(a) As the collector, you must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.

(b) As the collector, you must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The monitor can be a different person from the collector and need not be a qualified collector.

(c) As the collector, if someone else is to monitor the collection (e.g., in order to ensure a same-gender monitor), you must verbally instruct that person to follow the procedures of paragraphs (d) and (e) of this section. If you, the collector, are the monitor, you must follow these procedures.

(d) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation (see §§40.63(e), 40.65(c), and 40.67(b)).

(e) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.

(f) As the collector, when someone else has acted as the monitor, you must note that person's name in the "Remarks" line of the CCF (Step 2).

(g) As the employee being tested, if you decline to permit a collection authorized under this section to be monitored, it is a refusal to test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001]

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§40.71 How does the collector prepare the specimens?

(a) All collections under DOT agency drug testing regulations must be split specimen collections.

(b) As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you. You must take these steps in the presence of the employee.

(1) Check the box on the CCF (Step 2) indicating that this was a split specimen collection.

(2) You, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.

(3) You, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.

sealant into the second specimen bottle to be used for the split specimen.

(4) You, not the employee, must place and secure (*i.e.*, tighten or snap) the lids/caps on the bottles.

(5) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.

(6) You, not the employee, must then write the date on the tamper-evident bottle seals.

(7) You must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided. If the employee fails or refuses to do so, you must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.

(8) You must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: you may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither you nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to demand that the excess urine be turned over to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001]

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§40.73 How is the collection process completed?

(a) As the collector, when using the paper CCF, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (7) of this section in the employee's presence.

(1) Direct the employee to read and sign the certification statement on Copy 2 (Step 5) of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide date of birth, printed name, or telephone numbers, you must note this in the "Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.

(2) Complete the chain of custody on the CCF (Step 4) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory,

(3) Ensure that all copies of the CCF are legible and complete.

(4) Remove Copy 5 of the CCF and give it to the employee.

(5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.

(6) Secure both pouches of the plastic bag.

(7) Advise the employee that he or she may leave the collection site.

(8) To prepare the sealed plastic bag containing the specimens and CCF for shipment you must:

(i) Place the sealed plastic bag in a shipping container (*e.g.*, standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)

(ii) Seal the container as appropriate.

(iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.

(9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.

(b) As a collector, when using other forms of the CCF as approved by the Office of Management and Budget, you must follow the procedures approved for that form.

(c) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case, within 24 hours or during the next business day.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 80 FR 19553, Apr. 13, 2015]

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Subpart J—Alcohol Testing Personnel

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§40.211 Who conducts DOT alcohol tests?

(a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

(b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.

(c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

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§40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

(a) You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. Procedures and guidance are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-3784, or on the ODAPC Web site, <http://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at (<https://www.transportation.gov/odapc/get-odapc-email-updates>).

(b) *Qualification training.* You must receive qualification training meeting the requirements of this paragraph (b).

(1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue, SE., Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.

(2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (*i.e.*, the ASD(s) or EBT(s)) you will be using.

(3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a "train the trainer" course.

(c) *Initial Proficiency Demonstration.* Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).

(1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who meets the requirements of paragraph (b)(4) of this section.

(2) These tests must use the alcohol testing devices (*e.g.*, EBT(s) or ASD(s)) that you will use as a BAT or STT.

(3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.

(d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform STT or BAT functions.

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(f) *Error Correction Training.* If you make a mistake in the alcohol testing process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.

(g) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.

(h) *Other persons who may serve as BATs or STTs.* (1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.

(2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 5244, Feb. 2, 2010; 82 FR 52246, Nov. 13, 2017]

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§40.215 What information about the DER do employers have to provide to BATs and STTs?

As an employer, you must provide to the STTs and BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

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§40.217 Where is other information on the role of STTs and BATs found in this regulation?

You can find other information on the role and functions of STTs and BATs in the following sections of this part:

§40.3—Definitions.

§40.223—Responsibility for supervising employees being tested.

§§40.225-40.227—Use of the alcohol testing form.

§§40.241-40.245—Screening test procedures with ASDs and EBTs.

§§40.251-40.255—Confirmation test procedures.

§40.261—Refusals to test.

§§40.263-40.265—Insufficient saliva or breath.

§40.267—Problems requiring cancellation of tests.

§§40.269-40.271—Correcting problems in tests.

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Subpart K—Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

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[Back to Top](#)**§40.221 Where does an alcohol test take place?**

(a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.

(b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of §40.223.

(c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

(d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

(e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.

(f) An alcohol testing site can be in a medical facility, a mobile facility (*e.g.*, a van), a dedicated collection facility, or any other location meeting the requirements of this section.

[Back to Top](#)**§40.223 What steps must be taken to protect the security of alcohol testing sites?**

(a) If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.

(1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers, DERs, employee representatives authorized by the employer (*e.g.*, on the basis of employer policy or labor-management agreement), and DOT agency representatives.

(2) You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.

(3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.

(b) As the BAT or STT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process (see §§40.241-40.255).

(c) If you are operating an alcohol testing site, you must ensure that when an EBT or ASD is not being used for testing, you store it in a secure place.

(d) If you are operating an alcohol testing site, you must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.

(e) As a BAT or STT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.

(1) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.

(2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.

(3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

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§40.225 What form is used for an alcohol test?

(a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form. The ATF is found in Appendix G to this part. You may view this form on the ODAPC web site (<http://www.transportation.gov/odapc>).

(b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:

(1) You may include other information needed for billing purposes, outside the boundaries of the form.

(2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.

(3) You may use an ATF that has the employer's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.

(4) You may use an ATF in which all pages are printed on white paper. You may modify the ATF by using colored paper, or have clearly discernable borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and blue for Copy 3.

(5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.

(6) As a BAT or STT, you may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.

(c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 8529, Feb. 25, 2010; 75 FR 13009, Mar. 18, 2010; 82 FR 52246, Nov. 13, 2017]

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§40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

(a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.

(b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (*e.g.*, post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with §40.271(b).

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§40.229 What devices are used to conduct alcohol screening tests?

ASDs listed on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" and EBTs listed on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD for DOT alcohol tests only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and must not be used for confirmation tests.

[82 FR 52246, Nov. 13, 2017]

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§40.231 What devices are used to conduct alcohol confirmation tests?

(a) EBTs on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part.

(b) To conduct a confirmation test, you must use an EBT that has the following capabilities:

(1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;

(2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;

(3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;

(4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;

(5) Tests an air blank; and

(6) Performs an external calibration check.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

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§40.233 What are the requirements for proper use and care of EBTs?

(a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before ODAPC places the EBT on its Web page for "Approved Evidential Breath Measurement Devices."

(1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (*e.g.*, temperature, humidity, altitude) and type of operation (*e.g.*, stationary or mobile).

(2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.

(b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.

(c) As the user of the EBT (*e.g.*, employer, service agent), you must do the following:

(1) You must follow the manufacturer's instructions (see paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.

(2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."

(3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.

(4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in §40.333(a)(3).

(5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

[⬆ Back to Top](#)**§40.235 What are the requirements for proper use and care of ASDs?**

(a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA approves it and ODAPC places the device on its Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (*e.g.*, temperature, altitude, humidity) that may affect the ASD's performance.

(b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.

(c) As the user of the ADS (*e.g.*, employer, STT), you must follow the QAP instructions.

(d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.

(e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of §40.233 .

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

[⬆ Back to Top](#)**Subpart L—Alcohol Screening Tests**[⬆ Back to Top](#)**§40.241 What are the first steps in any alcohol screening test?**

As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.

(b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

(2) If the employee needs medical attention (*e.g.*, an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (*e.g.*, a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.

(e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.

(f) Complete Step 1 of the ATF.

(g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

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§40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

As the BAT or STT, you must take the following steps:

(a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.

(b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

(c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

(d) Show the employee the displayed test result.

(e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.

(f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

(g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the ATF.

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§40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

(a) As the STT or BAT, you must take the following steps when using the saliva ASD:

(1) Check the expiration date on the device or on the package containing the device and show it to the employee. You may not use the device after its expiration date.

(2) Open an individually wrapped or sealed package containing the device in the presence of the employee.

(3) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.

(4) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (a)(7) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.

(5) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.

(6)(i) If you were unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section (*e.g.*, the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.

(ii) The new device you use must be one that has been under your control or that of the employee before the test.

(iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(iv) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (*e.g.*, the employee dropped the device) for the new test needing to be conducted.

(v) If you are unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.

(vi) You must then direct the employee to take a new test immediately, using an EBT for the screening test.

(7) If you are able to successfully follow the procedures of paragraphs (a)(3)-(a)(5) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (a)(6) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.

(8) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.

(9) You must never re-use devices, swabs, gloves or other materials used in saliva testing.

(10) You must note the fact that you used a saliva ASD in Step 3 of the ATF.

(b) As the STT or BAT, you must take the following steps when using the breath tube ASD:

(1) Check the expiration date on the detector device and the electronic analyzer or on the package containing the device and the analyzer and show it to the employee. You must not use the device or the analyzer after their expiration date. You must not use an analyzer which is not specifically pre-calibrated for the device being used in the collection.

(2) Remove the device from the package and secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.

(3) Break the tube's ampoule in the presence of the employee.

(4) Offer the employee the opportunity to use the device. If the employee chooses to use (*e.g.* hold) the device, instruct the employee to blow forcefully and steadily into the blowing end of device until the inflation bag fills with air (approximately 12 seconds).

(5) If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph (b)(4) of this section.

(6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth), remove the inflation bag, and prepare the device to be read by the analyzer in accordance with the manufacturer's directions.

(7)(i) If you were unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section (*e.g.*, the device breaks apart, the employee did not fill the

inflation bag), you must discard the device and conduct a new test using a new one.

(ii) The new device you use must be one that has been under your control or that of the employer before the test.

(iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(iv) You must offer the employee the choice of holding the device or having you hold it unless the employee, in the your opinion, was responsible (*e.g.*, the employee failed to fill the inflation bag) for the new test needing to be conducted.

(v) If you are unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.

(vi) You must then direct the employee to take a new test immediately, using another type of ASD (*e.g.*, saliva device) or an EBT.

(8) If you were able to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section and after having waited the required amount of time directed by the manufacturer for the detector device to incubate, you must place the device in the analyzer in accordance with the manufacturer's directions. The result must be read from the analyzer no earlier than the required incubation time of the device. In all cases, the result must be read within 15 minutes of the test.

(9) You must follow the manufacturer's instructions for determining the result of the test. You must show the analyzer result to the employee and record the result on Step 3 of the ATF.

(10) You must never re-use detector devices or any gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. Inflation bags and electronic analyzers may be re-used but only in accordance with the manufacturer's directions.

(11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

[67 FR 61522, Oct. 1, 2002, as amended at 72 FR 1299, Jan. 11, 2007]

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§40.247 What procedures does the BAT or STT follow after a screening test result?

(a) If the test result is an alcohol concentration of less than 0.02, as the BAT or STT, you must do the following:

(1) Sign and date Step 3 of the ATF; and

(2) Transmit the result to the DER in a confidential manner, as provided in §40.255 .

(b) If the test result is an alcohol concentration of 0.02 or higher, as the BAT or STT, you must direct the employee to take a confirmation test.

(1) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures beginning at §40.251 .

(2) If you are not the BAT who will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.

(3) If the confirmation test will be performed at a different site from the screening test, you must take the following additional steps:

(i) Advise the employee not to eat, drink, put anything (*e.g.*, cigarette, chewing gum) into his or her mouth, or belch;

(ii) Tell the employee the reason for the waiting period required by §40.251(a) (*i.e.*, to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) Explain that following your instructions concerning the waiting period is to the employee's benefit;

(iv) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;

(v) Note on the "Remarks" line of the ATF that the waiting period instructions were provided;

(vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and

(vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.

(c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (see §40.271).

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Subpart M—Alcohol Confirmation Tests

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§40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

(a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:

(1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.

(i) If the confirmation test is taking place at a different location from the screening test (see §40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.

(ii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.

(iii) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.

(2) Concerning the waiting period, you must tell the employee:

(i) Not to eat, drink, put anything (*e.g.*, cigarette, chewing gum) into his or her mouth, or belch;

(ii) The reason for the waiting period (*i.e.*, to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) That following your instructions concerning the waiting period is to the employee's benefit; and

(iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.

(3) If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF.

(b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You

must note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test.

(c) Complete Step 1 of the ATF.

(d) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

(e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in §40.253, not another screening test.

(f) You must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.

(g) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

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§40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:

(a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.

(1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.

(2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.

(3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.

(4) You must proceed with the test of the employee using another EBT, if one is available.

(b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

(c) You must ensure that you and the employee read the unique test number displayed on the EBT.

(d) You must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

(e) You must show the employee the result displayed on the EBT.

(f) You must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.

(g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

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§40.255 What happens next after the alcohol confirmation test result?

(a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:

- (1) Sign and date Step 3 of the ATF.
- (2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF.
- (3) If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, you must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.
- (4) If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (see §40.271).
- (5) Immediately transmit the result directly to the DER in a confidential manner.
 - (i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.
 - (ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the ATF.

(b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:

- (1) If you receive any test results that are not in writing (e.g., by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.
- (2) You must store all test result information in a way that protects confidentiality.

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Subpart N—Problems in Alcohol Testing

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§40.261 What is a refusal to take an alcohol test, and what are the consequences?

- (a) As an employee, you are considered to have refused to take an alcohol test if you:
- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.241(a));
 - (2) Fail to remain at the testing site until the testing process is complete; *Provided*, That an employee who leaves the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;
 - (3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; *Provided*, That an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;
 - (4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.265(c));
 - (5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at §40.265(c);

(6) Fail to sign the certification at Step 2 of the ATF (see §§40.241(g) and 40.251(d)); or

(7) Fail to cooperate with any part of the testing process.

(b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(c) As a BAT or an STT, or as the physician evaluating a “shy lung” situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means (*e.g.*, telephone or secure fax machine) that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).

(d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

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§40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

(a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (*e.g.*, the employee does not provide sufficient saliva to activate the device).

(1) You must conduct a new screening test using a new screening device.

(2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the “Remarks” line of the ATF, and immediately notify the DER. This is a refusal to test.

(3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the “Remarks” line of the ATF and immediately notify the DER.

(b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

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§40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

(a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.

(b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.

(1) If the employee refuses to make the attempt, you must discontinue the test, note the fact on the “Remarks” line of the ATF, and immediately notify the DER. This is a refusal to test.

(2) If the employee again attempts and fails to provide a sufficient amount of breath, you may provide another opportunity to the employee to do so if you believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.

(3) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, you must note the fact on the “Remarks” line of the ATF and immediately notify the DER.

(4) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.

(5) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.

(c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath, you must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to you and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.

(1) You are required to provide the physician who will conduct the evaluation with the following information and instructions:

(i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;

(ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;

(iii) That the physician must provide you with a signed statement of his or her conclusions; and

(iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:

(A) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.

(B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.

(C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (*e.g.*, a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.

(2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.

(3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

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§40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

(a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:

(1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see §40.245(a)(8) for the saliva ASD and §40.245(b)(8) for the breath tube ASD).

(2) The saliva ASD does not activate (*see* §40.245(a)(7)); or

(3) The device is used for a test after the expiration date printed on the device or on its package (see §40.245(a)(1) for the saliva ASD and §40.245(b)(1) for the breath tube ASD).

(4) The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot (see §40.245(b)(1)).

(b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see §40.253(c), (e) and (f)).

(c) In the case of a confirmation test:

(1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see §40.251(a)(1));

(2) The BAT does not conduct an air blank before the confirmation test (see §40.253(a));

(3) There is not a 0.00 result on the air blank conducted before the confirmation test (see §40.253(a)(1) and (2));

(4) The EBT does not print the result (see §40.253(f)); or

(5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see §40.233(a)(1) and (c)(3)).

[65 FR 79526, Dec. 19, 2000, as amended at 67 FR 61522, Oct. 1, 2002; 71 FR 49384, Aug. 23, 2006; 72 FR 1299, Jan. 11, 2007]

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§40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:

(a) The BAT or STT does not sign the ATF (see §§40.247(a)(1) and 40.255(a)(1)).

(b) The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (see §40.255(a)(3)).

(c) The BAT or STT uses a non-DOT form for the test (see §40.225(a)).

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006]

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§40.271 How are alcohol testing problems corrected?

(a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.

(1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see §40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.

(2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (*e.g.*, manual operation) if you have been trained to do so in accordance with §40.213(c).

(3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.

(4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.

(b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a "correctable flaw" (see §40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.

(2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(c) If you cannot correct the problem, you must cancel the test.

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§40.273 What is the effect of a cancelled alcohol test?

(a) A cancelled alcohol test is neither positive nor negative.

(1) As an employer, you must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (*e.g.*, removal from a safety-sensitive position).

(2) As an employer, you must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (*e.g.*, in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).

(3) As an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part.

(b) A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.

(c) When a test must be cancelled, if you are the BAT, STT, or other person who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation.

(d) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (*i.e.*, a test under company authority).

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§40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

(a) As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not "fatal flaws" or "correctable flaws" listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the

employee to a fair and accurate test. For example, it is inconsistent with this part to cancel a test based on a minor administrative mistake (*e.g.*, the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.

(c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations.

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§40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

No, other types of alcohol tests (*e.g.*, blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.

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City and County of San Francisco

Department of Human Resources

PERSONAL SERVICES CONTRACT SUMMARY

DATE: May 9, 2013DEPARTMENT NAME: San Francisco Municipal Transportation AgencyDEPARTMENT NUMBER 68

TYPE OF APPROVAL: () EXPEDITED (X) REGULAR (OMIT POSTING_____)

() CONTINUING () ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST () MODIFICATION

TYPE OF SERVICE: Offsite and Onsite Urine and Breath Sample CollectionFUNDING SOURCE: Operating BudgetPSC AMOUNT: \$1,200,000.00PSC DURATION: December 1, 2013 through November 30, 20181. **DESCRIPTION OF WORK****A. Concise description of proposed work:**

To provide an off-site facility to collect pre-employment, post-accident, return-to-duty, reasonable suspicion breath and urine samples during normal working hours and/or after hours for San Francisco Municipal Transportation Agency (SFMTA) employees and contractors and to provide a mobile on-site facility to collect random, follow-up, reasonable suspicion and post-accident breath and urine collection in compliance with DOT/FTA Drug and Alcohol Testing Regulations.

B. Explain why this service is necessary and the consequences of denial:

Urine and breath collection is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) Rules. Denial of this service will jeopardize continued transit agency Federal funding assistance.

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

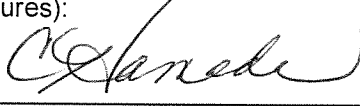
This service was provided in the past through PSC No. 4023-08/09 that was approved by the Civil Service Commission on September 15, 2008, and PSC No. 3034-08/09, approved on September 25, 2008. At this time the SFMTA elects to allow the current contract to expire, and then proceed to solicit proposals for collection services with the goal of establishing a new contract.

D. Will the contract(s) be renewed:

Yes. At the end of this contract the SFMTA will issue a Request for Proposal for breath and urine collection services.

2. **UNION NOTIFICATION:** Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

IFPTE Local 21
Union Name


Signature of person mailing / faxing form

5/9/13
Date

Union Name

Signature of person mailing / faxing form

Date

RFP sent to _____, on _____
Union Name Date

Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4136-12/13

SFMTA approved
5-9-13

STAFF ANALYSIS/RECOMMENDATION:
CIVIL SERVICE COMMISSION ACTION:

PSC FORM 1 (9/96)

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE**A. Specify required skills and/or expertise:**

The collection personnel must be trained in procedures designed to comply with 49 CFR Part 40, Subparts C and J, and shall demonstrate proficiency in complying with these procedures. Collection procedures for urine samples should be designed to comply with 49 CFR Subparts C, D and E. The collection of breath samples must be designed to comply with 49 CFR Part 40, Subparts J, K, L, M and N.

B. Which, if any, civil service class normally performs this work?

No civil service class normally performs this work.

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

The contractual services will include all necessary facilities and/or equipment for the collection of specimens and collection sites must comply with all requirements specified in 40 CFR Part 40, Subparts D and K. The firm selected must have the appropriate off-site facilities and personnel dedicated solely to SFMTA's drug and alcohol testing program to provide a clean, secure and private environment.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM**A. Explain why civil service classes are not applicable:**

Civil service classes are not applicable because the knowledge and experience required for this type of work requires knowledge, experience and training related to the collection of urine and breath samples as specified by 49CFR Part 40, Subpart C, D, E, J, K, L, M, and N.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No, it would not be practical to adopt a new civil service class, because adopting a new civil service class may result in a recruitment and retention problem and consequently affect the required services under DOT/FTA rules. There are legal mandates (49 CFR Part 40) requiring contractor to meet specific standards and adhere to specific procedures. Contracting is the most effective way to provide this service.

5. ADDITIONAL INFORMATION (if "yes", attach explanation)

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	()	(X)
B. Will the contractor train City and County employees?	()	(X)
C. Are there legal mandates requiring the use of contractual services?	()	(X)
D. Are there federal or state grant requirements regarding the use of contractual services? - 49 CFR Part 40	(X)	()
E. Has a board or commission determined that contracting is the most effective way to provide this service?	()	(X)
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department?	()	(X)

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

Parveen Boparai

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai
Print or Type Name

415-701-5377
Telephone Number

San Francisco Municipal Transportation Agency, Human Resources

1 S. Van Ness Ave., 6th Floor, San Francisco, CA 94103
Address

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Moccasin Powerhouse Generator Rehabilitation (DB-121R2)

Funding Source: Hetch Hetchy Water and Power CIP

PSC Duration: 3 years 16 weeks

PSC Amount: \$3,100,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Contract Work will consist of designing, manufacturing, and installation of hydro-generators including stator core, windings, frame, field rotor poles for two (2) hydro-generation units at Moccasin Powerhouse. Each generator is rated at 50 MVA, 13.8kV, three-phase, 60 Hz, .9 power factor, 300 RPM (24 field poles). This Design-Build contract is estimated to require \$3,100,000 for design services and \$28,000,000 for construction costs

B. Explain why this service is necessary and the consequence of denial:

Moccasin Powerhouse Generators No. 1 and No. 2 were completed in 1969 and generate a combined maximum output of 110 MegaWatts. The average generation from Moccasin Powerhouse is about 430 Gigawatt hours per year or 25% of the total generation from the Hetch Hetchy Water and Power (HHWP) Project. The generator units at Moccasin Powerhouse have exceeded their life expectancy by 20 years. The generator units are in critical need of repair in order continue operations. A delay in authorizing these services will prolong critical upgrades and increase the likelihood that the generators will fail. Water delivery from the Hetch Hetchy Water System pass through the generators. Failure of both units concurrently would impede delivery to 2.6 million water customers.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

D. Will the contract(s) be renewed?

No.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable**

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

The need for this work is infrequent and would occur years apart. For example, two generators were rehabilitated at Holm Powerhouse in 2003. Two of the three generators at Kirkwood Powerhouse were rehabilitated in 2009 under contract HH-910. Both rehabilitations at Holm and Kirkwood Powerhouse were not design-bid-build. The last hydro-generator on the system (Unit III Kirkwood Powerhouse) is not included in the current Hetchy Capital System Projects for rehabilitation. Three installations in five years and then none for ten years. Most of the time, there would be no work to do for this specific service. This work is highly specialized based on individual manufacturers' equipment. This work only occurs at equipment installation and commissioning prior to City acceptance and without ongoing work thereafter and is necessary for the activation of the manufacturer's warranty on this equipment.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Generator design and rehabilitation is very specialized. This project will require someone with the intimate knowledge of both rotor-stator design along with relay protection for large hydro-generators. They will also need experience in rehabilitating generators within a short construction window and provide a suggested sequence of work.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Due to the required specialized design experience, there is no one within other City Departments that could provide the Design Criteria for a large hydro-generator rebuild. There is a small pool of qualified engineers nationally to provide this service. The Project Manager met with the Project Engineer and Electrical Section Manager early in the project to discuss.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil Service classes are not applicable because they do not have the specialized expertise in hydro-generator design, relay protection, and installation.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it wouldn't be practical to adopt a civil service class to perform this work due to the specialized nature of the services required and these services are only necessary on an intermittent basis. The life expectancy of a hydro-generaor is 30-35 years.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. Training will not be provided.
- C. Are there legal mandates requiring the use of contractual services?
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
Yes. Yes, SFPUC Res.10-0051 adopted 4-13-2010
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 07/08/2020, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Daniel Kwon Phone: 415-934-5722 Email: dkwon@sfwater.org

Address: 525 Golden Gate Avenue 8th Floor San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 40551 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/17/2020

Receipt of Union Notification(s)

From: dhrr-psccordinator@sfgov.org on behalf of dkwon@sfgwater.org
To: Kwon, Daniel; Criss@SFMEA.com; [Meyers, Julie \(HSA\)](mailto:Meyers, Julie (HSA)); seichenberger@local39.org; Camaguey@SFMEA.com; ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; [wendywong26@yahoo.com](mailto>wendywong26@yahoo.com); sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Basconcillo, Kathy; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; ramonliuna261@gmail.com; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Sin.Yee.Poon@sfgov.org; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@SFMEA.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfmsa@gmail.com; mshelley@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; L21PSCReview@ifpte21.org; LiUNA.local261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; Christina@SFMEA.com; ecdenvoter@aol.com; thomas.vitale@seiu1021.org; Irwin, William; [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator, DHR (HRD))
Subject: Receipt of Notice for new PCS over \$100K PSC # 40551 - 19/20
Date: Wednesday, July 8, 2020 5:27:16 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 40551 - 19/20 more than \$100k

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a request for a Personal Services Contract (PSC) 40551 - 19/20 for \$3,100,000 for Initial Request services for the period 01/08/2021 – 05/02/2024. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/15204> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 10-0051

WHEREAS, Due to the unique complexities of the design and manufacture/installation required for Agreement No. DB-121 Moccasin Powerhouse Generator Rewind Project, Hetch Hetchy Water and Power has determined that using a Design Build Agreement (DBA) project delivery method approach for procurement of both design and construction services will achieve cost savings and time efficiencies, and is in the best interests of the SFPUC; and

WHEREAS, It is necessary to procure the services of a qualified firm to provide specialized design build services to supplement SFPUC staff; and

WHEREAS, The engineer's estimate for the project, including design and construction costs, is \$12,834,000; and

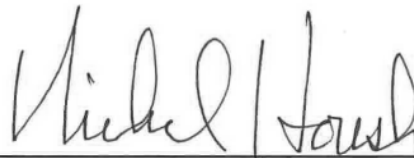
WHEREAS, The estimated contract duration is two (2) years from NTP to completion; and

WHEREAS, Human Rights Commission (HRC) sub-contracting goals have been waived for this agreement; and

WHEREAS, Funds for this contract will be available from CUH976, Power Infrastructure, in FY 2009-2010 and as requested in FY 2010-11, DB-121, Moccasin Powerhouse Generator Rewind Project; now therefore, be it

RESOLVED, That this Commission hereby authorizes the General Manager of the San Francisco Public Utilities Commission to advertise the Request for Proposal (RFP), DB-121, Moccasin Powerhouse Generator Rewind Project and allow a Design-Build Agreement as an alternative project delivery method for the rehabilitation of the rotor and stator in Generators No. 1 and No. 2 at the Moccasin Powerhouse; and return to the Commission for award and authorization to execute an agreement.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting April 13, 2010



Secretary, Public Utilities Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Airport Operations Software License, Maintenance, and Support Services

Funding Source: Airport Operating Funds

PSC Amount: \$1,600,000

PSC Est. Start Date: 09/01/2020

PSC Est. End Date 12/31/2025

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Services include software licensing, customization, maintenance, support services and training for the Airport's continuity and response software system used by various Airport divisions including: 1) Airfield Operations, 2) Safety Management, and 3) Emergency Management. Services will also include software development solutions and provision of development/design solutions for integrating the system with external systems such as the Federal Aviation Administration (FAA) and National Weather Service. Approximately \$900,000 of the total requested amount will be used for the software license/subscription, and \$700,000 for professional services.

B. Explain why this service is necessary and the consequence of denial:

This system will provide data management, internal and external real-time data sharing, and robust data analysis and reporting for the Airport. This service will also allow the Airport to maintain FAA and Transportation Security Administration (TSA) compliance and align with International Civil Aviation Organization (ICAO) guidance. If denied, SFO would not meet Federal record keeping and document requirements and would cease to operate as an FAA/TSA certified commercial airport. SFO would cease commercial air carrier operations which would result in lost revenue.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This software was originally procured under a competitive solicitation process conducted in 2017.

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for this service.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

This duration will allow the Airport to enter into a contract duration of over 5 years, which will help maintain continuity of the existing operations software.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Immediately needed services to address unanticipated or transitional situations, or services needed to address emergency situations.

☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

Software development and system maintenance services are required on an as-needed, intermittent basis.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Contractor must have access to proprietary software, expertise in design, configuration, delivery and installation of technology solutions for airports, with experience developing and maintaining safety management and emergency management software, and an in depth knowledge of the aviation industry, including FAA, TSA, and ICAO standards.

B. Which, if any, civil service class(es) normally perform(s) this work? 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1823, Senior Administrative Analyst; 9220, Airport Operations Supervisor; 0923, Manager II; 9247, Airport Emerg Planning Coord;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

None. The City does not have available resources with the access to proprietary software to perform the support and maintenance work, or the required expertise in design and configuration of technology solutions for airports with knowledge of FAA, TSA and ICAO standards.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil Service classes are not applicable as this software is a proprietary system and must be maintained and serviced by the software provider.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. In addition to the lack of access to proprietary software, the required services are intermittent. The required work may fluctuate based on needs for the solution, maintenance, and software upgrade deployments, as well as changes related to regulatory requirements from the FAA and/or TSA.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. Yes, Contractor will provide 16 hours of system administrator "bootcamp" training per year for Airport staff in the following classifications: 0923, 1823, 9220, 9221, 9247. NOTE: Airport was unable to select 9221 (represented by SEIU Local 1021) in the database. This training includes profile management, system navigation and taxonomy, creation of lists and access controls, as well as the development and use of Forms, Dashboards, Tasks, Plans, and Workflows. Trainees receive hands on practice to prepare them to serve in a system administrator role.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

- E. Has a board or commission determined that contracting is the most effective way to provide this service?
If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 05/22/2020, the Department notified the following employee organizations of this PSC/RFP request:
Municipal Executive Association; Professional & Tech Engrs, Local 21; SEIU 1021 Miscellaneous

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: PO Box 8097 San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 42930 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/17/2020

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of cynthia.avakian@flysfo.com
To: Cynthia Avakian (AIR); Meyers, Julie (HSA); Ricardo.Lopez@sfgov.org; Basconcillo, Katherine (PUC); pcamarillo_seiu@sbcglobal.net; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; davidmkersten@gmail.com; ablood@cirseiu.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA); david.canham@seiu1021.org; jtanner940@aol.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; Criss@SFMEA.com; camaguey@sfmea.com (contact); Christina@SFMEA.com; staff@SFMEA.com; Sung Kim (AIR); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 42930 - 19/20
Date: Friday, May 22, 2020 4:26:44 PM

RECEIPT for Union Notification for PSC 42930 - 19/20 more than \$100k

The AIRPORT COMMISSION -- AIR has submitted a request for a Personal Services Contract (PSC) 42930 - 19/20 for \$1,600,000 for Initial Request services for the period 09/01/2020 – 12/31/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/14973> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Modification

Personal Services Contracts

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN

Dept. Code: ADM

Type of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 38642 - 19/20)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Stakeholder facilitation

Funding Source: General fund

PSC Original Approved Amount: \$50,000

PSC Original Approved Duration: 12/01/19 - 11/30/20 (1 year)

PSC Mod#1 Amount: \$150,000

PSC Mod#1 Duration: 12/01/19-11/29/24 (4 years)

PSC Cumulative Amount Proposed: \$200,000

PSC Cumulative Duration Proposed: 5 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

In October 2018, the Board of Supervisors passed an ordinance to create the Cannabis Oversight Committee to advise the Board of Supervisors and the Mayor regarding the implementation and enforcement of City laws and regulations relating to cannabis. . The Cannabis Oversight Committee is expected to begin in Fall 2019 and will be active for a three-year period. The committee is comprised of 18 members. Seven seats are held by non-voting government bodies, including Planning, Fire, Police, Building Inspection, and Health departments, San Francisco Unified School District and the Entertainment Commission. . The remaining committee seats are held by voting members from various sectors, including advocacy, applicants for licenses, equity applicants, business and unions. The proposed work for this group will include preparation and facilitation of the monthly Task Force meetings. Committee members may have strong, differing, yet equally legitimate, viewpoints. There is a need for strong skills in facilitation, writing, meeting preparation, recording and synthesis of meeting minutes, and presentation

B. Explain why this service is necessary and the consequence of denial:

Outside expertise is needed to prepare for and facilitate Committee discussion. Without this assistance and expertise in report and issue brief writing, it will not be possible for provide full and accurate reports to the Mayor and Board of Supervisors.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.
By contract

D. Will the contract(s) be renewed?
Yes.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

☒ Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

This is short term, part time work. While there are not legal requirements for an independent entity to perform these services, it is advisable given the need for impartial facilitation of meetings and writing of reports.

B. Reason for the request for modification:

To add funds and duration. Additional work is necessary.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: • Strong facilitation skills in managing large and smaller groups • Meeting planning and preparation – creating agendas and synthesizing meeting minutes • Report and issue brief writing • Knowledge of cannabis industry preferred

B. Which, if any, civil service class(es) normally perform(s) this work? 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 0931, Manager III;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

There is a need for a neutral arbiter to facilitate work among and between members of the public who have potentially conflicting interests and City department representatives who represent the interests of their unit(s). Knowledge of the cannabis industry is preferred. City employees do not have the necessary skills and subject matter expertise.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. This is a one year contract and work is part time. The term of the Oversight Committee is three years.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No training will be provided.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes. We will extend the contract with the current vendor

7. Union Notification: On 07/09/20, the Department notified the following employee organizations of this PSC/RFP request:
Municipal Executive Association; Architect & Engineers, Local 21;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place Room 362, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 38642 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/17/2020

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of joan.lubamersky@sfgov.org
To: [Lubamersky, Joan \(ADM\)](mailto:Lubamersky.Joan@ADM); Criss@SFMEA.com; camaguey@sfmea.com (contact); Christina@SFMEA.com; staff@SFMEA.com; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 38642 - 19/20 - MODIFICATIONS
Date: Thursday, July 9, 2020 3:09:58 PM

PSC RECEIPT of Modification notification sent to Unions and DHR

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a modification request for a Personal Services Contract (PSC) for \$150,000 for services for the period December 1, 2019 – November 29, 2024. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/15141>

Email sent to the following addresses: L21PSCReview@ifpte21.org
pkim@ifpte21.org
eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org
tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com
ecassidy@ifpte21.com staff@sfmea.com Christina@sfmea.com Camaguey@sfmea.com
Criss@SFMEA.com

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADMDept. Code: ADMType of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)Type of Approval: ☒ Expedited ☐ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)Type of Service: Stakeholder facilitationFunding Source: General fundPSC Duration: 1 yearPSC Amount: \$50,000**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

In October 2018, the Board of Supervisors passed an ordinance to create the Cannabis Oversight Committee to advise the Board of Supervisors and the Mayor regarding the implementation and enforcement of City laws and regulations relating to cannabis. . The Cannabis Oversight Committee is expected to begin in Fall 2019 and will be active for a three-year period. The committee is comprised of 18 members. Seven seats are held by non-voting government bodies, including Planning, Fire, Police, Building Inspection, and Health departments, San Francisco Unified School District and the Entertainment Commission. . The remaining committee seats are held by voting members from various sectors, including advocacy, applicants for licenses, equity applicants, business and unions. The proposed work for this group will include preparation and facilitation of the monthly Task Force meetings. Committee members may have strong, differing, yet equally legitimate, viewpoints. There is a need for strong skills in facilitation, writing, meeting preparation, recording and synthesis of meeting minutes, and presentation

B. Explain why this service is necessary and the consequence of denial:

Outside expertise is needed to prepare for and facilitate Committee discussion. Without this assistance and expertise in report and issue brief writing, it will not be possible for provide full and accurate reports to the Mayor and Board of Supervisors.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services have not been provided in the past.

D. Will the contract(s) be renewed?

Yes.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request**A. Indicate all that apply (be specific and attach any relevant supporting documents):**

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

☒ Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

B. Explain the qualifying circumstances:

This is short term, part time work. While there are not legal requirements for an independent entity to perform these services, it is advisable given the need for impartial facilitation of meetings and writing of reports.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: • Strong facilitation skills in managing large and smaller groups • Meeting planning and preparation – creating agendas and synthesizing meeting minutes • Report and issue brief writing • Knowledge of cannabis industry preferred
- B. Which, if any, civil service class(es) normally perform(s) this work? 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 0931, Manager III;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
There is a need for a neutral arbiter to facilitate work among and between members of the public who have potentially conflicting interests and City department representatives who represent the interests of their unit(s). Knowledge of the cannabis industry is preferred. City employees do not have the necessary skills and subject matter expertise.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. This is a one year contract and work is part time. The term of the Oversight Committee is three years.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. Explanation of training has not been provided by the department
- C. Are there legal mandates requiring the use of contractual services?
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 07/23/2019, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21; Municipal Executive Association

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place Room 362 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 38642 - 19/20

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 08/27/2019