2.5 Hiring and Managing Consultants and Attorneys

When to Hire a Consultant

- When needed technical expertise is not available on staff.
- When the necessary staff and resources to perform a job are not available.
- When outside objectivity and perspective are needed.

What to Look for in a Consultant

- Match the firm to the requirements of a particular task, taking into consideration factors such as size of firm, training and experience, particular related experience, experience working on controversial projects (if applicable) and knowledge of local conditions.
- If adequate campus staffing is not available to prepare the Initial Study, a consultant may be hired to prepare the Initial Study/Preliminary Environmental Assessment.
- Choose a firm with a realistic budget. The lowest bidder may produce disappointing results. Documents may have to be redrafted if they are not prepared correctly.
- Have contingency funds available. Often, new issues will arise that could not have been foreseen prior to the beginning of the environmental process. Much time and trouble will be saved if the project description does not change after environmental analysis begins.
- Ask for names of previous clients and check the consultant's record with them. Ask if they would hire the consultant again. Talk about the process by which their particular document reached final form, the timeliness of consultant’s response to deadlines, and the degree of commitment from the project manager.
- Focus on and demand commitment from the project manager. This person’s capability can be more important than the general qualifications of the firm.
- Ask the consultant the following types of questions:
  - Who will actually be responsible for the work on this contract? Who will be the project manager? What is his or her background and related experience? What is a realistic assessment of his/her time percentage available for this project? Discuss the qualifications and experience of each member of the technical team, including any subconsultants, especially regarding key issues addressed in the Initial Study such as hazards, archaeology, traffic, etc. If possible, name “dedicated” staff in the contract.
  - Request and review copies of documents on similar projects provided by the consultant. Pay special attention to treatment of those issues that are likely to be similar to issues associated with the proposed project. Evaluate whether the documents are written in a consistent manner.
• If the consultant’s previous documents have been recirculated, request initial drafts; if litigation has occurred, request copies of relevant legal documents.

Be completely satisfied with the reputation of the consulting firm and its principals.

**How to Hire a Consultant**

The consultant selection and hiring process should follow applicable State law and University policies as set forth in *Business & Finance Bulletin 34*.  [http://www.ucop.edu/ucophome/policies/bfb/bus34.html](http://www.ucop.edu/ucophome/policies/bfb/bus34.html)

The campus may use a competitive bid process. This process is useful in establishing a pool of qualified consultants.

**Competitive Bidding**

**The RFQ Process**

• Use a Request for Qualifications (RFQs) when there is a need to determine the most qualified consultants from among a number of candidates.

• Request information on firm qualifications, relevant experience, key personnel and, optionally, thoughts on study approach.

• RFQ announcements can be made in the Hawkins-Marktel newsletter, local newspapers, planning journals and newsletters, including the Association of Environmental Professionals (AEP) Newsletter.

**The RFP Process**

• Send Requests for Proposals (RFPs) to a maximum of three to five firms that have been prequalified through the RFQ process.

• The RFP should include a project description, a discussion of key issues, work scope required, time schedule, campus contact person, and proposal submission deadline. Optional: available budget, sample contract, the NOP, any agency comments, and other supplementary information.

• The RFP should request a scope of work, qualifications and time commitments of key staff, study approach, references, schedule, budget, and examples of relevant recent EIRs.

**The Interview Process**

• Select the campus interview panel. Its members could include selected representatives of the administration and academic community who may have special interest in the project, as well as those with specific responsibility.
• Determine questions in advance, based upon the nature of the proposed project and any special associated problems or unique circumstances, consultant's specific relevant experience and time commitment, subconsultants and technical staff qualifications, performance on previous work, and working relationship with selected legal counsel.

• Limit the consultant presentation time and interview panel questioning period, and evaluate whether consultants adhere to those limitations.

• Do not base selection entirely on the interview.

• Become acquainted with all subconsultants.

**Sole Source Selection**

Under certain circumstances, such as unique positive qualifications or recent relevant background, it may be in the campus’s best interest to hire a consultant on a sole-source basis (noncompetitively). If, for example, a group of consultants have performed to the level of campus expectation, the campus may be at an advantage in continuing to draw from this pool.

**How to Manage a Consultant**

• Provide the consultants with sample documents from other campus projects.

• Provide the consultants with the web site to access this Handbook online. Insist either that the model approaches be used or that consultants indicate where they would need to deviate from those approaches. Any deviations should be cleared in advance with the Offices of the President and the General Counsel. Agreements should be reached prior to signing a contract.

• Negotiate as clear and comprehensive a contract as possible; this is the foundation of a successful relationship. Discuss the consultants’ process for resolving disputes. Clarify the point at which documents will be available for review, the process for campus/legal counsel oversight, and due dates for release of documents. Discuss who will review documents and who will be responsible for changes. Make clear the nature of input that campus and Office of the President/Office of General Counsel staff will have in the final document.

• Agree very specifically about the scope of the project and the manner in which out-of-scope requests should be handled. When it is agreed that out-of-scope work is required, it may be appropriate to provide authorization to continue work up to a certain level before a formal amendment is required to allow for meeting initial deadlines.

• Receive written progress reports with each invoice, including a record of work accomplished, problems needing resolution and work expected in the coming month.

• Maintain a comfortable level of contact with the consultant, sharing information often about
project demands, expectations, and changes. Provide as much data as you can at the start. Indicate information sources available to the consultant.

- Try to plan a realistic timeframe for projects. Allow time for consultants to do their work and meet their own standards.

- Require a fully assembled Administrative “screencheck” environmental document so that it can be reviewed as a comprehensive document.

- Treat your consultants well, and the good ones will more than repay you.

- Following campus, Office of the President and Office of General Counsel review of the Administrative Draft of an environmental document, the campus planner should compile the comments, resolve any conflicts, and provide the consultant with a single set of comments and changes.

- Consultants who fail to perform or do not meet campus needs should be dismissed before project objectives and deadlines are compromised. However, the campus should also prepare and maintain a clear record of the reasons for releasing the consultant.

**Information to Provide a Consultant**

Providing consultants with the following information will enable them to use existing resources, and focus on the environmental issues specific to a project rather than repeating previous analyses.

- How to access the UC CEQA Handbook online.
- Project Planning Guide and relevant portions of the Detailed Project Program
- Initial Study format
- Long Range Development Plan and LRDP EIR
- Relevant subsequent environmental documents
- Sample environmental document(s)
- Standard construction contract elements which avoid or reduce environmental impacts.
- UC seismic policy (Facilities Manual Volume 1, Chapter 5)
  [http://www.ucop.edu/facil/fmc/facilman/volume1/ch5.html](http://www.ucop.edu/facil/fmc/facilman/volume1/ch5.html)

**When to Hire an Attorney**

- Key issues to consider when determining the need for outside legal counsel may include expertise related to specific issues, local or regional experience, availability of key attorneys, and particular litigation experience.

- Any special needs, such as those listed above, should be discussed with the Offices of the President and the General Counsel as early in the environmental documentation process as possible, preferably during preparation of the Initial Study. At this point, a decision can be made about the advisability of retaining outside counsel and effectively managing the EIR process to reduce the likelihood of legal challenge.
How to Manage an Attorney

- As early as possible, define project-specific levels of significance in concert with the Offices of the President and General Counsel.

- Clarify with the consultant, the Office of the President, and legal counsel what assumptions will underlie the analysis of different environmental issue areas, especially those which may provoke controversy. Try to reach consensus at this early stage on methodologies to be used.

- Jointly review section outlines provided by the consultant.