



**MDOT LOCAL AGENCY PROGRAM (LAP) POLICIES & PROCEDURES**  
**FOR PROCUREMENT, MANAGEMENT AND ADMINISTRATION OF**  
**PRELIMINARY ENGINEERING, CONSTRUCTION ENGINEERING OR TESTING**  
**RELATED SERVICES**  
**USING FEDERAL OR STATE FUNDS**  
**(For Use by Local Agencies Contracting for Consultant/Vendor Services)**

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## **Preface**

This document outlines the expectations, responsibilities and accountabilities of a Local Agency seeking to solicit and contract consultant/vendor preliminary engineering, construction engineering or testing related services using State or Federal funds.

Federal Regulations issued in June of 2015, 23 CFR 172, required MDOT to establish written policies and procedures which must be followed by a Local Agency seeking Federal funds for consultant services, to assure compliance with the applicable requirements . All Local Agency/Consultant or Third Party Agreement contracts issued after June 21, 2016, must be in compliance with the new regulation to be eligible for Federal funds.

## **Section I: Required Local Agency Procurement Procedures using State or Federal Funds**

### **A. Definition of Consultant Service considered Design or Engineering (23 CFR 172.3)**

Engineering and design related services are defined as: program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural services. These services must be procured using competitive negotiation/qualification based selection (commonly known as the “Brooks Act”) to receive State or Federal funds unless otherwise stated below. Planning studies or other services not included in the definition of engineering and design related services or are not directly related to a construction project, will generally not require procurement through qualification based selection process under Federal law.

### **B. Services Equal or Greater than \$100,000: Competitive Negotiation/Qualifications Based Selection (QBS)/Brooks Act (23 CFR172.7(1))**

#### **1. Solicitation Requirements**

A solicitation for services is required and shall be a public announcement and advertisement to assure qualified in-state and out-of-state consultants are given a fair opportunity to be considered. This can be accomplished with either a single step Request for Proposal (RFP) or through a two-step, Request for Qualifications (RFQ), whereby responding consultants are ranked based on qualifications followed by a RFP to at least the three most qualified firms.

#### **2. Request for Proposal (RFP)/Request for Qualifications (RFQ) Scope of Services Requirements Checklist**

- a. Shall contain a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of the consultants necessary for the service to be rendered. It should detail the services to be performed, deliverable to be provided, estimated schedule for performance of the work and applicable standards, specifications and policies.
- b. Shall contain Evaluation Factors and their relative weight or scoring factor. See Section V for MDOT’s recommended scoring factor form. The evaluation factors are the criteria used for evaluation, ranking, and selection. These qualification-

based factors may be technical approach (project understanding/innovation), work experience, specialized expertise, staff capabilities/capacities, and past performance. Price or cost related items such as cost proposals, direct salaries/wage rates and other direct costs, SHALL NOT be used as an evaluation factor. In-State or local preference SHALL NOT be used as a RFP selection or consultant evaluation factor. SPECIAL “non-qualification based factors” which may be used are local presence (e.g. local office) and Disadvantaged Business Enterprise (DBE) subconsultant(s), however, per 23 CFR 172, the weighted values must not exceed 10% for local presence and DBE combined, if included as part of the Evaluation Factors.

- c. Shall contain the contract type and method of payment for services.
  - d. Shall state any required cost proposal will be requested from the most highly qualified consultant (highest scoring) once all RFPs have been scored and ranked. Costs will not be considered during the evaluation, ranking, and selection phase (cost proposals are not a step required with RFQ process since this is a step preceding the RFP process).
  - e. Shall contain the estimated schedule for the procurement process and establishes a submittal deadline for responses to the RFP or RFQ. A minimum of three weeks response time from the issuance of the RFP or RFQ is required.
3. Evaluation, Ranking and Selection Requirements
- a. Based on Evaluation Factors outlined in the RFP, the Local Agency will evaluate, score, and rank all consultants fully complying with the RFP submittal requirements. The most highly qualified (highest scoring) consultant will be notified to proceed with negotiations and providing their cost proposal to the Local Agency.
  - b. If less than three qualified consultants have responded to the RFP, then the Local Agency shall contact MDOT LAP Section (MDOT LAP will contact FHWA) for authorization, in writing, to proceed with negotiations with the most highly qualified consultant.
4. Negotiation Requirements
- a. Prior to negotiations and receipt of the cost proposal from the most highly qualified consultant, the Local Agency shall prepare a detailed, independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs and consultant’s fixed fee for the defined scope of work. This estimate will serve as a basis for negotiations.
  - b. If a cost agreement with the most highly qualified consultant cannot be reached, negotiations will be formally terminated with that consultant prior to entering into negotiations with the next qualified consultant. A cost proposal from the next qualified consultant shall be obtained by the Local Agency and negotiated on per Section I.B.4.a.
  - c. All unsuccessful consultant cost proposals will be destroyed once negotiations have been initiated with the most qualified consultant. This cost data is considered confidential and proprietary to the submitting consultant.

- d. Notification to unsuccessful consultants/vendors should be provided once negotiations with successful consultant/vendor is complete. The Local Agency should consider providing a debrief session for unsuccessful consultants/vendors.
5. Documentation Requirements
  - a. For all services \$25,000 or greater, a Third Party Agreement is required. See: Section VI: Third Party Agreement Template.
  - b. The Local Agency shall retain all documents relating to the solicitation, RFP, scoring, ranking, negotiations, independent estimate, cost proposal for a period of three years beyond the final payment for services in accordance with 2 CFR 200.333.

**C. Services Less than \$100,000: Small Purchase Procedure (23 CFR 172.7 (a) (2))**

If the engineering or design related services are estimated to be less than \$100,000, the following procedures may be followed:

1. If the estimated costs for services are near \$100,000, it is recommended that the Local Agency utilize the QBS process in the event costs exceed \$100,000. If costs are capped, QBS is not needed.
2. The Local Agency may use their current procedures which comply with all state and federal laws and the scope of work has not been broken down into small components merely to meet the \$100,000 limitation.
3. Additional requirements include:
  - a. A minimum of three consultants is required to satisfy the adequate number of qualified sources reviewed. In instances where only two qualified consultants responded, evaluation and selection can proceed as long as the solicitation did not contain conditions or requirements which limited the competition.
  - b. Contract costs can be negotiated in accordance with the Local Agency's small purchase procedures, however, the allowability of the costs shall be determined in accordance with Federal cost principles.
  - c. Note: The full amount of any contract modification or amendment which would cause the contract to exceed \$100,000, will not be eligible for State or Federal aid unless a QBS process was utilized per Section I.B. (23 CFR 172.7 (a)(2)(iv))
4. Documentation Requirements
  - a. For all services \$25,000 or greater, a Third Party Agreement is required. See: Section VI: Third Party Agreement Template.
  - b. **For services less than \$25,000, the Local Agency shall submit the Local Agency/Consultant Agreement which shall have the following statement incorporated: “All the provisions stated in 23 CFR 172.9(c) Contract Provisions are hereby incorporated by reference.”** MDOT LAP will review the agreement to ensure this statement is included and compliance with Federal and State Laws. In addition an executed form 5108L “Certification of Indirect (Overhead) Rate” needs to be submitted with the Local Agency/Consultant Agreement.

- c. The Local Agency shall retain all documents relating to the selection per their current approved procedures for a period of three years beyond the final payment for services in accordance with 2 CFR 200.333.

**D. Emergency Services/Disaster Recovery: Non-competitive services**

1. Upon prior written approval from MDOT, noncompetitive services can be used when a natural disaster or an emergency occurs which will not permit the time necessary to conduct competitive negotiations. These situations will be handled by MDOT Local Agency Section on a case by case basis and must be justified in accordance with current MDOT policies and coordinated with FHWA.

**E. Additional Procurement Requirements Regardless of Contract Amount**

1. Disadvantaged Business Enterprise (DBE): The Local Agency shall give consideration to the establishment of a contract participation goal in accordance with the FHWA approved MDOT DBE program. The use of quotas or exclusive set asides for DBE consultants is prohibited. ([www.michigan.gov/mdotdbe](http://www.michigan.gov/mdotdbe))
2. Suspension and Disbarment: The Local Agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract. All consultants and subconsultants should be vetted through the “System for Award Management” (<https://www.sam.gov/portal/SAM/#1>) and keep this documentation in the permanent contract file. (<http://www.fhwa.dot.gov/legsregs/directives/orders/20002b.cfm>)
3. Conflict of Interest (COI): The local agency shall be in compliance with MDOT’s approved policy. ([http://www.michigan.gov/documents/mdot/Final\\_Conflict\\_of\\_Interest\\_Policy\\_0214\\_12\\_376724\\_7.pdf](http://www.michigan.gov/documents/mdot/Final_Conflict_of_Interest_Policy_0214_12_376724_7.pdf))
4. Consultant Services in a Management Support Role: Services where the consultant provides oversight of a project, series of projects, or the work of other consultants and contractors on behalf of the Local Agency and provides specific approval responsibilities and associated controls to another consultant. Due to potential conflicts of interest, the Local Agency must receive MDOT LAP Section written approval to use State or Federal funds for procuring consultants in a management support role prior to any solicitation of services.
5. Compliance Certification by Local Agency with MDOT LAP Section Procurement Procedures: The local agency shall fill out, sign and submit a signed certification form at the time of their Local Agency/Consultant or Third Party Agreement submittal. See Section III.

## **Section II: Management & Administration Requirements by the Local Agency for all Contracts (23 CFR 172.9 (d))**

- A. Responsible Charge Accountability:** The Local Agency will designate one, full-time, public employee as their Responsible Charge. This person will be designated on the Local Agency/Consultant or Third Party Agreement (Services Contract). The Responsible Charge will be required to ensure the work delivered under the contract is complete, accurate, and consistent with the terms, conditions and specifications of the contract. A, full-time, public employee may serve in responsible charge of multiple projects and contracting agencies. The Responsible Charge will be familiar with the contract requirements, scope of services to be performed and products to be produced; will be familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel; will schedule and attend progress and project review meetings to assure scheduled milestones are being met; will review the consultants invoices to ensure the costs are allowable in accordance with the Federal cost principles and consistent with the contract terms; will evaluate and participate in decisions for contract modifications; and will document contract activities and supporting contract records. See Section III for compliance certification form.
- B. Performance Evaluations:** The Local Agency shall prepare an evaluation summarizing the consultant's performance on the contract. The Local Agency shall provide a copy of the performance evaluation and an opportunity to provide written comments to be attached to the evaluation to the consultant. The performance evaluation should include but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of work conducted. The Local Agency should record these performance results and use them as an element of past performance in future evaluation criteria on similar services. **MDOT LAP Section requires the completed Consultant/Vendor Performance Evaluation Form (see Section VII), or Local Agency equivalent, to be submitted with the final payment request.**
- C. Contract Modifications:** The Local Agency Responsible Charge will evaluate any request to amend the current contract. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work. Any contract amendment shall be submitted to the MDOT LAP Section in draft format for approval by MDOT LAP Section and Michigan's Office of Commission Audit (OCA), when applicable, before the Local Agency authorizes any work relating to the contract modification. **Any work performed prior to written authorization, is not eligible for State or Federal Funds.**
- D. Duration of a Contract:** Service Contracts, including all contract modifications, shall not exceed 5 years. The initial contract duration should not exceed 2 to 3 years, which will allow for potential extensions without exceeding the 5 year time limit.

- E. Contract Provisions:** See Section VI: Third Party Agreement Template
- F. Allowable Costs:** All costs eligible for reimbursement must be in accordance with the Federal cost principles. See Section VI: Third Party Agreement Template. The Local Agency (Responsible Charge) must review all invoices and supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with the Federal cost principles. All allowable costs are subject to audit by the OCA in accordance with generally accepted government audit standards to test compliance with the requirements of the Federal cost principles.
- G. Record Retention:** The Local Agency will retain all records relating to this contract for a period of three (3) years from the date of the final payment for work.
- H. Dispute Resolution:** If errors and/or omissions occur and additional costs or reduction in quality occur, an assessment must be made to determine the extent of the design and/or construction engineering consultant's responsibility for the errors and/or omissions, including the consultant's share of the additional cost. The procedures the Local Agency must follow are outlined in Section VI: Third Party Agreement, Exhibit C.

**Section III: COMPLIANCE CERTIFICATION BY LOCAL AGENCY  
WITH MDOT LAP SECTION PROCUREMENT PROCEDURES**

The \_\_\_\_\_ (Local Agency) and assigned \_\_\_\_\_ individual as the Responsible Charge who has read “MDOT LOCAL AGENCY PROGRAM (LAP) POLICIES & PROCEDURES FOR PROCUREMENT, MANAGEMENT AND ADMINISTRATION OF PRELIMINARY ENGINEERING, CONSTRUCTION ENGINEERING OR TESTING RELATED SERVICES USING FEDERAL OR STATE FUNDS (Local Agency Consultant Services Contracting)” and understands the responsibilities, have complied with the appropriate procurement procedures, and intend to manage and administer the Consultant Services contract in accordance with these requirements.

Applies to Local Agency/Consultant or Third Party Agreement for the following services:

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Responsible Charge (Print):

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Responsible Charge (Signature):

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Date:

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MDOT Project Manager (Print):

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MDOT Project Manager (Signature):

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Date:

#### **Section IV: LOCAL AGENCY SUBMISSION REQUIREMENT CHECKLIST AND QUALITY ASSURANCE FOR PROCUREMENT**

For projects in which federal or state funding is used for consultant/vendor services, follow the procedures listed below. The first step in initiating such procedures is to contact Local Agency Programs of the Michigan Department of Transportation (MDOT) and inquire whether state or federal funds are available for the particular area and project.

Items marked with a “\*” are not required when a Qualifications Based Selection process is not utilized and/or required.

The following documentation shall be submitted to MDOT Local Agency Program Section:

1. Advertisement of the project for interested consultants.
  - a. Include information detailing language used, length of advertisement, publications/outlets utilized, etc.
2. Copy of the Request for Proposals (RFP). The following information shall be included:
  - a. Project description.
  - b. Description of required activities, including deadline dates and intended bid letting date.
  - c. Location map, if applicable.
3. Listing of Consultants/Vendors that showed interest.
4. Criteria for selection of consultant/vendor.
  - a. \*Include short listing criteria, if applicable, and final list of candidates
  - b. \*Numeric evaluations of the short listed consultants/vendors based on criteria established in the RFP.
5. Estimate of consultant/vendor hours required for the project.
6. \*Basis for the final selection, including (at a minimum):
  - a. Qualifications of the project manager and other key members of the selected organization.
  - b. Scoring for each RFP based on selection criteria.
  - c. Evaluation of the consultant/vendor based on past performance.
  - d. Scoring sheets for
7. Copy of the prepared Third Party Agreement (unsigned when utilizing QBS) shall be submitted to MDOT for review and comment. Verify fixed fee does not exceed 15% of the total cost of the contract. FHWA approval is required when fixed fee exceeds that threshold.
8. Statement that indicates consultant/vendor proposed hours are reasonable based on estimate prepared and negotiations, if applicable, conducted with selected consultant/vendor.

9. \*Copy of the form that will be used to evaluate consultant/vendor performance upon completion of the contract. Sample evaluation criteria can be found in Section VII.
10. Compliance Certification Form (signed). Form can be found in Section III.
11. Copy of the signed Third Party Agreement (services \$25,000 or greater), with comments incorporated, shall be submitted to MDOT LAP Section.
12. OR copy of signed Local Agency/Consultant Agreement (services less than \$25,000), with comments incorporated, shall be submitted to MDOT LAP Section. **The Local Agency/Consultant Agreement must contain the statement: “All the provisions stated in 23 CFR 172.9(c) Contract Provisions are hereby incorporated by reference” or it will be considered non-compliant and rejected.** For services less than \$25,000, executed form 5108L “Certification of Indirect (Overhead) Rate” will also be required.

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MDOT Project Manager:

Signature:

Date:

**Section V: QUALIFICATIONS BASED SELECTION (QBS) FOR  
CONSULTANT/VENDOR SERVICES  
REQUEST FOR PROPOSALS (RFP) SELECTION CRITERIA**

For all Qualifications Based Selections, the Local Agency selection team will review the information submitted and will select the consultant considered most qualified to perform the services based on the proposals. The selected consultant will be asked to prepare a price proposal. **Cost related items cannot be considered in the selection process.** Negotiations will be conducted with the consultant selected.

One scoring sheet shall be filled out per RFP received.

Items marked with a “\*” are optional. Weighting factors can be applied to each category at the discretion of the Local Agency selection team. Comments should be provided that explain reasoning for selected score.

**Rating Description:** 5 point scale used with the rating description guidelines listed below.  
 0 or 1 – RFP did not fulfill the requirement or failed to fully convey work necessary.  
 5 – RFP conveyed the information clearly and without question. The proposal exceeded expectations by providing a complete and accurate conveyance of the work to be completed, value added innovations, specific examples of applicable past work, etc.

**RFP Specific Information:**

Prime Consultant/Vendor: \_\_\_\_\_

- Design Services                       Construction Engineering Services                       Testing Services

JN: \_\_\_\_\_ Description: \_\_\_\_\_

**\*Understanding of Service:** How well does the RFP describe understanding of service intended to be proposed? This should be based on the scope of services.

- 1    Comments: \_\_\_\_\_  
 2    \_\_\_\_\_  
 3    \_\_\_\_\_  
 4    \_\_\_\_\_  
 5    \_\_\_\_\_

Category Weighting Factor: \_\_\_\_\_ x Score: \_\_\_\_\_ = Category Total: \_\_\_\_\_

**Qualifications of Team:** How well did the RFP provide information related to organization chart, describe the structure of the project team including the roles of all key personnel?

- 1    Comments: \_\_\_\_\_  
 2    \_\_\_\_\_  
 3    \_\_\_\_\_  
 4    \_\_\_\_\_  
 5    \_\_\_\_\_

Category Weighting Factor: \_\_\_\_\_ x Score: \_\_\_\_\_ = Category Total: \_\_\_\_\_



**RFP Total Score (All Categories):**

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Selection Team Name: Signature: Date:

**Section VI: THIRD PARTY AGREEMENT TEMPLATE**  
**(MDOT/Local Agency/Consultant Services Contract)**

[http://www.michigan.gov/mdot/0,1607,7-151-9625\\_25885\\_40399---,00.html](http://www.michigan.gov/mdot/0,1607,7-151-9625_25885_40399---,00.html)

**Section VII: POST PERFORMANCE EVALUATION FOR  
CONSULTANT/VENDOR SERVICES**

For all Quality Based Selections, the Local Agency shall complete a consultant/vendor services evaluation, provide a copy and opportunity to provide written comments to be attached to the evaluation to the consultant, and **submit their signed evaluation with their request for final payment** to the MDOT Local Agency Program Section.

5 point scale used with the rating description guidelines listed below.

**Rating Description:** 5 point scale used with the rating description guidelines listed below.

1 - Vendor failed to comply with applicable federal, state and/or laws regulations.

5 - Vendor displayed outstanding knowledge of applicable federal, state and/or local laws and regulations. In addition, the vendor was proactive in assuring they complied with local agency guidelines and procedures and therefore needed no agency intervention.

**Vendor Services Specific Information:**

Prime Consultant/Vendor: \_\_\_\_\_

Design Services                       Construction Engineering Services                       Testing Services

JN: \_\_\_\_\_ Description: \_\_\_\_\_

1. Was the Vendor in control of services provided to the local agency?

- 1                      Comments: \_\_\_\_\_
- 2                      \_\_\_\_\_
- 3                      \_\_\_\_\_
- 4                      \_\_\_\_\_
- 5                      \_\_\_\_\_

2. Did the Vendor communicate adequately with local agency staff?

- 1                      Comments: \_\_\_\_\_
- 2                      \_\_\_\_\_
- 3                      \_\_\_\_\_
- 4                      \_\_\_\_\_
- 5                      \_\_\_\_\_

3. Was the Vendor responsive to requests from the local agency, including requests for information and requests to make changes in work?

- 1                      Comments: \_\_\_\_\_
- 2                      \_\_\_\_\_
- 3                      \_\_\_\_\_
- 4                      \_\_\_\_\_
- 5                      \_\_\_\_\_

4. Did the Vendor follow good safety practices?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

5. Did the Vendor meet deliverable date requirements?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

6. Did the Vendor coordinate work with subvendor's work, exercise authority over subvendors, provide notice of subvendor work schedule, and ensure that subvendors were in compliance with contract requirements?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

7. Did the Vendor have competent and sufficient personnel with the technical expertise to successfully complete the project?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

8. Did the Vendor have adequate and sufficient resources other than personnel (equipment, manuals, etc.) to fulfill the requirements of the scope of services?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

9. Did the Vendor provide a quality work product?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

10. Did the Vendor properly notify and coordinate work with local agency staff and affected parties such as utility companies, property owners, local units of government, and MDOT?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

11. Did the Vendor meet the applicable environmental requirements such as documentation, enforcement obtaining permits, studies, etc?

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____

12. Did the Vendor comply with the applicable federal, state and local laws and regulations? This includes but is not limited to, submitting accurate and timely invoices, responding to contractual issues, etc.

<input type="checkbox"/> 1	<u>Comments:</u> _____
<input type="checkbox"/> 2	_____
<input type="checkbox"/> 3	_____
<input type="checkbox"/> 4	_____
<input type="checkbox"/> 5	_____



## **Section VIII: REFERENCES**

- A. 23 Code of Federal Regulations (CFR) 172, Procurement, Management and Administration of Engineering and Design Related Services; Effective June 21, 2015 (<https://www.gpo.gov/fdsys/pkg/FR-2015-05-22/pdf/2015-12024.pdf>)
- B. FHWA Question & Answers (<http://www.fhwa.dot.gov/programadmin/172qa.cfm>)