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Changes to State Administrative Board Contract Approval Requirements

On August 30, 2011, State Administrative Board (SAB) Resolution 2011-2 (attached) became effective, which significantly changed the dollar thresholds and types of contracts requiring SAB approval. Below is a summary of the changes resulting from the Resolution:

Construction and Consultant Contracting:

- Award construction and consultant (requiring MDOT prequalification) contracts with a value up to \$500,000 without SAB approval. Any amount greater than \$500,000 requires SAB approval.
- May request SAB approval based on engineer's estimate for construction and consultant (requiring MDOT prequalification) contracts with a value over \$500,000. However, if a contract amount exceeds 10% of the engineer's estimate, the contract must be re-approved by the SAB.
- Amendments or revisions to a contract requiring prequalification, as described above, including extras and overruns on a construction contract, must be approved by the SAB if the sum of all previous amendments exceeds **10%** of the original contract, **unless:**
 - A) approved in accordance with applicable federal law or procedures by a representative of a federal agency contributing funds to the project that is the subject of the contract; or
 - B) approved in accordance with MDOT's internal procedures provided the procedures include approval by at least one MDOT employee who has managerial responsibility and is neither the project manager nor directly involved in the administration of the project.
- Award a contract for services **not requiring MDOT prequalification** (Service Contract) with a value up to \$250,000 without SAB approval. A Service Contract does not include a Professional Engineering Consultant Contract or a Construction Contract. For example: maintenance service contracts, bond counsel contracts, etc.
- Amend Service Contracts, if the amount of the amendment and the sums of all previous amendments total **\$125,000** or less, without SAB approval. Thereafter, an amendment to a Service Contract must be approved by the Board if the amount of the amendment and the sum of all amendments executed after the most recent Board approval total \$125,000 or more.

Real Estate Transactions:

- Award a contract involving the conveyance of any real property interest under the jurisdiction of MDOT and if the fair market value of the interest is \$250,000 or less without the approval of SAB.

Transit Contracts:

- Enter into a contract with a sub-recipient without approval of the Board if:
 - A) The purpose of the contract is to provide federal or state matching funds for a project;
 - B) MDOT has been authorized by an agency administering any federal funds to award them to the sub-recipient; and
 - C) The sub-recipient has agreed to fully reimburse the State in the event the sub-recipient does not use the funds in accordance with the purpose of the funding.

Transit and Rail Service Agreements:

- Enter into a contract in connection with the award of a grant, including state matching funds, to a local unit of government, a government authority, private non-profit entity, a railroad or a rail service provider, without the approval of the Board if the contract provides that the recipient will fully reimburse the State in the event grant funds are not used in accordance with the terms of the grant.

Highway Local Government Contracts:

- Enter into a cost participation contract with a local unit of government without approval of the Board if:
 - A) The contract involves the construction of physical improvement of a street, road, highway, bridge or other structure.
 - B) The construction or improvement is funded by federal, state, or local funds; and
 - C) The contract is approved by each entity providing funds in accordance with applicable law.

Aeronautics Agreements:

- Enter into a contract with an airport sponsor without approval of the Board if the contract has been approved by the Michigan Aeronautics Commission.

Emergency Contracting:

- Enter into a contract or award a grant without the approval of the Board in situations where emergency action is required. For all emergency contracts or grants of \$250,000 or more, MDOT must transmit to the board a written report within 30 days of executing the contract.

STATE ADMINISTRATIVE BOARD

RESOLUTION 2011-2

**PROCEDURES APPLICABLE TO MDOT CONTRACTS AND GRANTS
AND
RESCISSION OF RESOLUTIONS 2003-2 and 2005-2**

WHEREAS, the State Administrative Board ("Board") exercises general supervisory control over the functions and activities of all administrative departments, boards, commissioners, and officers of this State, and of all State institutions pursuant to Section 3 of 1921 PA 2, MCL 17.3;

WHEREAS, the Board may adopt rules governing its procedures and providing for the general conduct of its business and affairs pursuant to Section 2 of 1921 PA 2, MCL 17.2;

WHEREAS, exercising its power to adopt rules, the Board adopted Resolution 2003-1 on March 4, 2003, lowering the threshold for Board approval of all new contracts, grants and amendments to \$25,000 or more for the purchase of materials or services unless specifically approved by the Governor, and simultaneously adopted Resolution 2003-2 setting forth certain exceptions to Resolution 2003-1;

WHEREAS, the Board has adopted Resolution 2011-1, raising the threshold for Board approval of all new contracts and grants to \$250,000 or more and of all amendments to \$125,000 or more, and rescinding Resolution 2003-1;

WHEREAS, the Michigan Department of Transportation ("MDOT") is a party to a considerable number of contracts, the majority of which are funded via grants administered by federal agencies including the U.S. Department of Transportation's Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration and Federal Aviation Administration, which oversee MDOT's administration of such contracts and amendments thereto;

WHEREAS, MDOT has implemented internal procedures to assure the proper expenditure of state and federal funds and is subject to financial and performance audits by the Office of Commission Audits pursuant to 1982 PA 438, MCL 247.667a;

WHEREAS, MDOT is a party to a significant number of contracts which by their nature involve substantial consideration and often require amendments arising out of changes in scope, differing field conditions and design errors and omissions;

WHEREAS, delays in the approval of amendments to contracts can result in: postponement of payments to subcontractors and suppliers; work slow downs and stoppages; delays in the completion of projects; exposure to additional costs; and exposure to litigation arising out of contractor claims; and

WHEREAS, recognizing the Board's duty to promote the efficiency of State Government, the Board resolves as follows:

1. Resolution 2003-2 is rescinded.
2. Resolution 2005-2 is rescinded.
3. A contract for professional design, engineering or consulting services requiring MDOT prequalification in connection with the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Professional Engineering Consultant Contract") or a contract for the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Construction Contract") must be approved by the Board prior to execution by MDOT if the amount of the contract is \$500,000 or more. MDOT may obtain approval of the solicitation of a Professional Engineering Consultant Contract or a Construction Contract which, based on the estimate prepared by an engineer employed by the State of Michigan, is estimated to be \$500,000 or more. A contract arising out of such solicitation must be approved by the Board prior to execution by MDOT if the amount of the contract exceeds 110% of the State engineer's estimate.
4. An amendment to a Professional Engineering Consultant Contract or a Construction Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments exceeds 10% of the original contract, except that an amendment to a Professional Engineering Consultant Contract or a Construction Contract need not be approved by the Board if: a) approved in accordance with applicable federal law or procedure by a representative of a federal agency contributing funds to the project that is the subject of the contract; or b) approved in accordance with MDOT's internal procedures provided the procedures include approval by at least one MDOT employee who has managerial responsibility and is neither the project manager nor directly involved in the administration of the project.
5. A contract for services not requiring MDOT prequalification ("Service Contract") in the amount of \$250,000 or more must be approved by the Board prior to execution by MDOT. A Service Contract does not include a Professional Engineering Consultant Contract or a Construction Contract.
6. An amendment to a Service Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments total \$125,000 or more. Thereafter, an amendment to a Service Contract must be approved by the Board if the amount of the amendment and the sum of all amendments executed after the most recent Board approval total \$125,000 or more.
7. A contract involving the conveyance of any real property interest under the jurisdiction of MDOT must be approved by the Board prior to execution by MDOT if the fair market value of the interest is \$250,000 or more. Fair market value must be determined in accordance with procedures approved by the State Transportation Commission.

8. MDOT may enter into a contract with a sub-recipient without approval of the Board if: a) the purpose of the contract is to provide federal or state matching funds for a project; b) MDOT has been authorized by an agency administering any federal funds to award them to the sub-recipient; and c) the sub-recipient has agreed to fully reimburse the State in the event the sub-recipient does not use the funds in accordance with the purpose of the funding. A sub-recipient includes, but is not limited to, a local unit of government, a governmental authority, a private non-profit entity, a railroad or a rail service provider.

9. MDOT may enter into a cost participation contract with a local unit of government without approval of the Board if: a) the contract involves the construction or physical improvement of a street, road, highway, bridge or other structure congruous with transportation; b) the construction or improvement is funded by federal, state or local funds; and c) the contract is approved by each entity providing funds or in accordance with applicable law.

10. MDOT may enter into a contract in connection with the award of a grant, including state matching funds, to a local unit of government, a governmental authority, a private non-profit entity, a railroad or a rail service provider, without approval of the Board if the contract provides that the recipient will fully reimburse the State in the event grant funds are not used in accordance with the terms of the grant.

11. MDOT may enter into a contract with an airport sponsor without approval of the Board if the contract has been approved by the Michigan Aeronautics Commission.

12. MDOT may enter into a contract or award a grant without approval of the Board in situations where emergency action is required. For all emergency contracts or grants of \$250,000 or more, MDOT must transmit to the Board a written report setting forth the nature of the emergency and the key terms of the contract or grant within 30 days of executing the contract or awarding the grant.

13. Notwithstanding any provision of this resolution, the Board may require MDOT to report the status of any project and may require MDOT to obtain Board approval of any contract, grant or any amendment to a contract.

This Resolution is effective _____, 2011.