

**Frequently Asked Questions (FAQs):**  
**Consultant Selection for Local Agency Projects**  
**September 2018**

These FAQs apply to consultant/vendor service contracts when federal funds are used to pay for those services.

**Q: Is the Third-Party Agreement the same as the Project Contract (Cost-Sharing Agreement) that the Local Agency (County, City, Village) signs with MDOT?**

**A:** No, the Project Contract is an agreement between the Local Agency, MDOT, and FHWA (if applicable) for the construction of a project, and preliminary or construction engineering (if applicable).

The Third-Party Agreement is the agreement between the Local Agency and a Consultant for consultant services that are to be reimbursed with Federal or state funds. Typically, there are separate agreements for each type of reimbursable service, such as preliminary engineering (PE) and construction engineering (CE).

**Q: Is a Third-Party Agreement required? If not, what is required?**

**A: Services \$100,000 and above:** The local agency shall follow the competitive negotiation/Quality Based Selection (QBS) process as discussed below. A third-party agreement is required.

**Services from \$25,000 to less than \$100,000:** The local agency may use its current small purchase procedure per 23 CFR 172.7a(2), if it complies with all state and federal laws. Note that the project, work, and phases can not be broken down into smaller components to be less than the \$100,000 limitation. Also note that any contract modification or amendment that would cause the contract to exceed \$100,000 will not be eligible for State or Federal Aid funding unless a QBS process was utilized. A minimum of three consultants is required to ensure an adequate number of qualified sources were reviewed. A third-party agreement is required.

**Services less than \$25,000:** The Local Agency shall submit its 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 Local Agency Program (LAP) staff will review the agreement to ensure that this statement is included, and that the agreement is in compliance with State and federal laws.

In addition, an executed form 5108L "Certification of Indirect (Overhead) Rate" needs to be submitted with the Local Agency/Consultant Agreement. A third-party agreement is not required. MDOT form 5108L is on the MDOT LAP website at the link:

<https://mdotjboss.state.mi.us/webforms/GetDocument.htm?fileName=5108L.pdf>

**Q: Can I use an "as-needed" selection or contract? Does the age/duration matter?**

**A:** Yes, if it complies with the above requirements and does not exceed five years from the date of advertisement, including any extensions of time. The initial contract should not exceed two to three years, which would allow for potential extensions without exceeding the five-year limit.

**Q: Is there a template of a Third-Party Agreement?**

**A:** Yes, on the MDOT-LAP website at:

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

Click the "Third Party Agreement Template" link.

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**Q: Can we edit the Third-Party Agreement Template?**

**A:** Yes, however all changes must be noted by the local agency, then reviewed and approved by MDOT. Please be aware that the changes will add additional time to the agreement approval process.

**Q: Does the Third-Party Agreement have to be executed (signed and dated) by both the Local Agency and the Consultant prior to submitting to MDOT?**

**A:** It is at the Local Agency's discretion if they would like to have MDOT review the Agreement prior to execution. Local Agencies should consider the ease of obtaining the signatures prior to making this decision. If an executed agreement is received by MDOT and changes are required, the agreement will need to be revised, re-executed, and resubmitted. This could potentially lead to some delay. Please verify that the fixed fee does not exceed 15% of the total cost of the agreement.

**Q: What is QBS? Is it required?**

**A:** QBS is an acronym for Qualifications-Based Selection. It is required by law for all consultant services which are greater than or equal to \$100,000 and reimbursed with Federal or state funds. It is also recommended that QBS be utilized if the costs could potentially exceed \$100,000. The QBS process ensures that the Consultant is selected based on project related qualifications, and not by low bid. **Cost-related items cannot be requested or considered in the selection process.**

Selecting a Consultant Firm – General QBS Process Summary

1. The Local Agency issues a request for qualifications/proposal based on a scope of work.
2. Statements of qualifications that are based on established, publicly available criteria are evaluated.
3. A short-list of qualified firms is determined. Interviews with these firms may be held.
4. The firms are ranked according to qualifications/criteria.
5. The Local Agency selects the most qualified (highest-ranked) firm and negotiations begin.
6. If the proposal fee is acceptable (contract pricing is determined to be fair and reasonable based on the scope, complexity, professional nature, and estimated value of services), an MDOT-approved agreement is executed by the Local Agency and Consultant and submitted to MDOT.
7. If an agreement cannot be reached with the top-ranked firm, those negotiations are ended, and negotiations begin with the next-most-qualified firm.

Please refer to the following MDOT Policies and Procedures for more information:

[https://www.michigan.gov/documents/mdot/Consultant\\_Management\\_Local\\_Agency\\_Vendor\\_Procurement\\_Guidance\\_527793\\_7.pdf](https://www.michigan.gov/documents/mdot/Consultant_Management_Local_Agency_Vendor_Procurement_Guidance_527793_7.pdf)

**Q: How long and where should I publish an RFP/RFQ? What if fewer than three firms respond?**

**A:** A RFP/RFQ shall be posted for a minimum of three weeks from issuance and made publicly available through media sources (newspapers, trade group listserv/publications, local agency website, etc.). If fewer than three firms respond, and the Local Agency would like to proceed, a representative of the local agency shall contact its MDOT LAP engineer for authorization in writing to proceed with negotiations. The local agency must include documentation stating how the project was advertised and the reasons they feel justified in proceeding with the lone or most qualified firm.

**Q: What is a Certification of Indirect (Overhead) Rate?**

**A:** This is a form (MDOT 5108L) that provides assurance that the Consultant overhead rate is based only on allowable costs in accordance with the Federal Acquisition Regulations (FAR) 48 CFR Part 31. The form is on the MDOT LAP website at the link:

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<https://mdotjboss.state.mi.us/webforms/GetDocument.htm?fileName=5108L.pdf>

as well as in the Third-Party Agreement Template.

Please be aware that overhead rate in the “derivation of cost” shown within the Third-Party Agreement must match the Form 5108L. It must be completed by the prime consultant for themselves and any subconsultants.

**Q: What is the “Technical Evaluation”?**

**A:** MDOT needs to know that the Local Agency has reviewed the Third-Party agreement and finds that the hours and personnel assigned to the project appear reasonable for the scope of work needed. For auditing and negotiating purposes, the Local Agency is required to develop its own estimate of hours and cost (and place in the project file) prior to negotiations. The Local Agency must notify the MDOT Staff Engineer of its evaluation and acceptance of the consultant’s proposal. This can be handled as simply as an email stating, “We find that the hours and personnel assigned to this project appear reasonable for the scope of work required.”

**Q: How long does it take for a Third-Party Agreement to be Authorized? Who do I contact to get a status update?**

**A:** There may be as many as three reviews that have to take place with a submitted Third-Party Agreement- Staff Engineer, Contract Engineer, and MDOT’s Office of Commission Audit (OCA). Each review is done consecutively, and each may find things that need to be addressed by the Local Agency prior to moving forward. If the agreement is over \$100,000, then the OCA will be the final reviewer, which does add time to the review. If it is \$25,000 to \$100,000, the MDOT Staff Engineer and Contract Engineer will review. For agreements less than \$25,000, only the Staff Engineer will review. The review process could take anywhere from several days to several weeks depending on the contract amount and complexity of the project.

Please contact your MDOT Staff Engineer by email or phone as needed to inquire about the status of your approval.

**Q: Are obligation, approval and authorization the same thing? At what point may the consultant start work?**

**A:** Obligation, approval and authorization are not the same. **Obligation** is when the funding is officially designated to the project. Up until obligation, money is assigned to a programmed project, but nothing is official or guaranteed. This typically happens after MDOT approved final plans, supporting documents and S/TIP clearance have been submitted (i.e. you need **approval** from your staff engineer for the job to be submitted for obligation). MDOT operates on a first come, first serve basis until all the funding for the fiscal year is gone. Once obligation has been received from the State or FHWA, charges eligible for reimbursement can start to be incurred.

All costs or charges prior to obligation are not eligible for reimbursement. For Preliminary Engineering (PE), reimbursable costs start at the date of obligation and for Construction Engineering (CE) work, costs incurred after the letting date of the project are reimbursable

The **authorization** is a written ‘go ahead’ from MDOT written by the MDOT Staff Engineer authorizing reimbursement of the reimbursable costs in LARS (Local Agency Reimbursement System) and means that all other items have been reviewed and approved. Authorizations are based on the date of obligation, but the actual reimbursement of costs to the local agency cannot happen until everything (cost sharing agreement, executed third party agreement, authorization, etc.) is signed. Work begun prior to Authorization is at the Local Agency’s own risk, with no guarantee that federal funds may be reimbursed.

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**Q: Can I use MiDEAL contracts to hire a consultant in lieu of QBS?**

**A:** No, to comply with federal-aid requirements for a contract above \$100,000, the process would have to follow 23 CFR 172.7(a)(1) Competitive negotiation – which would require a RFP specific to the project, task or service to be evaluated for the consultant’s specific technical approach and qualifications available to all prequalified consultant for the engineering service requested. Similarly, it may be difficult for an agency to meet the small purchase procedure requirements of 23 CFR 172.7a(2) through MiDeal.

**Q: What is the “Conflict of Interest Matrix”?**

**A:** The FHWA instituted a policy regarding Consultant Conflict of Interest which required MDOT to form a matrix to help local agencies decide how to secure their consultants and minimize the potential for Conflict of Interest when using Federal funds to pay for either Preliminary Engineering (PE) or Construction Engineering (CE). Depending on which or both of those functions you are seeking to be reimbursed for, the matrix assists in determining whether one consultant may perform both scopes of work. For the matrix, please see the last page at the link at:

[https://www.michigan.gov/documents/mdot/Final\\_Conflict\\_of\\_Interest\\_Policy\\_021412\\_376724\\_7.pdf](https://www.michigan.gov/documents/mdot/Final_Conflict_of_Interest_Policy_021412_376724_7.pdf)

**Q: A local agency can’t just hire any firm at their choosing for PE or CE work?**

**A:** If there are no Federal funds being used to reimburse the consultant’s fees then, yes, the local agency may hire any qualified consultant utilizing its existing procurement procedures. However, if there are federal funds being used to pay for PE and or CE services, then depending on each local agency’s situation, they may not be able to hire the same consulting firm for both functions.

If you have any questions regarding this, please contact your LAP Staff Engineer early to determine which, if any, restrictions you may face.

**Q: We don’t have a City (or County) Engineer. Multiple consultants have helped us with engineering work. How do we assess if hiring a certain consultant creates a conflict of interest?**

**A:** Look at who performed the initial scoping of the project and produced an initial estimate of cost for that scope of work (typically to get the correct amount of Federal Aid into the Transportation Improvement Plan at planning level). That Consultant would be exempt from performing work on either federally funded PE or CE.

**Q: The matrix states that I need to “mitigate”. What should I do?**

**A:** Mitigation is an assurance that a licensed engineer, who is not part of the consultant staff performing either CE or PE, will resolve a potential conflict of interest should it arise by providing necessary controls and sufficient oversight to minimize or eliminate any potential for conflict. MDOT will be looking for the assurance in writing of who will be performing that function, as required by the matrix. This could be a publicly employed engineer from either the local agency, another local agency, or consultant, who is willing to perform that function.