

Appendix C

REQUIREMENT CHECKLIST FOR CONSULTANT SERVICES FOR CATASTROPHIC FAILURE OR EMERGENCY/DISASTER RECOVERY WHEN REIMBURSED WITH FEDERAL FUNDS

23 *CFR* 172.7(a)(3)(iii)(B) allows a Local Agency to use the noncompetitive contracting procedure to procure the services of a consultant when, "...there is an emergency which will not permit the time necessary to conduct competitive negotiations".

A "Catastrophic Failure", as defined by 23 *CFR* 668.103, is the sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

If a Local Agency chooses to use engineering consultants that it currently has under contract for as-needed services, the Local Agency must provide the MDOT Project Manager with documentation demonstrating how the consultants were selected, including:

- A summary of the RFP and solicitation
- A copy of the governing board's action
- A general statement that the consultants have performed similar services on recent federally funded projects delivered through MDOT.

For this case, the Local Agency prepares and forwards to MDOT Project Manager a work order or similar document that outlines the work to be completed in the authorization, the schedule of deliverables, and the agreed upon costs for the professional services. The submittal needs to also include completed [MDOT Form 2660](#), as well as a summary of the consultant's direct and indirect costs, overhead rate and amount, the percentage and amount of the fixed fee, and the percentage and amount of the Facilities Capital Cost. The total amount of the professional services should not exceed the estimated costs for these services, listed in the Detailed Damage Inspection Report (DDIR), [FHWA Form 1547](#), as approved by MDOT and Federal Highway Administration (FHWA). Such costs are not capped and can be modified during the course of the agreement, after the Local Agency provides sufficient justification for such increases to MDOT and FHWA, and both agencies approve the cost increase.

If a Local Agency does not have an engineering consultant under contract for as-needed services, the Local Agency is required to do the following:

1. Develop a scope of services.
2. Request availability of qualified personnel and bids from at least three consultants that have satisfactorily performed similar work for the Local Agency on recent federally funded projects delivered through MDOT.
 - a. It is recommended that the Local Agency contact consultants which have MDOT prequalification for the type of work proposed.

- b. If three consultants cannot be found, refer to the “**Procurement of Consultant Services**” section for more information.
3. Provide LAP Project Manager with documentation demonstrating how the consultants were selected.

This procurement must be consistent with all other applicable local, State and Federal laws, regulations, and requirements.

The Local Agency forwards this information to the LAP Project Manager, along with the document that outlines the work to be completed in the authorization, the schedule of deliverables, and the agreed upon costs for the professional services. The submittal needs to also include completed MDOT Form 2660, as well as a summary of the consultant’s direct and indirect costs, overhead rate and amount, the percentage and amount of the fixed fee, and the percentage and amount of the Facilities Capital Cost. The total amount of the professional services should not exceed the estimated costs for these services, listed in the DDIR, as approved by MDOT and Federal Highway Administration (FHWA). Such costs are not capped and can be modified during the course of the agreement, after the Local Agency provides sufficient justification for such increases to MDOT and FHWA, and both agencies approve the cost increase. All engineering costs must be tracked to the approved Detailed Damage Inspection Report (DDIR) regardless of which method above is used. It is recommended that the Local Agency does not issue a notice to proceed to the consultant until FHWA approval of the DDIR(s). Federal funds are not eligible for reimbursement until FHWA approval of the DDIR.