

**MDOT Policies & Procedures  
For  
Consultant/Vendor Services on Local Agency Federal-Aid Projects**

**Approved May 2016  
Revised October 2017; Revised March 2023**

**PURPOSE**

This document outlines the requirements that a Local Agency must follow regarding preliminary engineering, construction engineering, and/or testing services receiving reimbursement with Federal Aid Highway Program (FAHP) funds. The requirements ensure that a qualified consultant is obtained through an equitable selection procurement process, and that prescribed work is properly accomplished in a timely manner and at fair and reasonable cost. Eligibility of consultant/vendor services to be paid for with FAHP funds is at the discretion of the program manager, Rural Task Force, or Metropolitan Planning Organization.

*23 CFR (Code of Federal Regulations) 172* requires MDOT to prepare and maintain written policies and procedures which Local Agencies must follow to assure compliance with applicable requirements. All Local Agency/Consultant or Third-Party Agreement contracts must comply with the following policies and procedures, as well as referenced documents and legislation, to be eligible for FAHP fund reimbursement.

**ELIGIBLE CONSULTANT SERVICES**

Consultant Services eligible for FAHP funds are defined as follows:

*23 CFR 172.3:*

1. Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project (subject to *23 U.S.C. (U.S. Code) 112(a)* as defined in *23 U.S.C. 112(b)(2)(A)*); and
2. Professional services of an architectural or engineering nature, as defined by State law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project (subject to *23 U.S.C. 112(a)* and as defined in *40 U.S.C. 1102(2)*).

*40 U.S.C. 1102(2)(C):*

- "...including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services".

23 U.S.C. 149(b):

- The operating costs for traffic monitoring, management, and control systems, such as integrated traffic control systems, incident management programs, and traffic control centers.
  - For projects located in air quality non-attainment and maintenance areas, and in accordance with the eligibility requirements of 23 USC 149(b), Congestion Mitigation and Air Quality Improvement Program funds may be used for operating costs for a 3-year period, so long as those systems measurably demonstrate reductions in traffic delays. Operating costs include labor costs, administrative costs, costs of utilities and rent, and other costs, including system maintenance costs, associated with the continuous operation of the system.

## **PROCUREMENT OF CONSULTANT SERVICES**

Procurement of Consultant Services utilizing FAHP funds will fall into one of three categories.

1. Services Estimated **under \$250,000**
  - [Appendix A](#) (PDF Format)
2. Services Estimated **over \$250,000**
  - [Appendix B](#) (PDF Format)
3. Services for Catastrophic Failure or Emergency/Disaster Recovery
  - [Appendix C](#) (PDF Format)

A Requirement Checklist for each category can be found in the above stated appendices, as well as in a linked PDF checklist.

Estimates Near Threshold:

If the estimated costs for services are near the financial threshold and costs are not capped, it is recommended that the Local Agency utilize the requirements of the higher category. If the higher category is not used, then any contract modification or amendment causing the total contract amount to exceed the category threshold would be ineligible for FAHP funding.

As-Needed/On-Call Consultants- Defined:

Consultant contract for services for a number of projects, under task or work orders issued on an as-needed or on-call basis, for an established contract period.

Scope of Services:

The Scope of Services (for selections under \$250,000) or Request for Proposals (for selections at or over \$250,000) shall include a project description, description of required activities including milestone dates and intended bid letting date, and location map. As-needed/on-call solicitations and contract provisions shall include a maximum total dollar amount that may be awarded under a contract, a reasonable maximum length of contract (see

Contract Duration below), and a statement of work, requirements, specifications, or other descriptions to define the services. Additionally, if multiple consultants are to be selected and multiple contracts awarded through a single solicitation, the following must be included: identify the number of consultants that may be selected or contracts that may be awarded and specify the procedures the contracting agency will use in competing and awarding task or work orders among the selected, qualified consultants. Refer to *23 CFR 172.9* for more details.

#### Inadequate Number of Interested Consultants:

The Federal Highway Administration (FHWA) considers three responses as the minimum number to meet the adequate number of responses requirement. In instances where only one or two qualified consultants responded, evaluation and selection can proceed if the solicitation did not contain conditions or requirements which arbitrarily limited the competition. In this case, the Local Agency shall contact the MDOT Local Agency Program (LAP) Engineer by email, including the following: Project description and location, length of time of advertisement, estimated cost of services, consultants showing interest, past performance information of the consultant(s) (if applicable), and the recommended selection request with reasons. The LAP Engineer will forward the information to the MDOT Development Services Division (DSD) Administrator for review. Upon review of documentation provided, the MDOT DSD Administrator will provide written concurrence to proceed with negotiations with the selected consultant.

#### Disadvantaged Business Enterprise (DBE):

The Local Agency shall consider 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))

#### Local Presence/Local Preference:

The Local Agency shall not use local preference as a factor in selection. In addition, when scoring proposals for services at or over \$250,000, DBE participation and local presence combined cannot exceed 10% of the score.

#### Contract Duration:

Consultant service contracts, including as-needed/on-call selections or contracts, shall not exceed 5 years from the date of advertisement. This includes any contract modifications or extensions of time. The initial contract duration should not exceed 2-3 years, which will allow for potential extensions without exceeding the 5-year time limit.

#### Record Retention:

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 and in accordance with *2 CFR 200.333*. Please also refer to the Local Agency's record retention policy, as State law may have longer requirements.

#### Suspension and Debarment:

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/>) and keep this documentation in the permanent contract file. (<http://www.fhwa.dot.gov/legsregs/directives/orders/20002b.cfm>)

#### Consultant in a Management Support Role:

Management support roles include, but are not limited to, 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 MDOT LAP Engineer must request FHWA written concurrence of the RFP and conflict of interest plan to use federal funds for procuring consultants in a management support role prior to any solicitation of services.

### **LOCAL AGENCY RESPONSIBLE CHARGE**

Per 23 CFR 172.9(d), a full-time, public employee of the contracting agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role, or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, the contracting agency shall designate a public employee as being in responsible charge. A public employee may serve in responsible charge of multiple projects and contracting agencies may use multiple public employees to fulfill monitoring responsibilities.

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 and must complete the “Compliance Certification Form”. The Responsible Charge will:

- Know the contract requirements, scope of services to be performed, and products to be produced by the consultant.
- Know the qualifications and responsibilities of the consultant’s staff and evaluating any requested changes in key personnel.
- Schedule and attend progress and project review meetings to assure work is progressing in accordance with established scope of work and scheduled milestones are being met.
- Review the consultant’s invoices to ensure that the costs are allowable and in accordance with the Federal cost principles.
- Ensure that costs are consistent with the contract terms as well as the acceptability and progress of the consultant’s work.

- Evaluate and participate in decisions for contract modifications, document contract monitoring activities and maintain supporting contract records. See Section III for compliance certification form.

## **CONTRACT MODIFICATIONS**

The Local Agency Responsible Charge will evaluate all requests to amend the current contract.

Contract modifications are required for any amendments to the terms of the existing, MDOT approved contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

A contract modification shall clearly define and document the changes made to the contract, establish the method of payment for any adjustments in contract costs, and follow the terms and conditions of the contract and original procurement. Only the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made may be added to a contract.

Contract modifications shall be negotiated following the same procedures as the negotiation of the original contract.

For all additional preliminary engineering, construction engineering, and/or testing services outside of the scope of work established in the original request for proposal, the Local Agency shall:

1. Procure the services under a new solicitation;
2. Perform the work itself using agency staff; or
3. Use a different, existing contract under which the services would be within the scope of work.

The Third-Party Agreement Template uses a cost-plus fixed fee method of payment. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost-plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost-plus fixed fee or lump sum reimbursed contracts.

The Local Agency Responsible Charge shall submit drafts of all contract modifications to the MDOT LAP Engineer for approval by MDOT LAP Section. If applicable, review by Michigan's Office of Commission Audits (OCA) will be required. LAP's authorization must be issued to the Local Agency before the Local Agency authorizes any work relating to the contract modification.

## **REIMBURSEMENT OF COSTS**

The Local Agency Responsible Charge must review all invoices and supporting documentation to verify that the costs claimed have been incurred, are allocable to the contract, and comply with the Federal cost principles (48 CFR 31). The Local Agency must pay the allowable costs, and provide LAP with such documentation, as part of the Local Agency's request for reimbursement. All allowable costs are subject to audit by the Office of Commission Audit (OCA) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles. **All work performed prior to obligation of FAHP funds is not eligible for reimbursement, and it also cannot be used as non-Federal matching funds. Any work completed prior to LAP's authorization (and prior to the completion of OCA's review when applicable) may not be eligible for FAHP funds.**

### **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 fiscal responsibility for the errors and/or omissions. The procedures the Local Agency must follow are outlined in the Third Party Agreement Template, Section VI "Exhibit C – Dispute Resolution", found on the LAP website, at [Third Party Agreement Template](#).