

Consultant Advisory

2021-01

February 9, 2021

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Consultant Contract Expiration Dates

For all RFP's submitted on or after March 1, 2021, Contract Services Division (CSD) will be adding a six-month extension/buffer to consultant contract expiration dates.

To reduce the number of contract time extensions and retroactive time extensions, CSD will be adding an extension or cushion to consultant contract expiration dates to all engineering services, both design and construction phase, with the exception of as-needed contracts or project specific contracts awarded under an as-needed selection. In addition to the currently provided 'Anticipated Start Date' and 'Anticipated Completion Date', the following statement will be required in all applicable scopes:

"The Contract term will be from the Anticipated Service Start Date and extend six months beyond the Anticipated Service Completion Date".

Example for a Six Month Estimated Service Period

Anticipated Service Start Date:	July 1, 2020	Date to be determined by PM for inclusion in the RFP
Anticipated Service Completion Date:	December 31, 2020	Date to be determined by PM for inclusion in the RFP
Contract Expiration Date:	June 30, 2021, for the six- month service period, in the example.	Date to be determined by CSD

Notes:

- The extension of the contract expiration date by six months does not in any way affect the timeline for the delivery of the services, as determined by the prime consultant and the MDOT Project Manager. This is purely for administrative purposes only.
- The actual contract start date may not always align with the start date identified in the RFP. In these cases, the contract expiration date will be modified accordingly.
- All applicable generic scopes have been updated to include the six-month extension/buffer language.

Parameters:

- Not to be implemented for as-needed contracts.
- Not to be implemented for any project specific contracts awarded under an as-needed selection.
- To be used only on contracts that include prequalification classifications.

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2021-02

February 24, 2021

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Prequalification Updates

Financial Prequalification Updates:

On February 20, 2021, Contract Services Division published updated versions of the following Financial Prequalification documents:

- [Financial Prequalification Questionnaire for Compiled Indirect Cost Rates](#)
- [Financial Prequalification Questionnaire for Audited Indirect Cost Rates](#)
- [Financial Prequalification Questionnaire for the Users of the Safe Harbor Rate](#)
- [Related Party Cost of Ownership Calculation Worksheet](#)
- [Facilities Capital Cost of Money Calculation Worksheet](#)

To avoid inquiries from MDOT requesting additional information, please be sure to supply the most recent version of the applicable Financial Prequalification Questionnaire during the annual prequalification renewal.

The following pages contain a brief description of the revisions to each document.

Classification Specific Updates:

On October 1, 2020, MDOT CADD Workspace standards were updated to require the use of MDOT's accepted version of Bentley CONNECT products. This update in design standards directly impacts MDOT consultant prequalification requirements, and all classifications where MicroStation was previously required have been updated to include the current Bentley CONNECT module(s).

At this time, no action is required by current prequalified consultants and prequalification in any classification where MicroStation was previously identified will remain current until the firm's annual prequalification renewal. Annually all prequalified vendors are required to supply updated General and Financial Prequalification Information, in which a certification of equipment will be collected via the [Annual Renewal Certification Document](#).

For complete annual prequalification renewal instructions, please review pages fifteen through seventeen of the [MDOT Consultant Prequalification Application Instructions](#).

REVISIONS TO MDOT'S FINANCIAL PREQUALIFICATION QUESTIONNAIRES

Financial Prequalification Questionnaire for Audited Indirect Cost Rates

FPQ Page	Original Language	Revised Language
1	Indirect Cost Rate Audit Report including all opinions, schedules, and notes for Home Office (Example 1), and Field or Project Offices (Example 2), as applicable.	Indirect Cost Rate Audit Report including the report on internal controls and all opinions, schedules, notes for Home Office (Example 1) and Field or Project Offices (Example 2), as applicable.
1	<i>N/A – New worksheet</i>	If the company received a Paycheck Protection Program (PPP) loan through the Federal Coronavirus Aid, Relief, and Economic Security Act complete this Worksheet.
7	<i>N/A – New question</i>	B.8. Paycheck Protection Program - Did the company received a Paycheck Protection Program (PPP) loan through the Federal Coronavirus Aid, Relief, and Economic Security Act?

Financial Prequalification Questionnaire for Compiled Indirect Cost Rates

FPQ Page	Original Language	Revised Language
2	<i>N/A – New worksheet</i>	If the company received a Paycheck Protection Program (PPP) loan through the Federal Coronavirus Aid, Relief, and Economic Security Act complete this Worksheet.
8	<i>N/A – New question</i>	B.8. Paycheck Protection Program - Did the company received a Paycheck Protection Program (PPP) loan through the Federal Coronavirus Aid, Relief, and Economic Security Act?

Financial Prequalification Questionnaire for Users of the Safe Harbor Rate

FPQ Page	Original Language	Revised Language
2	<i>N/A – New worksheet</i>	If the company received a Paycheck Protection Program (PPP) loan through the Federal Coronavirus Aid, Relief, and Economic Security Act complete this Worksheet.
8	<i>N/A – New question</i>	B.8. Paycheck Protection Program - Did the company received a Paycheck Protection Program (PPP) loan through the Federal Coronavirus Aid, Relief, and Economic Security Act?

Calculation Worksheets

FPQ Attachment	Original Language	Revised Language
Related Party Cost of Ownership	Treasury Rates were listed through 2019	Updated to add 2020 Treasury Rates
FCCM Calculation	Treasury Rates were listed through 2019	Updated to add 2020 Treasury Rates

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2021-03

March 03, 2021

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Updated MDOT Conflict of Interest Guidance Document

Since 2008, the Michigan Department of Transportation (MDOT) has utilized a Conflict of Interest document for use by both MDOT Project Managers and consulting firms that contract with MDOT. To bring the guidelines up to date and to document the revised process that must be used in determining whether a conflict of interest exists, a revised Conflict of Interest Guidance document has been implemented. The purpose of the guidance is to ensure that consultants have not entered into a contract where there may be a conflict of interest as well as to ensure compliance with 23 CFR, Section 1.33 Conflicts of Interest.

The Conflict of Interest Guideline is broken down into the following sections:

- Department Responsibilities
- Consultant Responsibilities
- Examples of a Conflict of Interest
- Examples of when the Department will determine whether a Conflict of Interest Exists
- Example of when a Conflict of Interest does not exist

Please note that these examples are not intended to be all inclusive.

To disclose a conflict or perceived conflict of interest, a Conflict of Interest Determination Request may happen at any time during the Project/Contracting Process:

- Prior to the submittal of a proposal
- During the Selection of a consultant
- After Selection Approval but prior to contract award
- During the performance of the service

In all cases, the process documented in the Guideline for determining whether a conflict of interest or the appearance of a conflict of interest exists, must be followed.

To review the current [Conflict of Interest Guidance Document](#), please visit MDOT's website.

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March 12, 2021

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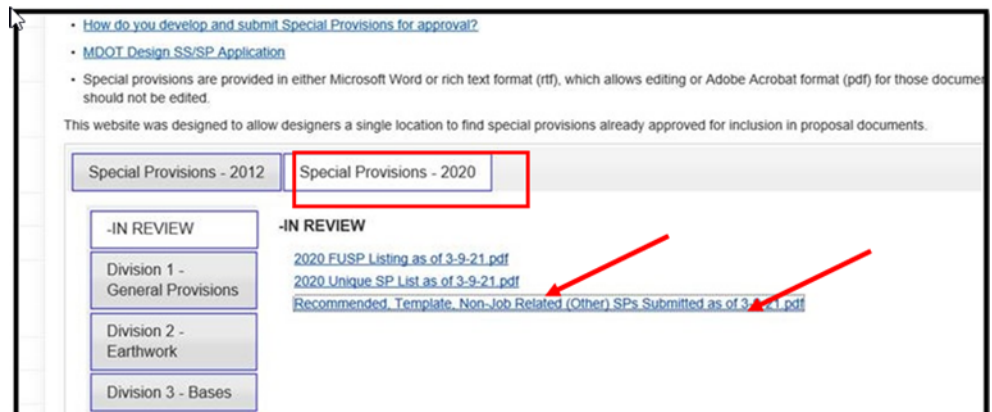
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MDOT Unique SPs - Migrating from 2012 to 2020 Spec Book

Until MDOT has fully switched over to the new 2020 Spec Book with the **Aug 2021 Letting and beyond, please note the guidance below when updating 2012 Unique SPs to 2020.**

- All Recommended and Template SPs that will be carried over for 2020 (*that are not already approved*) are being tracked internally by MDOT.
 - Before submitting any revised drafts, be sure to check the applicable conversion list found here:
<https://mdotjboss.state.mi.us/SpecProv/specProvHome.htm>
 - Note: MDOT's technical experts were tasked with updating all of the 2012 Recommended and Template SPs for 2020.
 - **Designers do not need to submit any of these if they are being carried over for the new spec book.**
- MDOT is also tracking updated non-recommended/template 2020 Unique SPs.
 - Before submitting any updated drafts, be sure to check the applicable conversion list found here:
<https://mdotjboss.state.mi.us/SpecProv/specProvHome.htm>
 - MDOT QA will only be accepting **one** SP for any item of work
 - If you find a Special Provision that is in review but is needed for an earlier letting than noted, please have your MDOT PM notify QA so approval can be coordinated in time to make your specified letting.
 - **Duplicate submittals will be rejected.**
 - If changes are needed, once the 2020 Unique SP is approved (and on the web) you can then submit it with revisions if updates are still needed for your project (ensuring the use of track changes).



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2021-05

March 19, 2021

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Update to Tier I and Expedited Contracting Selection Processes

In March 2020, MDOT implemented a revised Tier I Contracting Process, applicable for both State and Federally Funded Project Phases less than \$250,000, and established an Expedited Contracting Process, an optional process for 100% State Funded Projects Phases greater than \$250,000. These processes were detailed in [Consultant Advisory 2020-2](#).

Please be advised that the following modifications to the Tier I and Expedited Contracting processes have occurred:

Small Business Program - Tier I Selections:

Effective January 2021, MDOT made a modification to the Tier I process, requiring all MDOT Project Manager's, when contacting a minimum of three consultants, must contact at least one Small Business Program (SBP) certified vendor, if such is available for the required Primary prequalification classification(s). If this a specialty service with no prequalification classification, there is no SBP contact requirement.

Form 5100D – Tier I and Expedited Selections:

Effective April 1, 2021, to ensure compliance with recent updates to MDOT's Conflict of Interest Guidance Document, as detailed in [Consultant Advisory 2021-03](#), all Scopes of Services for both the Tier I and the Expedited contracting processes, will require Form 5100D be included with consultant submittals. All applicable internal generic scopes and checklists have been updated to include this requirement.

To review updated process maps and/or the current Form 5100D, please follow the links below:

- [Tier I Process Map](#)
- [Expedited Process Map](#)
- [5100D Form](#)
- [Selection Guidelines for Service Contracts](#)

* If Form 5100D does not open automatically, please follow these [instructions](#).

Consultant Advisory

2021-06

April 22, 2021

Revision to the Conflict of Interest Guidance Document

Consultant Advisory 2021-03, dated March 3, 2021 provided information on MDOT's revised Conflict of Interest Guidance Document. The purpose of the revised Conflict of Interest Guidance Document is to: bring the previous guidelines up to date; to document the revised process that must be used in determining whether a conflict of interest exists; and to ensure compliance with 23 CFR, Section 1.33 Conflicts of Interest.

Following the publication of Consultant Advisory 2021-03, subsequent discussions took place which resulted in a revision to the Conflict of Interest Guidance Document:

- The statement: "If the consultant or their affiliate provided or will provide services to a developer involving the same project", has been moved from the ***"Examples of a Conflict of Interest"*** section of the document, to become example number four under the section of the document ***"The following are examples where the department will judge based on the circumstances whether a conflict of interest exists or not"***.

To view the revised [Conflict of Interest Guidance Document](#), please visit MDOT's website.

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Consultant Advisory

2021-07

May 24, 2021

Second Revision to the Conflict of Interest Guidance Document

Consultant Advisory 2021-06, dated April 22, 2021 provided an update to the Conflict of Interest Guidance Document. Advisory 2021-07, is to provide notification of an additional revision to the Document, to ensure compliance with 23 CFR, Section 1.33 Conflicts of Interest.

- The statement: "If the consultant or their affiliate provided or will provide services to a developer involving the same project", has been revised to read: "If the consultant or their affiliate is providing or will provide services to another business entity or organization that is involved with the same project", and has been moved from the header ***"The following are examples where the department will judge based on the circumstances whether a conflict of interest exists or not"***, to the header ***"Examples of a Conflict of Interest"***.

Consultants and Project Manager's are encouraged to seek guidance from MDOT if a potential conflict of interest situation seems possible.

To view the revised Conflict of Interest Guidance Document [Conflict of Interest Guidance](#), please visit MDOT's website.

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Consultant Advisory

2021-08

August 2, 2021

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Treatment of Paycheck Protection Program (PPP) Loan Forgiveness

On March 24, 2021, the Federal Highway Administration (FHWA) issued guidance on Paycheck Protection Program (PPP) loan forgiveness for Federally funded contracts ([HCFB-30 Memorandum](#)). The FHWA's guidance provided several parameters for use and treatment of forgiven PPP loans. Most notably:

1. Forgiven PPP funds may not be used to pay for direct costs on Federal acquisition Regulation (FAR) based, actual-cost type contracts (FAR Contracts).
2. FAR 31.201-4 requires the applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost to be credited to the Government, either as a cost reduction or by cash refund.
3. Credits for forgiven PPP funds must therefore be allocated via, and be recovered through, a reduction to indirect costs in the year the funds were spent.

In order to comply with the FHWA guidance, and to provide stability in contract pricing and consultant billing, MDOT will require the following:

1. Any consultant receiving forgiveness of PPP loan will calculate the amount, if any, that is ultimately creditable to applicable MDOT *FAR contracts*. **This calculation will not be required unless, or until, a consultant is granted loan forgiveness**, and will comprise two components: 1) Calculating an Indirect Cost Credit and 2) Calculating the Recoverable Amount.
 - MDOT will require consultants to provide documentation supporting a) the allocation of forgiven funds to the consultant's costs during the PPP loan period (e.g. the indirect cost reduction), and b) the allocation of any resulting indirect cost credit to MDOT's *FAR Contracts*.
 - The Indirect Cost Credit and Recoverable Amount shall be calculated and applied to the period*(s) in which forgiven PPP funds were spent. This ensures proper allocation to the affected cost objectives and eliminates the risk of over or under recovery in the event loan forgiveness occurs in future periods.
2. **Consultants will continue to use their MDOT-approved and accepted full indirect cost rates for invoicing and priced proposal, meaning no PPP credit should be reflected in the indirect cost rate(s) submitted to MDOT for use and acceptance at the time of prequalification.** This will mitigate the administrative burdens and the effect of the project-level credits on future contract estimation, negotiation, and billing.

**Period refers to the consultant's fiscal year used for financial reporting purposes in accordance with generally accepted accounting principles.*

Treatment of Paycheck Protection Program (PPP) Loan Forgiveness - (Continued)

Calculating the Indirect Cost Credit

The amount of the forgiven PPP loan will be credited to indirect costs for the period*(s) in which forgiven PPP funds were spent. The amount of the forgiven PPP loan credited to indirect costs can be reduced for the following items:

1. PPP funds spent on unallowable indirect costs, as supported by the forgiveness application.
2. PPP funds spent on direct costs for contracts other than *FAR Contracts*.

MDOT may request detailed support for any figures in this credit calculation.

Calculating the Recoverable Amount

Consultants will allocate the Indirect Cost Credit to its direct labor base for the period in which the forgiven PPP funds were spent. The portion allocable to MDOT's FAR contracts represent the amount recoverable by MDOT.

Step 1:

Using the direct labor base for the applicable-period's indirect cost rate calculation, segregate the base into 1) labor applicable to MDOT's *FAR Contracts*, and 2) all other contracts.

Step 2:

Calculate the percentage of the base represented by MDOT's FAR Contracts.

Step 3:

Multiply the Indirect Cost Credit by the percentage from Step 2. This is the Amount to be Recovered.

MDOT Recovery

The Amount to be Recovered by MDOT (Step 3 above) will be repaid pursuant to an agreement by each firm with MDOT. For example, the firm can make one payment, either through check or through a reduced future invoice, or the firm and MDOT can agree to a payment plan that includes several payments or reductions to several future invoices on any affected contracts until MDOT has collected the entire Amount. To reiterate, the indirect cost *rate* will not be adjusted as part of whatever repayment process is settled upon.

Should the FHWA provide additional guidance, or if regulations are changed or clarified, MDOT will revisit the preceding determination to ensure it is in compliance with any authoritative directives.

Consultant Advisory

2021-09

November 23, 2021

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Paycheck Protection Program Loan – Q&A Session Information

On October 19, 2021, MDOT hosted an informational session regarding the treatment of forgiven Paycheck Protection Program (PPP) loans through an expanded explanation of the process components identified within MDOT Consultant Advisory [2021-08 – Treatment of PPP Loan Forgiveness](#).

During the session, representatives from MDOT's Contract Services Division and Office of Commission Audits provided an overview of FHWA issued guidance, compliance requirements, and the approach Consultants must utilize when calculating the Cost Credit and the Recoverable Amount. MDOT discussed its anticipated approach to collect/review/approve the Recoverable Amount calculations, and repayment plan, via invoice reduction(s). Following the initial presentation, participants were given the opportunity to provide feedback and/or ask questions.

To provide additional clarity for session attendees and offer inclusion to industry partners that were unable to attend, MDOT has posted the following documents:

- Treatment of PPP Loans – 10/19/2021 [Presentation Slides](#)
- Treatment of PPP Loans – 10/19/2021 [Question and Answer Responses](#)

MDOT is working to finalize all process documentation and anticipates issuing formal guidance for the following processes in the near future. The process steps will include:

- Notifying MDOT of loan forgiveness
- Submittal/Acceptance of Recoverable Amount calculations
- Recovery Amount repayment via invoice reduction, when applicable
- Compliance requirements

As a reminder, no PPP credit should be reflected in the indirect cost rate(s) submitted to MDOT during annual prequalification renewal. Consultants will continue to use their MDOT-approved/accepted full indirect cost rate(s) during invoicing and priced proposal.