

**LOCAL PUBLIC AGENCY (LPA) – FEDERAL-AID PROJECT**  
**COMPLIANCE CHECKLIST FOR A&E SERVICES**  
**FOR PROJECTS WITHIN A HIGHWAY RIGHT-OF-WAY**  
**(IDIQ Contracts Only)**

LPA: \_\_\_\_\_

Task Assignment: \_\_\_\_\_

Project Name: \_\_\_\_\_

Description of Services: \_\_\_\_\_

Type of Project:

- Baltimore City
- Montgomery County
- Prince George's County
- Other (please specify): \_\_\_\_\_

**Part I. Initiating A/E Procurement Requirements**

*Selection of contract type, procurement, and payment methods to be used based on the estimated cost for the scope of work to be completed by A/E consultant contract.*

**Contract Type:**

- On-call or indefinite delivery/indefinite quantity (IDIQ) – A contract for the performance of 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 and dollar amount. This method also requires MDOT SHA's **approval** of the Local's Consultant Task Selection Process in awarding of task orders in compliance with **23 CFR 172.9 (a)(3)**. Procurement procedures will involve a multi-step process with issuance of a request for statements or letters of interest or qualifications (EOI) whereby responding consultants are ranked based on qualifications and a Request for Proposal (RFP) is then provided to three or more of the most highly qualified consultants.

*\*The LPA shall **attach** their Local's Consultant Task Selection Process.*

**Procurement Method:**

- A/E Services exceeding \$200,000 – Competitive Negotiation (Qualifications-based selection/QBS) – **23 CFR 172.7(a)(1)**, requires open competition by advertising, evaluation, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price.

Information on Public Posting sourcing Solicitations is available at:

<https://procurement.maryland.gov/wp-content/uploads/sites/12/2021/01/2e-eMMA-QRG-Creating-Public-Posting-Sourcing-Solicitations-Public-Notice.pdf>

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□ **Payment Method:**

- Cost plus Fixed Fee – A cost-reimbursement contract that provides for payment to the consultant of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost but may be adjusted as a result of changes in the work to be performed under the contract.
- Cost per Unit of Work – A contract with a set rate to be charged on a project for each unit of work completed. This method of payment should be utilized when the work per unit can be determined in advance with reasonable accuracy, but the extent of the work is **indefinite**.

□ **Independent Cost Estimate is attached.**

- The LPA shall prepare a detailed independent estimate based on the maximum value of the IDIQ contract with an approximate breakdown of the work or labor hours, types or classifications of labor required, escalation over the duration of the IDIQ contract, indirect costs, other direct costs, and consultant’s fixed fee for the defined scope of work. Select the scope applicable to the project.
  - Preliminary Design
  - Final Design
  - Construction Inspection and Management

**Local Public Agency:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

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**Part II. Solicitation Requirements** – *Expression of Interest (EOI) and Request for Proposal (RFP). Complete the EOI with all the required language (Federal and/or State) for the advertisement after the selection of contract type, procurement and payment methods were made in Part I.*

**A. Procurement Method**

- Procurement Type is specified in the Solicitation:
  - A/E Services ***exceeding \$200,000*** / Competitive Negotiation (QBS)

**A/E Services exceeding \$200,000 / Competitive Negotiation (QBS)**

- Solicitation’s Scope of Services includes all work necessary to complete the project/projects and includes, at a minimum:
  - Purpose and description of the types of projects
  - Services to be performed
  - Deliverables to be provided
  - Minimum qualifications for experience, expertise, education, licensure of staff
  - Applicable Standards, Specifications and Policies
- The solicitation states that procurement methods and procedures follow **The Brooks Act**, which requires open competition by advertising, evaluation, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price.
- Solicitation includes an estimated schedule for the procurement process and establishes submittal deadlines for response(s) not less than **28 calendar days** from the date of issuance of the Advertisement for EOI.
- Information on Public Posting sourcing Solicitations is available at:  
<https://procurement.maryland.gov/wp-content/uploads/sites/12/2021/01/2e-eMMA-ORG-Creating-Public-Posting-Sourcing-Solicitations-Public-Notice.pdf>
- The solicitation includes a list of Evaluation Criteria and explains that responding firms will be rated and ranked based on their Expression of Interest (EOI) according to the criteria arranged in order of importance and with their relative weight as appropriate. Example criteria may include:
  - *General competence*
  - *Past performance on LPA/State work or similar work*
  - *Compatibility of size of firm with size of proposed project*
  - *Capacity to accomplish the proposed work in required time*
  - *Financial responsibility*
  - *Measures of protection for the LPA against errors and omissions*
  - *Key Staff*
  - *Professional licensure*
  - *Similar Project Experience / Example Projects*

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- *Specialized Expertise (if applicable)*
  
- Solicitation states that consultants expressing interest in this advertisement and ranked most qualified shall be requested to submit Technical Proposals and that additional information will be supplied to the selected firms so that they can prepare such proposals. The firms that submit the highest rated Technical Proposal will be requested to submit Price Proposals.
  
- The solicitation will specify the maximum length of the **On-call or indefinite delivery/indefinite quantity (IDIQ) contract**, not to exceed 5 years; specify the maximum total contract dollar amount that may be awarded under the contract; and identify the number of consultants selected or contracts that may be awarded under the solicitation.
  
- Solicitation includes the procedures the LPA will be using in competing and awarding Task Assignments or Work Orders among the selected, qualified consultants.
  
- **Note to the LPA:** Task Assignments shall not be completed and awarded among the selected qualified consultants on the basis of costs under the IDIQ contracts, but under an additional QBS procedure (which may include, but does not require, a formal RFP).
  
- The solicitation shall include language that Task Assignments will be issued based upon, but not limited to the following:
  - *Qualification*
  - *Scope of Work*
  - *Past Performance*
  - *Staff Availability*
  - *Quality Control*
  - *Timeliness*
  - *Workload capacity of the firms*
  
- Solicitation will specify that awarded Task Assignments will be negotiated as stand-alone assignments terminating when the task budget is exhausted, or the task time frame has expired, or the task has been completed. **No funds or tasks are guaranteed under these contracts.**
  
- The solicitation provides assurance that qualified in-State and out-of-State consultants will be given a fair opportunity to be considered for award and encourages **MDOT certified DBE** firms to respond.
  
- Solicitation's Scope of Services does **NOT** include Real Estate Services, Information Technology (IT) Services (e.g., development, maintenance, etc.) or Administrative Services.
  
- Consultant Services in a Management Support Role. A consultant acting in a management

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advisory role may be defined as a consulting firm or individual representative of a firm acting on the contracting agency's behalf to perform engineering management services or other services which are subject to review and oversight by agency officials, such as a program or project administration role typically performed by the contracting agency and necessary to fulfill the duties imposed by title 23 U.S.C., other Federal and State laws, and applicable regulations. More information can be found in 23 CFR 172.7(b)(5) and <https://www.fhwa.dot.gov/programadmin/172qa.pdf>. FHWA approval is required prior to procuring a consultant to act in a management support role for the contracting agency.

**B. Contract Type** – An *IDIQ contract* is a multi-step process with issuance of a request for expressions/letters of interest/qualifications (EOI) and interested consultants are ranked based on qualifications and the most highly qualified consultants are requested to submit Technical Proposals.

- The RFP letter requests from the most highly qualified consultants (based on their EOI) to submit the following eight (8) distinct parts in their Technical Proposals, as determined and depending on the nature and complexity of the project. For additional detailed information, please see [MDOT SHA Request for Proposal \(RFP\)](#):
  - *Scope of Services*
  - *Work Plan*
  - *Key Staff*
  - *Time Estimate*
  - *Computer/CADD*
  - *Subcontractors*
  - *DBE Compliance*
  - *Financial Capacity and Insurance*
  
- RFP letter includes a list of Evaluation Criteria and explains that responding firms will be rated and ranked based on their Technical Proposals according to the criteria arranged in order of importance and with their relative weight as appropriate. For additional detailed information, please see [MDOT SHA Request for Proposal \(RFP\)](#):
  - *Scope of Services*
  - *Specialized Expertise (if applicable)*
  - *Work Plan*
  - *Key Staff*
  - *Time Distribution*
  - *Computer/CADD*
  - *Concept of Project*
  - *Financial Responsibility*
  - *Measure of Protection for LPA against Errors and Omissions*
  - *Other (if applicable)*
  
- The RFP letter includes the requirements for any discussions that may be conducted with **three (3) or more** of the most highly qualified consultants following submission and evaluation of proposals. The letter must specify the parameters of the discussion and

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explain how it will be used in the technical selection and/or negotiation process.

- RFP letter states that consultants submitting Technical Proposals and ranked most qualified may be requested to submit Price Proposals.
- If a Price Proposal is solicited, the highest technical ranked consultant shall submit the proposal documentation in three (3) separate envelopes, and specifically marked as follows. For additional detailed information, please see [MDOT SHA Request for Proposal \(RFP\)](#):
  - Price Proposal: The consultant shall exercise caution that the manhours proposed in the Price Proposal correspond and equate to the percentage distribution of man hours previously furnished in the Technical Proposal.
  - DBE Package, if required.
  - Financial Statement and Data.
- Solicitation must specifically address how final selection will be made after evaluation of Technical Proposals. The LPA must document completely in the project's Administrative Record the process in which consultant selection was made.
- The solicitation shall contain the following language: As per State Finance & Procurement, State Government Article 17-701 – 17-707 of the Annotated Code of Maryland the firm(s) selected for a given Contract will be required to provide "Certification Regarding Investments in Iran". Furthermore, selected firms must comply with the State of Maryland Executive Order 01.01.2017.25 Prohibiting Discriminatory Boycotts of Israel in State Procurement.
- The solicitation states that if requested, price proposals must include: 1) Bid/Proposal Affidavit executed by the Prime/JV; 2) Certification for Federal-Aid Contracts executed by the Prime/JV and all of the Subcontractors; and 3) Truth in Negotiation Certification executed by the Prime/JV and each proposed Subconsultant. For additional information, please see [MDOT SHA Consultant Services Center](#).
- Solicitation requires that the submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals, since these shall not be considered in the evaluation, ranking and selection phase.
- The solicitation shall provide evidence of consideration to DBE firms in accordance with 49 CFR 26.53 and provide a DBE percentage goal. Individual contract goals should be established via MDOT SHA Federal Aid Programming Section by the Procurement Review Group/Construction and the MDOT SHA Office of Equal Opportunity. Additional information on compliance and goal setting may be found at <https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.26&rgn=div5#se49.1.26>

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- Solicitation includes that DBE firms must be certified by MDOT in those NAICS code(s) at the time of the RFP submission and remain certified through contract award by MDOT to participate on federally funded projects.
- The following Title VI language should be included in the solicitation:

The INSERT LPA Name, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises (DBE) will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Consultants interested in submitting an Expression of Interest must comply with the SPECIAL PROVISIONS, AFFIRMATIVE ACTION REQUIREMENTS, UTILIZATION OF DISADVANTAGED BUSINESSES, THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987, ISTEA OF 1991, MAP 21 OF 2012, FAST Act 2015, and INFRASTRUCTURE INVESTMENT AND JOBS ACT OF 2021 (See Attachment 6 of MDOT SHA Request for Proposal located at [www.roads.maryland.gov](http://www.roads.maryland.gov)).

INSERT LPA Name hereby notifies all bidders/offerors that in regard to any contract entered into pursuant to this advertisement, whenever the term “disadvantaged” and “minority” is used, it is understood to include women. The terms “disadvantaged”, and “minority” include certified female owned businesses, which will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex, or national origin in consideration for an award. It is the goal of INSERT LPA Name that disadvantaged business enterprises participate in all federal-aid contracts. Each contract will be evaluated for the placement of a goal for DBE participation on a contract-by-contract basis. MDOT certified DBE firms are encouraged to respond to this solicitation.

- No language is included in any of the procurement documents referencing a maximum or cap on indirect cost rates.
- Indirect cost rates shall be established consistent with 23 CFR 172.11 and include one of the following methods. Select the method applicable to the project:
  - The LPA may accept a consultant’s indirect cost rate(s) established for a one-year applicable accounting period that has been established by a cognizant State or Federal agency in accordance with Federal cost principles;
  - The LPA may establish a provisional indirect cost rate(s) that is negotiated with the Consultant for interim reimbursement pending final settlement of the actual allowable overhead at the completion of the contract. The LPA shall base the

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final negotiated overhead rate on actual costs incurred during the period involved. When the negotiated final indirect cost rate is determined or settled, any interim payments shall be adjusted accordingly;

- For firms not having an audited overhead rate, the Consultant may consult with MDOT SHA's Office of Procurement and Contract Management for approval to use the Safe Harbor Rate of 120%. Safe Harbor applies to Consultant firms who lack the financial capability to either develop an overhead rate or lack the resources to hire a CPA to develop it for them, or Consultant firms who do not have relevant contract cost history to use as a base for developing its own overhead rate. Approval to use the Safe Harbor Rate must be obtained in advance of cost and price negotiations with the LPA. The criteria for eligibility and instructions on how to apply are available at: [Safe Harbor Rate Guidance.pdf \(maryland.gov\)](#); or,
  - The Consultant may present an overhead rate proposal and negotiate a rate with MDOT SHA's Office of Procurement and Contract Management in advance of cost and price negotiations with the LPA. The negotiated rate obtained from MDOT SHA is contingent upon the Consultant obtaining a FARS level audit to determine a final rate and any adjustments necessary to interim and/or final payments. If an audit is not obtained prior to final payment, the negotiated rate will stand as the basis for payment on all indirect costs incurred over the duration of the contract.
- Consistent with COMAR 21.12.02.08(D), the LPA shall arrange for pre-audits and post-audits, as required. All rates used in cost-plus-fixed-fee compensations shall be verified.
  - The LPA must document in the project's Administrative Record how indirect cost rates were established with the Consultant. This documentation must be filed and available for inspection and audit.
  - The solicitation includes insurance requirements (types and coverage levels) and stipulates measures for protection against Consultant errors and omissions. The solicitation must establish what and how much insurance is expected at a minimum, and what documentation is expected as verification.

### **C. Payment Method**

- Solicitation stipulates Method of Payment (*please choose one*):
  - Cost plus fixed fee
  - Cost per unit of work
- An *independent cost estimate* has been completed and will be used as a basis for determining fairness by the time price negotiations with selected Consultant(s) takes place. The cost estimate should provide, as a minimum, a breakdown of:
  - Work or labor hours



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- Types or classifications of labor required
  - Escalation over the duration of the IDIQ contract
  - Indirect costs
  - Other direct costs
  - Fixed fee
- Pursuant to 23CFR 172.11, the LPA acknowledges that prior to the conclusion of price negotiations, the LPA must certify to the SHA Federal Aid Programming Section that the selected Consultant's cost/man-hours compare favorably to the LPA's independent cost estimate and appear reasonable, that any proposed profit/fixed fee is reasonable, and that all costs incurred or cost estimates included in negotiated prices are allowable in accordance with the federal Cost Principles at 2 CFR 200 Subpart E. ***The certification should be provided to MDOT SHA Office of Finance - Federal Aid Programming Section prior to the conclusion of price negotiations with selected firms.***
- The LPA certifies that fixed fees shall be in keeping with 23 CFR 172.11 (b)(3). Notably, fixed fees more than 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist.

**Local Public Agency:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

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**Part III. Contract Requirements**

*The contract between the LPA and consultant has all required contract provisions (Federal and/or State) for the A/E consultant selected through the advertising, evaluation, ranking, selecting, and negotiating contracts that were made in Part II.*

- Pursuant to 49 CFR 26.29 a provision must be placed in every USDOT-assisted contract requiring prime contractors to promptly pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment that MDOT makes to the prime contractor. To the extent that it is not inconsistent with federal law, all prime contractors shall also comply with all Maryland laws and regulations regarding the prompt payment to subcontractors. ***The LPA certifies that prompt payment provisions will be included in subsequent contract documents prior to Notice to Proceed.***
  
- The LPA certifies that in accordance with 49 CFR §26.13, each contract between the LPA and the contractor and each subcontract the prime contractor signs with a subcontractor, must include the following assurance “The contractor, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as LPA deems appropriate, which may include, but is not limited to:
  - (1) Withholding monthly progress payments;
  - (2) Assessing sanctions;
  - (3) Liquidated damages; and/or
  - (4) Disqualifying the contractor from future bidding as non-responsible.”
  
- The LPA agrees that if a Supplemental Agreement is warranted, the Scope of Work must be within the original Advertised Scope, from which the qualifications-based selection was made.
  
- The LPA agrees to the following **Procurement Records Management and Retention Policy** in their subsequent contract documents for this procurement:
  - Consistent with COMAR 21.07.01.21 the LPA shall retain and maintain all records and documents relating to this procurement for a period of three (3) years after final payment to the Contractor and shall make them available for inspection and audit by authorized representatives of the State of Maryland and the Federal Highway Administration (FHWA) at any time during or after the procurement.
  
  - The Contract shall include the following language: The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the *insert LPA Name* hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer

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or designee, at all reasonable times.

- The LPA agrees to include the following **Contract Requirements** in their subsequent contract documents for this procurement:
  - Consultant Conflict of Interest per 23 CFR 172.7(b)(4) (example available at [www.roads.maryland.gov](http://www.roads.maryland.gov)).
  - Contract Affidavit executed by the Prime (example available at [www.roads.maryland.gov](http://www.roads.maryland.gov))
  - All contracts and subcontracts exceeding \$100,000 shall contain a provision for lobbying certification and disclosure, as specified at 49 CFR 20.
  - Contract clauses for **Sanctions and Penalties** for violation or breach of contract and provision for **termination for cause and for convenience** including how it will be affected and the basis for settlement.
  - Contract references MDOT SHA General Conditions, which has additional contract provisions required per 23 CFR 172.9(c) to be included either by reference or physical incorporation, please see [MDOT SHA Request for Proposal \(RFP\) Section XI](#).
  - Contract references MDOT SHA [Specifications for Consulting Engineers' Services Volume II](#) which has additional contract requirements.

**Local Public Agency:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**Final Procurement Review Completed by RIPD:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

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**OPCM Recommendations:**

Project Name: \_\_\_\_\_

- In compliance with FHWA Regulations – OPCM recommends approval.
- OPCM recommends approval contingent upon the LPA addressing the attached Findings/Comments.
- Not in compliance with FHWA Regulations. Prior to approval, OPCM must receive revisions addressing the attached Findings/Comments. This checklist must be returned with the revised submittal.

**Revisions/Corrections:**

Date Received: \_\_\_\_\_

**Findings/Comments:**

- In compliance with FHWA Regulations

**MDOT SHA OPCM Reviewer:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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**Part IV. Contract Administration and Monitoring**

*The LPA must assign a full-time employee of the LPA to be in responsible charge. Per 23 CFR 172.9 (d)(1) “Responsible charge. 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, as specified in § 172.7(b)(5), 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 public employee's responsibilities shall include:
  - Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant;
  - Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
  - Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
  - Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
  - Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
  - Evaluating and participating in decisions for contract modifications; and
  - Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333.
  - Directing project staff, agency, or consultant, to carry out project administration and contract oversight, including proper documentation.
  - Being aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.
- The responsibilities mentioned above cannot be delegated to consultants.
- The LPA shall prepare an evaluation summarizing the consultant’s performance on a contract, per 23 CFR 172(d)(2).
- Please provide names of LPA employees, their titles, and roles to SHA prior to FHWA authorization.

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**Part V. FHWA FMIS Authorization**

*FHWA authorization is needed to provide NTP to the A/E consultant to commence work per the contract and contract provisions included in Part III.*

- Proceed with FMIS Authorization (FHWA Federal-Aid Project Agreement)
  
- [Only for Preliminary Design (30% Plans)]** Evidence of coordination with SHA OPPE on NEPA Requirements is included in the submittal for Preliminary Design authorization:
  - Approved Statewide Programmatic Categorical Exclusion (PCE) #1
  - Task Order Scope of Work to complete 30% plans
  - Task Order Cost to complete 30% plans
  
- [Only for Final Design (60%, 90%, 100% Plans)]** Evidence of coordination with SHA OPPE on NEPA Requirements is included in the submittal, along with any other needed SHA Office compliance approvals for Final Design authorization:
  - Approved PCE (number other than #1)
  - Approved Categorical Exclusion (CE)
  - Approved Finding of No Significant Impact (FONSI)
  - Task Order Scope of Work to complete 60%, 90%, 100% plans
  - Task Order Cost to complete 60%, 90%, 100% plans

**Package Reviewed and Completed by FAPS:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

All questions and/or requests should be directed to:

MDOT SHA Office of Finance  
Federal Aid Programming Section  
707 North Calvert Street  
Baltimore MD 21201  
Mail-Stop C-509  
(410) 545-5774