LOCAL PUBLIC AGENCY (LPA) – FEDERAL-AID PROJECT
COMPLIANCE CHECKLIST FOR A&E SERVICES
FOR PROJECTS OUTSIDE A HIGHWAY RIGHT-OF-WAY

LPA: _____

Project Name: _____

Description of Services: _____

Type of Project:

- ☐ Recreational Trails Program (RTP)
  - ☐ Project entirely outside a highway right-of-way

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 Type**:
  - ☐ Project Specific – A contract between the local contracting agency and consultant for the performance of services and defined scope of work related to a specific project or projects (ex. planning, preliminary design or final design or construction inspection/management). Procurement procedures will involve a single step process with issuance of a request for proposal (RFP) to all interested consultants.
  - ☐ Multiphase – A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses (ex. planning, preliminary design, final design, and construction inspection/management). Procurement procedures will involve a single step process with issuance of a request for proposal (RFP) to all interested consultants.

- ☐ **Procurement Method**:
  - ☐ A/E Services exceeding **$200,000** – **COMAR 21.12.02**, Qualifications-based selection procurement procedures that 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

  - ☐ A/E Services **$200,000** or Less – **COMAR 21.12.03**, The method of procurement of engineering and design related services where a **minimum of 2 qualified sources** are reviewed and the total contract costs does not exceed an established threshold of $200,000. **Note:** A list of qualified sources is developed through solicitation posted in eMaryland Marketplace Advantage (eMMA).

- 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

☐ **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**.
- ☐ Specific Rates of Compensation – A contract with a set rate to be charged on the project for each hour of work completed. The negotiated rate typically consists of an hourly rate, overhead, and a profit. Direct expenses would be in addition to the specific rate.

☐ **Independent Cost Estimate** is attached.

The LPA shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. Select the scope applicable to the project. Multiple boxes may be checked for multi-phase projects but separate Notice to Proceed is required for each phase.

- ☐ Planning
- ☐ Preliminary Design
- ☐ Final Design
- ☐ Construction Inspection and Management

Local Public Agency:

Signature: _____ Date: _____

Title: _____

Part II. Solicitation Requirements – *Request for Proposal (RFP)*

Complete the RFP with all 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***
  - ☐ A/E Services ***$200,000 or Less***

A/E Services exceeding $200,000 / COMAR 21.12.02

- ☐ Solicitation's Scope of Services includes all work necessary to complete the project and includes, at a minimum:
  - Purpose and description of the project
  - Services to be performed
  - Deliverables to be provided
  - Minimum qualifications for experience, expertise, education, licensure of staff
  - Estimated schedule for performance of work
  - Applicable Standards, Specifications and Policies

- ☐ The solicitation states that procurement methods and procedures 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 incudes a 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 RFP.

- ☐ The solicitation includes the requirements for any discussions that may be conducted with **two (2) or more** of the most highly qualified consultants following submission and evaluation of proposals. The solicitation must specify the parameters of the discussion and explain how it will be used in the technical selection and/or negotiation process.

- ☐ 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

- ☐ The solicitation 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)*

☐ 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.

☐ The solicitation's Scope of Services does **NOT** include Real Estate Services, Information Technology (IT) Services (e.g., development, maintenance, etc.) or Administrative Services.

A/E Services $200,000 or Less / COMAR 21.12.03

☐ Solicitation's Scope of Services includes all work necessary to complete the project and includes, at a minimum:
- Purpose and description of the project
- Services to be performed
- Deliverables to be provided
- Minimum qualifications for experience, expertise, education, licensure of staff
- Estimated schedule for performance of work
- Applicable Standards, Specifications and Policies

☐ Solicitation incudes a 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 RFP.

☐ The solicitation package includes a potential bidders list with a **minimum of 2 qualified sources** for approval process only. **Note:** The bidder's list is developed through solicitation in eMaryland Marketplace Advantage (eMMA).

☐ 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

☐ The solicitation 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 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 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

- ☐ Solicitation for **Project Specific/Multiphase contract** includes the single step process with issuance of a request for proposal (RFP) to all interested consultants and requested 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
- Financial Capacity and Insurance
- Other (if applicable)

☐ The solicitation states that after review, rating and ranking of the Technical Proposals by the LPA, the highest technical ranked consultant may be requested to submit a Price Proposal.

☐ If a Price Proposal is solicited, the 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 develop a time estimate required to perform the required services. 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 the OPCM Consultant Services web page at: https://www.roads.maryland.gov/mdotsha/pages/Index.aspx?PageId=767

☐ 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_141

☐ 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 a Technical Proposal 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).

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 contacts. 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.

☐ Indirect cost rates shall be established consistent with COMAR 21.05.03.04 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 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; 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.

☐ 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
- ☐ Specific rates of compensation

☐ 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
- Types or classifications of labor required
- Indirect costs
- Other direct costs
- Fixed Fee

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- ☐ Pursuant to 23 CFR 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 (Federal Acquisition Regulations). ***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.***

Local Public Agency:

Signature: _____ Date: _____

Title: _____

Part III. Contract Requirements

Contract between 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 contract 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:

  Procurement Records Management and Retention Policy

  - ☐ 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 or designee, at all reasonable times.

☐ The LPA agrees to include the following Contract Requirements in their subsequent contract documents for this procurement:

Contract Requirements

- ☐ Policy for Consultant Conflict of Interest (example available at: www.roads.maryland.gov)
- ☐ Contract Affidavit executed by the Prime (example available at 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: _____

Procurement Review Completed by GPMD:

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: _____

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.
- □ Please provide names of LPA employees, their titles, and roles to SHA prior to FHWA authorization.

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Part IV. 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 Planning]** Evidence of coordination with SHA OPPE on planning requirements is included in the submittal for planning authorization:

- ☐ Approved Statewide Programmatic Categorical Exclusion (PCE) #1
- ☐ A/E Scope of Work to complete data collection, base plan preparation, feasibility report and coordination
- ☐ A/E Cost to complete study and/or workplan

☐ **[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
- ☐ A/E Scope of Work to complete 30% plans
- ☐ A/E 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)
- ☐ A/E Scope of Work to complete 60%, 90%, 100% plans
- ☐ A/E 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