



**Department of
Transportation**
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March 28, 2024: Office of Local Programs – LPA Manual Update – Consultant Contract Administration

The requirements below shall apply to all Municipal Local Public Agency (LPA) projects where ODOT provides USDOT funding, or the local entity is the subrecipient of any federal funding for any phase of a project, and where the municipality has hired a firm to serve as the Contracted Municipal Engineer. All other types of funding such as State, County, Local, or other sources are subject to the laws and rules governing those sources and Ohio's Ethics Laws. (Note/exception: As of January 1, 2024, Federal LPA projects in development being designed by the Contracted Municipal Engineer that have completed Stage 2 plans and have been authorized for Final Engineering may not be subject to the 3rd Party Consultant requirements below. Projects that have not developed beyond Stage 2 must follow the requirements below).

In accordance with 23 CFR 1.33, the following eligibility requirements apply:

1. Definitions:

- a. Engineer of Record - A Professional Design Firm engaged by the municipality to perform project specific Professional Design Services for the municipality.
- b. Contracted Municipal Engineer - A Professional Design Firm engaged by the municipality to serve as the municipal engineer.
- c. 3rd Party Consultant - A Professional Design Firm engaged by the municipality to perform Owner's Representative Services when the Contracted Municipal Engineer is serving as the Engineer of Record.
- d. Professional Design Services – Per Ohio Revised Code (ORC) §153.65(C), services within the scope of practice of an architect or landscape architect registered under Chapter 4703. of the Revised Code or a professional engineer or surveyor registered under Chapter 4733. of the Revised Code.
- e. Professional Design Firm – Per ORC §153.65(B), any person legally engaged in rendering Professional Design Services.
- f. Owner's Representative Services - Project management, contract oversight, design review, contract negotiations, invoice review, etc.

2. Pre-Funding Services

- a. A Contracted Municipal Engineer may perform pre-funding Professional Design Services in support of a Federal Aid LPA project funding application, such as conceptual design, cost estimates, technical assessments of existing infrastructure, various studies, application forms, etc.
- b. This same Contracted Municipal Engineer may be eligible to serve as the Engineer of Record and provide Professional Design Services to the Federal Aid LPA project if the municipality allows, and if the municipality and the Contracted Municipal Engineer meet

the requirements of the QBS Process described in #3 below and the 3rd Party Consultant requirements in #4 below. All pre-funding services information must be made available with the programmatic posting to all consultants during the QBS process.

3. Quality Based Selection (“QBS”) Process

- a. When the municipality has hired a Contracted Municipal Engineer, the municipality shall select the project specific Engineer of Record for Professional Design Services via the QBS process (ORC 153.65 to 153.71) in accordance with the ODOT Consultant Services Manual and ODOT LPA Manual.
- b. When the Contracted Municipal Engineer is seeking to be hired to perform project specific Professional Design Services as the Engineer of Record, neither the Contracted Municipal Engineer nor its firm shall have any involvement with the QBS process for the selection of the Engineer of Record.
- c. Documentation, including solicitation documents, Q&A records, evaluation scores, etc., of the QBS Process shall be provided by the municipality to the ODOT District LPA Manager.

4. 3rd Party Consultant

- a. If a municipality desires to hire their Contracted Municipal Engineer to provide project specific Professional Design Services as the Engineer of Record, special considerations apply on Federal Aid LPA projects to comply with 23 CFR 1.33 to provide transparency to the public and avoid a conflict of interest.
- b. The Contracted Municipal Engineer may be eligible to provide project specific Professional Design Services as the Engineer of Record on Federal Aid LPA projects under the following conditions:
 - i. the Contracted Municipal Engineer that carries the necessary ODOT prequalifications prescribed in the Request for Qualifications is selected via the QBS Process;
 - ii. the municipality shall follow applicable state law to hire a qualified 3rd Party Consultant to work on behalf of the municipality to provide Owner’s Representative Services on the Federal Aid LPA project; and
 - iii. the municipality provides documentation of the 3rd Party Consultant agreement, and, if applicable, the QBS Process documentation shall be provided to the ODOT District LPA Manager.
 - iv.

**The Contracted Municipal Engineer/their firm must not review and accept their own work nor approve their own invoices for payment. **

5. Other Situations

- a. Municipalities that have a publicly employed engineer may use that employee to perform Owner’s Representative Services and Professional Design Services. If the LPA hires an outside Engineer of Record or an outside Professional Design Firm, they must follow all applicable selection requirements including a QBS process where required.
- b. Municipalities that have engaged multiple Contracted Municipal Engineers that are independent from one another may designate one Contracted Municipal Engineer to perform Owner’s Representative Services and select another as the Engineer of Record if selected through the QBS process.