



Expires – Upon Issuance of LPP

\$150,000 Simplified Acquisition Threshold

I. BACKGROUND

The Final Rule in the Federal Register: (Volume 75, Number 167) issued on August 30, 2010, and effective on October 1, 2010; raised the Federal simplified acquisition threshold established in 41 U.S.C. 403(11), and in 48 CFR 2.101 of the Federal Acquisition Regulations from \$100,000 to \$150,000 for making small purchases of supplies or services. This raised threshold requires revision of Chapter 10 “Consultant Selection” of the Local Assistance Procedures Manual.

II. PURPOSE

The purpose of this Office Bulletin is to revise Chapter 10 “Consultant Selection” of the Local Assistance Procedures Manual as follows:

- (a) To specifically revise a portion of Section 10.2 “Identifying & Defining a Need for Consultants” under the heading entitled “ESTIMATED COST OF CONSULTANT WORK” to now read as follows:

ESTIMATED COST OF CONSULTANT WORK

An independent cost estimate is needed for consultant contracts (required for contracts over **\$150,000**) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance, so the local agency’s negotiating team has a detailed cost analysis of the project to evaluate the reasonableness of the consultant’s cost proposal. The estimate, which is specifically for the use of the local agency’s negotiating team, is to be kept confidential.

- (b) To specifically revise a portion of Section “10.3 Consultant Selection Methods” under the heading entitled “ENGINEERING SERVICES UNDER \$100,000” to now read as follows:

ENGINEERING SERVICES UNDER \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.5(a)(2) modified by FHWA Memorandum dated June 26, 1996, and 49 CFR 18.36(d).

Local agencies should be fully aware that consultant services costing in aggregate no more than **\$150,000** per contract, may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and provide justification for the selection. It shall be documented and supported. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible.

Price or rate quotation may be considered in the selection. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts.

Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language be included.



- (c) To specifically revise a portion of Section 10.3 “Consultant Selection Methods” under the heading entitled “PERSONAL SERVICES CONTRACTS” to now read as follows:

PERSONAL SERVICES CONTRACTS

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel. When personal engineering services less than ***\$150,000*** are needed and federal and/or state reimbursement will be sought; these services may be obtained through Small Purchase Procedures up to a limit of ***\$150,000 per contract***.

The ***\$150,000*** is a cumulative limit for services provided by any individual consultant or consulting firm. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus-a-fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

- (d) To specifically revise Section 10.3 “Consultant Selection Methods” by adding a new heading and paragraph to read as follows:

LIMIT OF CONTRACT AMOUNT

The full amount of any contract modification or amendment that would cause the total contract amount to exceed \$150,000 would be ineligible for Federal-aid funding. FHWA reserves the right to withdraw all Federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold amount of \$150,000.

- (e) To specifically revise a portion of Section 10.7 “Completing The Project” under the heading entitled “REVIEW AND APPROVAL OF AGREEMENTS” to now read as follows:

REVIEW AND APPROVAL OF AGREEMENTS

Proposed contracts for consultant services including those for subcontracted work exceeding ***\$150,000***, must be reviewed by the local agency to verify that...

- (f) To specifically revise a portion of Exhibit 10-C “Consultant Agreement Reviewers Checklist” under the item entitled “**I. Selection Procedures Items needed for Review**” to now read as follows:

D. INDEPENDENT COST ESTIMATES (FOR CONTRACT OVER \$150,000)

Note: Revisions/additions to the foregoing are shown in ***bold italics***.

III. POLICY

The maximum total cost of a contract for services procured under small purchase/simplified acquisition procedures shall be \$150,000.

Small purchase/simplified acquisition procedures for engineering and design related services do not have to follow a competitive negotiation/qualifications based selection (Brooks Act) process



given the amount of contract (maximum of \$150,000 for the final contract amount), however, the contracting agency should take steps to ensure that an adequate number of qualified firms are considered including Disadvantaged Business Enterprise firms. FHWA considers three sources as the minimum number to meet the adequate number of sources requirement.

For small purchase procurements, local agencies must follow the State's laws, regulations, and procurement procedures which are not in conflict with applicable Federal laws and regulations. Project phases and contract requirements should not be broken down into smaller components merely to permit the use of Small Purchase Procedures.

The full amount of any contract modification or amendment that would cause the total contract amount to exceed \$150,000 would be ineligible for Federal-aid funding. FHWA reserves the right to withdraw all Federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

IV. PROCEDURE

All incidences of the "\$100,000" value in the aforementioned headings and paragraphs in Chapter 10 "Consultant Selection" of the Local Assistance Procedures Manual shall now be understood to mean "\$150,000".

V. APPLICABILITY/IMPACTS

This increase to the Simplified Acquisition Threshold, which became effective October 1, 2010; is applicable to the aforementioned paragraphs in Chapter 10 "Consultant Selection" of the Local Assistance Procedures Manual, and will allow local agencies to increase their procurements under the Small Purchase Procedures from \$100,000 to \$150,000.

Recommended: Original Signed By _____ 12/2/11
Eugene Shy, Committee Chair Date

Approved: Original Signed By _____ 12/2/11
Mohsen Sultan, Office Chief Date
Office of Policy Development and Quality Assurance