

**MEMORANDUM**

TO: ADOT Local Public Agencies Section - All Local Public Agencies – Sub-recipients  
ADOT Project Management Group, Roadway Group, Bridge Group, Traffic Group, Utility  
& Railroad Group, Right-of-Way Group, Environmental Planning Group, Transportation  
Technology Group, LPA Section, Project Resource Office

FROM: Michael DenBleyker, Manager – ADOT Engineering Consultants Section 

CC: Steve Boschen, ITD Director; Tom Deitering, FHWA

DATE: August 21, 2015

RE: Notice of Final Rulemaking for 23 CFR 172: Procurement, Management, and  
Administration of Engineering and Design Related Services regulations

---

This memorandum serves as notice that 23 CFR 172 has been updated, which may affect local public agency projects and delivery programs under the Federal-aid Highway Program. The State and all agencies which are sub-recipients of Federal-aid Highway Program funds are required to follow these updated regulations.

The FHWA published the Final Rule updating the Procurement, Management, and Administration of Engineering and Design Related Services regulations in the Federal Register on May 22, 2015 (Docket No. FHWA-2015-12024). The Final Rule became effective on June 21, 2015. The Final Rule can be found on the Federal Register Web site at: <https://federalregister.gov/a/2015-12024> or printed directly from: <http://www.gpo.gov/fdsys/pkg/FR-2015-05-22/pdf/2015-12024.pdf>

This rulemaking updates 23 CFR Part 172 governing the procurement, management, and administration of engineering and design related services directly related to a highway construction project and reimbursed with Federal-aid highway program (FAHP) funding. In issuing the final rule, FHWA revises the regulations to conform to changes in legislation and other applicable regulations [including the DOT's recent adoption of 2 CFR 200, the revised "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and removal of 49 CFR Parts 18 and 19]. It also addresses certain findings and recommendations for the oversight of consultant services contained in national review and audit reports. The general intent and requirements of the regulations outlined in 23 CFR Part 172 remain the same. Some of the significant modifications to the regulation include:

- Allows the selection of numerous consultants through a single "on-call" solicitation.
- Limits the maximum length of an "on-call" or an Indefinite Delivery – Indefinite Quantity (IDIQ) contract to 5 years.

- Requirements for Competitive Negotiations, including administration of a Qualifications Based Selection (QBS) process for each on-call task order project assignment.
- Requirement for Agencies to develop independent cost estimates for agency and consultant costs associated with a project to support federal funding authorization and prior to contract negotiations.
- Requirements for the State and all sub-recipients to incorporate Title VI/Non-Discrimination Assurances into all contract and contract solicitation documentation.
- Requirements for use of consultants or sub-consultants serving in management support roles (supplemental services consultants).
- Allows states the flexibility to determine their own consultant performance evaluation process.
- Allows the use of DBE commitment and local presence as evaluation criteria for up to 10% total, while clarifying the distinction between a prohibited "local preference" and an allowable "local presence".
- Provides guidance regarding what type of "discussions" will take place following the submission and evaluation of proposals.
- Removes the provisions that permitted States to use "alternative" or "equivalent" State qualifications-based selection procedures (to match 2006 law change).
- Revises, eliminates or includes several definitions or phrases such as the terms "subconsultant", "fixed fee", "management support role" and others.
- Responsibilities of Consultants, States and Sub-Recipients for contract cost accounting.

States and Sub-recipients are required to implement the requirements outlined in the revised regulations on all new procurement activities initiated after June 21, 2015. However, States and Sub-recipients have 12 months from the effective date of the Final Rule to update and obtain approval of their written policies and procedures. The updated regulations outline the requirements for the State and each sub-recipient in developing and maintaining their written policies and procedures.

Additional information regarding the procurement and administration of consultant services funded in whole, or in part, with Federal-aid highway program funds can be found on the HFWA Consultant Services website: <http://www.fhwa.dot.gov/programadmin/consultant.cfm>. To view the currently available, online webinar that explains the Final Rule, please visit:

<https://connectdot.connectsolutions.com/p305ikqxt04/?launcher=false&fcsContent=true&pbMode=normal>

ADOT Engineering Consultants Section (ECS) is currently updating its "ECS Contract Award and Administration Manual" to be in conformance with the updated regulations. The updated document will be made available upon its completion and approval.

END OF MEMORANDUM