

## Questions & Answers

### Design / Construction: Separation of Interests

- Q. Does this separation apply to public employees?  
A. The separation only applies to consultants.
- Q. Does the separation still apply to a consultant acting as city engineer if that person is part-time or full-time, or if the LPA is paying into PERS?  
A. Yes, a consultant is a consultant, regardless.
- Q. Can employees of the design firm oversee construction inspection?  
A. No, except in limited circumstances a waiver can be obtained on a project-per-project basis if the LPA has a qualified construction contract administration staff and agrees to provide an in-house Construction Project Engineer.
- Q. For design-build projects is it okay if the same consultant oversees design and construction?  
A. Yes, as long as the project's contract with the design-build team is being managed/administered by a qualified, third party professional engineer.
- Q. Can the consultant serving as city engineer design the project if it is let by ODOT?  
A. No, a consultant city engineer may not design projects.
- Q. Can a consultant hired to act as city engineer design and/or sign design plans for the jurisdiction?  
A. No, a consultant city engineer may not design projects.
- Q. How are 'phases' defined in applying the Separation?  
A. Design and construction.
- Q. Can the same firm who does the environmental also do design and acquisition?  
A. Not if the firm is in a position to determine future work on the project. The district would have to evaluate the situation. Generally, there needs to be sufficient LPA oversight of the consultant's products and services to ensure that there are no conflicting interests.
- Q. Consultants carry insurance. Doesn't that address the Separation of Interests concern?  
A. No, if design errors or omissions are not properly reported, the LPA may end up paying for corrective work unnecessarily.

- Q. Can consultants team together?  
A. Yes, but the separation still applies as does QBS.
- Q. Can the design firm use a subconsultant for inspection? Can the inspector work for the designer?  
A. No, there must be two separate contracts. The relationship must be between the design firm and the LPA, or the inspector and the LPA.
- Q. Is a subconsultant required to be prequalified?  
A. Yes, if ODOT has a prequalification category for the work type involved. If no prequalification category exists, then the LPA is responsible for hiring a qualified subconsultant.
- Q. If an LPA is small with no engineers on staff, what is needed; one PE to design, one to administer, and one to inspect?  
A. No, just two; one PE to design and one for administration/inspection activities.
- Q. Is the separation of interests requirement only an ODOT policy?  
A. No, FHWA made this determination based on its interpretation of the Federal Conflict of Interest law. This determination avoids the possibility of financial gain of a single private firm or private individual.
- Q. Does the separation of interests requirement also apply to ODOT-designed projects?  
A. No, it does not apply to State- or local-public employees.
- Q. Does the separation of interests requirement apply to other state agencies?  
A. This requirement applies to Federal and State funds administered by ODOT. Please check with other state agencies for their requirements.
- Q. If an LPA is no longer qualified in SFY05 and ODOT takes over administration, therefore, the plans must be revised to ODOT specs; who pays the cost of having the plans redesigned?  
A. The LPA.
- Q. Are inspection activities eligible for Federal reimbursement?  
A. Yes.
- Q. Will ODOT start prequalifying consultants for inspection services?  
A. Yes, we intend to address that in the future.
- Q. Regarding contract termination of contracts in order to split the interests, if the

- LPA performs the CE internally must the contract still be terminated?
- A. This is a question for the LPA's legal counsel.
- Q. If the LPA needs to renegotiate a contract and it impacts the project schedule, will there be any relief?
- A. We are flexible and will work with you. Discuss it with your District LPA Coordinator.
- Q. Can the design engineer be involved in the construction process by reviewing shop drawings?
- A. Yes.
- Q. Does QBS apply if the dollar amount is below \$25,000?
- A. No, QBS only applies to projects \$25,000 and greater.
- Q. If an LPA does the inspection itself but needs to hire someone for testing, is QBS required?
- A. Yes, if the cost of testing is \$25,000 or greater.
- Q. How is pricing considered in the QBS process?
- A. A firm is picked based on its qualifications, and then the price is negotiated. If a mutually acceptable fee can not be negotiated with the first selected consultant, then the next qualified consultant is chosen and negotiations are undertaken.
- Q. Is there a standard QBS process?
- A. ODOT has its own process which an LPA may use as a model, or refer to the Ohio Revised Code which provides for basic requirements.
- Q. Does QBS apply to projects in SFY05 or later, and does it have anything to do with funding source?
- A. QBS applies to all projects that are funded with Federal or State dollars administered by ODOT.
- Q. Does the separation of interests apply if the contract is set up with authorized parts?
- A. Yes, the consultant who designs the project can not inspect it.
- Q. When an LPA has already hired its design consultant to do the construction engineering, who can the third party be to oversee construction and change orders?
- A. During the SFY2004 transition year, the third party can be an experienced public employee of the LPA or a consultant. After SFY2004, there must be a Separation of Interests.

- Q. Does the use of local design standards affect a project's initial acceptance, and would it jeopardize funding?
- A. Generally, no. The LPA just needs a basis for the standard which must be written and accepted by the LPA. It would not affect funding. The LPA and the ODOT district will discuss the standards up front when scoping the project and determine their acceptability in light of the actual situation.
- Q. Is there a guideline for overhead costs?
- A. ODOT's own rate to FHWA is 100%. Consultants typically charge 110% to 200%, with an average of approximately 155%. Any LPA can ask ODOT for assistance.
- Q. Is geographical preference allowed when hiring consultants or contractors?
- A. No, Federal law prohibits geographical preference. The only "preference" allowed by law is the hiring of private entities that reside within the State of Ohio.
- Q. Do geographical preferences apply to ODOT?
- A. Yes, it is Federal law.

### **Right of Way**

- Q. Are LPAs required to follow ODOT's RW plan formats?
- A. ODOT requirements provide for alternative formats that are not as complex as what ODOT follows for its own projects.
- Q. If a resident donates property and doesn't ask for compensation, does there still have to be an appraisal and offer?
- A. Federal Uniform Act requirements call for the acquiring agency to formally advise the property owner of its right to have an appraisal of the property performed by a prequalified appraiser as well as the opportunity to accompany the appraiser when inspecting the property for this purpose, and that the property owner also has the right to receive the determined value for the property rights being sought. After this information has been communicated, if the property owner still chooses to donate, a formal waiver of compensation must be executed. Not every take, such as strip takes or temporary easements, necessitates a full appraisal report. The LPA should contact the ODOT district for guidance.
- Q. When can you accept a RW donation?
- A. Anytime, but see the previous answer and contact the ODOT district for guidance.
- Q. Is there a difference as to how acquisition requirements apply between fee simple and easement property rights?
- A. No.

- Q. For Rights of Entry and Temporary Easements, does the LPA need to make an offer to the property owner?
- A. If Temporary Easements are needed for constructing the project, the acquiring agency must treat these property rights the same as any other R/W acquisition activity. Rights of Entry are to be used only as an interim solution while the formal acquisition of the needed property rights is still being transacted, so the "offer" issue is taken care of through the normal acquisition procedure.
- Q. Must LPA staff be certified by ODOT to perform right of way functions?
- A. Yes, the ODOT Real Estate website lists the courses and their availability.
- Q. For the performance of right of way functions such as acquisition and appraisal review, does QBS apply?
- A. Yes, if the service exceeds \$25,000.

### **Construction**

- Q. Is ODOT staff time for the labor, DBE, EEO reviews charged to the LPA?
- A. No, not for standard reviews.
- Q. Have suppliers already been certified by ODOT for the Materials Management process?
- A. Yes, the list of suppliers will be available on ODOT's website.
- Q. What is a pre-award meeting?
- A. It's a meeting between the LPA and ODOT to discuss each other's roles and responsibilities during the construction phase. The meeting should take place after PS&E submission but prior to bid opening.
- Q. Do contractors and subcontractors have to be prequalified by ODOT?
- A. Prime contractors do but prequalification does not apply to subcontractors.
- Q. In regards to the project progress meetings, is the ODOT Construction Monitor required to attend all of them?
- A. No, attendance at progress meetings is determined at the pre-award meeting.
- Q. Can LPAs use Federal money for Force Account by Railroads?
- A. Yes.
- Q. Does the Materials Management process have to be in writing?
- A. It already is. The applicable process depends on the cost of the project. For those projects less than \$2 million, the minimums in the Manual apply. For those

exceeding \$2 million, the LPA must follow ODOT procedures. In either case, ODOT-certified suppliers must be used. However, in writing, the LPA must submit details such as who will be performing the testing, and the names and certifications of individuals who will be doing the testing in the field. Please see the Local-let Manual Construction chapter for specific Materials Management process requirements.

Q. Can we still use the 404 mix?

A. The 404 specs no longer exist. The LPA must specify ODOT 448 mixes produced by ODOT qualified suppliers.

Q. Will ODOT provide assistance at facilities where structural members are produced or fabricated?

A. ODOT has personnel at these plants regularly. We are reviewing requirements with our Test Lab Administrator to provide more definitive guidance and direction.

Q. When ODOT does the inspection, is it counted against the CE costs and whose overhead is used?

A. There is an existing cost code (5181) for ODOT to administer the Local-let program. The rule is that any activity exceeding two hours is charged to a specific work order setup for the LPA project. In the existing process an encumbrance is established for ODOT costs, and we will absorb small costs. Know that anything charged against 5181 does not go into the ODOT overhead rate.

Q. What does ODOT need for "substantial completion" of a project for final inspection?

A. The project must be open and safe, and the equipment must be out.

### **General**

Q. How many new ODOT people has been hired or will ODOT use existing human resources?

A. All districts were asked to review their workload and adjust their resources accordingly.

Q. Won't the Stage 2 create a problem for existing human resources since ODOT employees will also be reviewing its own projects?

A. Our intent is to turn around reviews in 30 days and will do the best to accommodate. ODOT will monitor the situation and make adjustments as necessary.

Q. What is ODOT looking for when reviewing plans?

A. ODOT is reviewing to determine if they conform to the scope and the

environmental document, and if the plans are biddable and build-able.

Q. Is it a requirement to use ODOT's webpage for advertising consultants?

A. No, however, it is strongly encouraged. Federal requirements prohibit local geographical preference. This service helps to expand the pool of consultants.

Q. Who should fill out the LPA Qualification form?

A. This is completed by the ODOT District, however, LPAs are encouraged to review the form early and be familiar with what is required in order to be prepared. The District will verify, review and sign the form.

Q. Will ODOT allow signal projects to go Local-let? If so, when?

A. Yes, starting July 1, 2003 providing that the new requirements for Local-let projects are met, and any proprietary bid items are in conformance with ODOT's Traffic Engineering Manual, Section 1220-3.

Q. Will the new changes affect existing projects?

A. It depends on the issue, and what stage the project is in. Talk to your ODOT district.

Q. If a project is closed out, will ODOT go back and look at it?

A. No.

Q. Why weren't LPAs involved in the formulation of the new policy and procedures?

A. This was an internal effort between ODOT and FHWA to determine the requirements for ODOT to continue the Local-let process. Implementation was not open to negotiation, and ODOT was required to make changes to maintain its ability to allow Local administration.

Q. In regards to LPA Qualification Requirements, what is meant by "authority"?

A. This pertains to councilmatic authority - the resolution or ordinance which allows the LPA to enter into agreements with ODOT prequalified consultants and contractors.

Q. Who would be the public employee in "responsible charge"?

A. A mayor, service director, city or county engineer; someone who knows the active status of the project.

Q. Regarding the public employee in responsible charge requirement, the county engineer typically serves as the sponsor for a township. Who is in "responsible charge"?

A. The county engineer may serve that role.

- Q. If negative audit findings are associated with another office of the LPA, is that considered a deficiency of the responsible office (i.e. county/city engineer, service director)?
- A. No, the LPA Qualification review must consider the specific office unless an item indicates a deficiency of the LPA, and not the office.
- Q. Clarify "audit"; is this the general LPA audit?
- A. It is the State audit performed on an annual basis.
- Q. Considering that the SFY04 program is locked-down, will reservoir projects qualify for the transition? That is, were they included in the audit review ODOT conducted for SFY04 projects?
- A. If the reservoir projects are identified in the SFY2004 locked-down program, then yes, they were included in the review.
- Q. Is the LPA ODOT-let (traditional) process still an option, and will the district provide services?
- A. Yes.