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Montana Department of Transportation
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Michael T. Tooley, Director
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September 28, 2017

Chris Riley, P.E., Field Operations Engineer
Federal Highway Administration
585 Shepard Way, Suite 2
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Subject: Public Interest Finding
(Safety Improvements Implemented by Tribal or Local Forces)

The Montana Department of Transportation (MDT) is seeking approval from the Federal Highway Administration as per 23 CFR §635.201, Subpart B, for a Finding ofPublic Interest in allowing Tribal or local governments to implement simple low-cost safety improvements through "work-at-agreed price" agreements. Local governments include City, County, National Park Service, or any other public agency having jurisdiction over a specific roadway where the project is to be implemented. This Public Interest Finding (PIF) applies to safety improvement projects that have been identified and programmed with approved preliminary field review/scope of work (PFR/SOW) reports.

Projects eligible for this work typically include signing, pavement marking, delineation, installation of guardrail, installation of solar flashers, rumble strips, slope flattening, tree trimming, and other such low-impact work meant to address identified crash trends at specific locations.

At a minimum, MDT will ensure the following conditions exist prior to approving the use of these force account procedures on any project:

- Delegation of authority to negotiate such agreements/contracts remains with MDT per (MCA 60-2-112 (4), attached);
- Tribal or local governments have the manpower, know-how, and equipment to implement simple low-cost safety improvements;
- Implementation of these improvements is expected to reduce the number and /or severity of traffic crashes;

- These projects can be implemented on a fast track;
- Tribal or local government concurs with the work being done with its own workforce;
- For projects with an estimated cost for such work per project, based on the Department's average bid prices, excluding IDC;

  o $25,000 or less - strongly encourage project managers to use the less costly approach;

  o Greater than $25,000 but less than $50,000 – evaluate each project and determine the appropriate implementation plan;

- Completing such work using Tribal or local government forces will save money by eliminating the contract advertising/award process;
- MDT will monitor to ensure the work has been satisfactorily completed according to the contract.

Attached to this PIF is MDT's approved process outlining the necessary steps to ensure compliance with applicable federal requirements including FHWA's national PIF policy/ guidance. The local tribe and/or local government will follow these steps and complete as necessary to ensure compliance.

This PIF will be effective for five (5) years from the signature date. Approximately 30 days prior to expiration, FHWA requires that MDT must either request an extension from FHWA or develop a new PIF for approval.

Roy A. Peterson, P.E.
Traffic and Safety Engineer

Approved _____ Date 10/05/17
Chris Riley, P.E.
FHWA Field Operations Engineer

copies: Dustin Rouse, P.E., Preconstruction Engineer
Patricia Burke, P.E., Safety Engineer
Ivan Ulberg, P.E., Traffic Design Engineer
Paul Johnson, Planning Division

Montana Department of Transportation (MDT)
Low-Cost Safety Improvement Project
Force Account Process – Non-competitive

Introduction

This process outlines the basic elements MDT will complete in administering and implementing simple low-cost safety improvements through "work-at-agreed price" agreements with the local governments, tribal governments, and MDT maintenance. Local governments include City, County, National Park Service, or any other public agency having jurisdiction over a specific roadway where the project is to be implemented. The identified steps in the Force Account Process supports the Public Interest Finding (PIF) submitted and approved by FHWA as per 23 CFR 635.4 11. This process applies to individually identified and programmed safety improvement projects meeting the eligibility requirements. Each project is required to have an individual "work-at-agreed price" agreement. The following outlines steps to be completed by the MDT Traffic and Safety Bureau for approval and administration of the projects:

I. Ensure project has been identified within the Highway Safety Improvement Program (HSIP) and meets criteria
II. Perform benefit /cost analysis on an individual project basis and record in project file
III. Develop justification that clearly articulates the benefits to the public administering under a non-competitive basis (ie., time savings in delivering project, no contractor mobility cost, no administration cost in contract plans, immediate safety benefits to traveling public, overall cost savings, etc.)

Sample justification statement within the project files may include the following:

"Based on a cost effectiveness analysis; HIP prioritization, and need to accelerate due to public safety issues, MDT has approved this project award to (identify recipient) in the amount of ($ identify estimate"). MDT has determined this award to be in the best interest of the public and recommends approval consistent with the state-delegated actions under the current FHWA/ MDT Partnership Agreement. Procuring this project under a non-competitive basis is in the best interest of the public based on ....."

IV. Review and approve "work at agreed" price agreement
    a. MDT Traffic & Safety Bureau evaluates estimates and approves costs
V. Project file will have documentation and justification to support approval under PIF
VI. Administer construction project under approved MDT Force Account procedures
VII. Monitor, inspect, and review project progress as required
VIII. Complete final acceptance and closeout memo

Montana Code Annotated 2015

60-2-112. Competitive bidding -- reciprocity. (1) Except as provided in subsections (2) through (6), if the estimated cost of any work exceeds $50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting program if the provisions of 60-2-137 have been met.

(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101.

History: En. Sec. 9-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 278, L. 1974; amd. Sec. 150, Ch. 316, L. 1974; R.C.M. 1947, 32-4102; amd. Sec. 5, Ch. 23, L. 1979; amd. Sec. 1, Ch. 598, L. 1983; amd. Sec. 2, Ch. 87, L. 1985; amd. Sec. 1, Ch. 286, L. 1995; amd. Sec. 20, Ch. 443, L. 1997; amd. Sec. 2, Ch. 306, L. 1999; amd. Sec. 25, Ch. 181, L. 2001; amd. Sec. 8, Ch. 192, L. 2003; amd. Sec. 4, Ch. 56, L. 2007.

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