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Date: March 19, 2008

To: Local Units of Government

Re: Policy Changes to Local Force Account Agreements for Local Units of
Government Working on Their Local Highway System Using Federal Funds

Dear Sir or Madam:

Background

Although WisDOT policy is to let construction contracts through a competitive bidding process, under special circumstances the department may negotiate directly with local governments for the performance of construction work. Local Force Account (LFA) agreements are used when a local unit of government either does work for WisDOT on the State Trunk Highway System or when they do work on their own local highway system. Under these agreements the locals are reimbursed for the actual costs incurred in performing the work up to an agreement amount (as amended by any change orders); however, the labor, material, and machinery rates are estimated in advance and must be determined to be cost effective.

A recent review of department policies and procedures has resulted in a need to update several items to comply with federal regulations. The initial policy/procedure updates are discussed below – additional updates will be discussed and distributed in the future. Departmental manuals will be revised to reflect these and future updates. This memo is an early alert until the manuals are updated.

This memo applies to local units working on their own local system of highways and being reimbursed for that work with federal funds. Local units of government contemplating using an LFA in the future should be aware of these changes when planning their LFA projects.

A. LFA Defined As “Agreement”

While the words “Contract” and “Agreement” are generally used interchangeably, in the future the department will make a distinction. “Contracts” will be used when referring to the legal document achieved as a result of a competitive procurement process.

“Agreements” will be used when referring to the legal document achieved as the result of a non-competitive negotiation process. Since many of the current department policies and procedures still discuss a “negotiated contract”, upcoming updates to the various department manuals will replace those references with the phrase “negotiated agreement”.

B. Subcontracting As Part Of An LFA No Longer Allowed

In June 2007 the department distributed a memo to all Local Units of Government on the above topic. That memo made several broad statements that may have been unclear. This memo is intended to clarify several points in the original memo.

Clarifying Points

1. The “subcontracting” discussed in the June 2007 memo is defined as contracting for services/work from private industry. Contracting for private services/work under an LFA is no longer allowed. However, the term “subcontracting” does not include contracting for purchase of materials – materials purchases are allowed under an LFA.
2. In lieu of contracting as part of an LFA, a local unit may contract separately for services/work from private industry to do a portion of a project. The resulting contract would not be part of the LFA.
3. Services/work that are needed to complement the LFA work could be procured using one of two methods:
 - Contracts obtained using a state letting (meeting Federal-aid contracting requirements)
 - This could be one contract for each project or one contract that would combine work from several of projects
 - The threshold for these contracts is a minimum of \$50,000
 - Contracts obtained using a local letting and 100% locally funded
 - Locally funded contract work may follow the local unit’s own letting process, subject to applicable statutes

A potential third method of obtaining contracts for services/work from private industry – using a local letting and federal funds (meeting Federal-aid contracting requirements) – is still under consideration and any decisions will be covered in a future memo.

Implementation

Six FY 2008 LFA projects had an approved CEF (based on a September 2007 list) and are exempt from this requirement. Local units may contact their Region Management Consultant to see if their project is one of the six and therefore exempt.

C. All Project Work To Be Included In State/Municipal Agreement

A “project” is a segment of highway with logical termini that has “independent utility” (be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made). Some components of the project may be let using the state process. Some components of the project may be entirely locally funded. Local unit forces may construct some components of the project. The requirements of this memo are applicable to any component of the project that is federally funded and constructed with local unit forces.

To assure that the complete project (as defined by the project scope and the environmental document) will be constructed, all components of the project must be included in the State/Municipal Agreement (SMA). As noted above, using local funds to contract out portions of the project work may be the best way to handle work that cannot be completed by the local unit. However, the contracted work must be included in the SMA.

Implementation

For projects in the 2009 construction season, the State-Municipal Agreement must show all project work, including contracts for services/work by private companies. Some existing SMAs for projects in the 2009 construction season may have to be revised to show all project work.

D. Prequalification For LFA Work

To perform work under an LFA Agreement, the local unit is required to be “adequately staffed and suitably equipped”. The department is developing criteria on how to identify a local unit’s capabilities to perform one or more types of LFA work. The various work types a local unit could be prequalified for include:

- Design engineering
- Construction inspection
- Grading and gravel
- Asphalt paving
- Concrete paving
- Structures
- Lighting
- Incidental construction

The presence of qualified individuals will determine if a local unit is qualified to perform the first two work types (design engineering and construction inspection). (See also Item E. (below) for additional information about prequalification for construction inspection.)

The evaluation criterion for the latter six work types includes reviewing the existing inventory of owned equipment and determining the presence of sufficiently trained operators.

(The term “owned” equipment also applies to local unit equipment procured under a long (at least one year) lease for use on other projects the local unit undertakes.) Jointly owned equipment (where each local unit has a 50% ownership share) may be considered “owned” by each local unit. The department will also consider the local unit’s performance on similar projects in the past. The prequalification requirements should be met prior to submitting a new State Municipal Agreement.

Implementation

LFA projects in construction year 2008 are exempt from this requirement. Any LFA projects scheduled for construction in 2009 and beyond must meet the upcoming prequalification requirements (expected by this summer).

E. LFA Project Oversight

Under the WisDOT/FHWA Oversight Agreement, it is the department’s responsibility to oversee the expenditure of federal funds. In the case of LFA agreements, the department will be fulfilling this responsibility by assuring that the proper level of oversight is occurring. During the design and construction phases of a project, the oversight will be similar to our oversight of projects that will be let. The department’s current process is to use Region Management Consultants to achieve the proper oversight.

In the past some local units performed the construction engineering (CE) on LFA projects where they were also performing the construction work. While some local units are capable of performing the CE, there is a need to ensure that someone is independently representing the Federal interest and to ensure there are adequate controls in place that reduce the possibility for improprieties to occur. Therefore, beginning with the 2008 construction season, WisDOT will select a consultant to perform construction oversight of all LFA agreements. To reduce construction oversight costs, some LFA projects may be packaged with another nearby LFA project or a nearby let project.

Construction oversight of locally funded / locally let components will be limited to projects that were developed using the DOT/DNR Cooperative Agreement. The oversight needs to be sufficient to assure the construction activities comply with the terms of that Agreement.

Only local units that are prequalified may provide inspection staff for an LFA. The inspection staff would be under the responsible charge of the consultant.

Implementation

Until the formal prequalification process for construction inspection is in place (expected by this summer), local units may contact the Region Management Consultant to discuss informal inspection prequalification for 2008 construction projects.

F. Limited Use Of Rental Equipment

To perform LFA work, the local unit must be suitably equipped (as determined in the prequalification process). However, the limited rental of some specialized equipment may be appropriate as part of a LFA agreement. It would not be appropriate to rent a paving machine if the agreement is for paving, but it is appropriate to rent a pavement marking machine (with operator if necessary) for painting the lines once the paving portion of the agreement is complete. Specialized equipment is defined as equipment not listed in the prequalification for a particular work type.

Beginning with the upcoming 2008 construction season, specialized equipment may be rented up to a maximum of \$25,000 or 25% of the LFA agreement amount, whichever is less, for all rental equipment used on a LFA agreement. Equipment rental would be limited to only those pieces of equipment that are incidental to the primary work being performed. The rental could be from a private or public entity.

An exception is allowed if a piece of county owned equipment breaks down unexpectedly and renting a replacement is needed to keep a project on schedule. The municipality must notify the consultant responsible for project oversight, in writing, immediately if this occurs.

G. Local Unit Not Allowed To Work On Another Local Unit's System

To perform federal-aid LFA work, the local unit must be adequately staffed and suitably equipped. If the local unit requires assistance from another local unit then, by definition, they do not have adequate forces or equipment to complete the work. Local units cannot use Federal-aid funds to have another local unit perform construction work on their own system.

The impact on the small Highway Safety Improvement Program (HSIP), which WisDOT currently requires to be completed using an LFA, will be discussed before the solicitation for new HSIP projects for FFY 2009 begins this summer.

Implementation

This policy is effective immediately. However, five LFA projects have been granted an exception from this requirement. Local units may contact their Region Management Consultant to see if their project is one of the five.

For Additional Information

As noted above, a few LFA projects currently far along in their development have been granted exceptions to some of the new policy changes. Local units may contact their Region Management Consultant to see if their project is one of those projects. This concludes the evaluation of exceptions under the policies discussed above.

Questions about these policy and procedure changes may be directed to Brian Bliesner at 608.264.8701 or to Brian Edwards at 920.492.0149. Questions may also be directed to a shared mailbox – the Email address is DOTFHVALFA@dot.state.wi.us. You are also encouraged to contact your local unit organization representative (listed below) with questions.

Sincerely,

A handwritten signature in cursive script that reads "Brian Bliesner".

Brian Bliesner, P.E.
Chief, Local Program Management Section
Bureau of Project Development, Division of Transportation System Development

CC: WisDOT Senior Managers
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