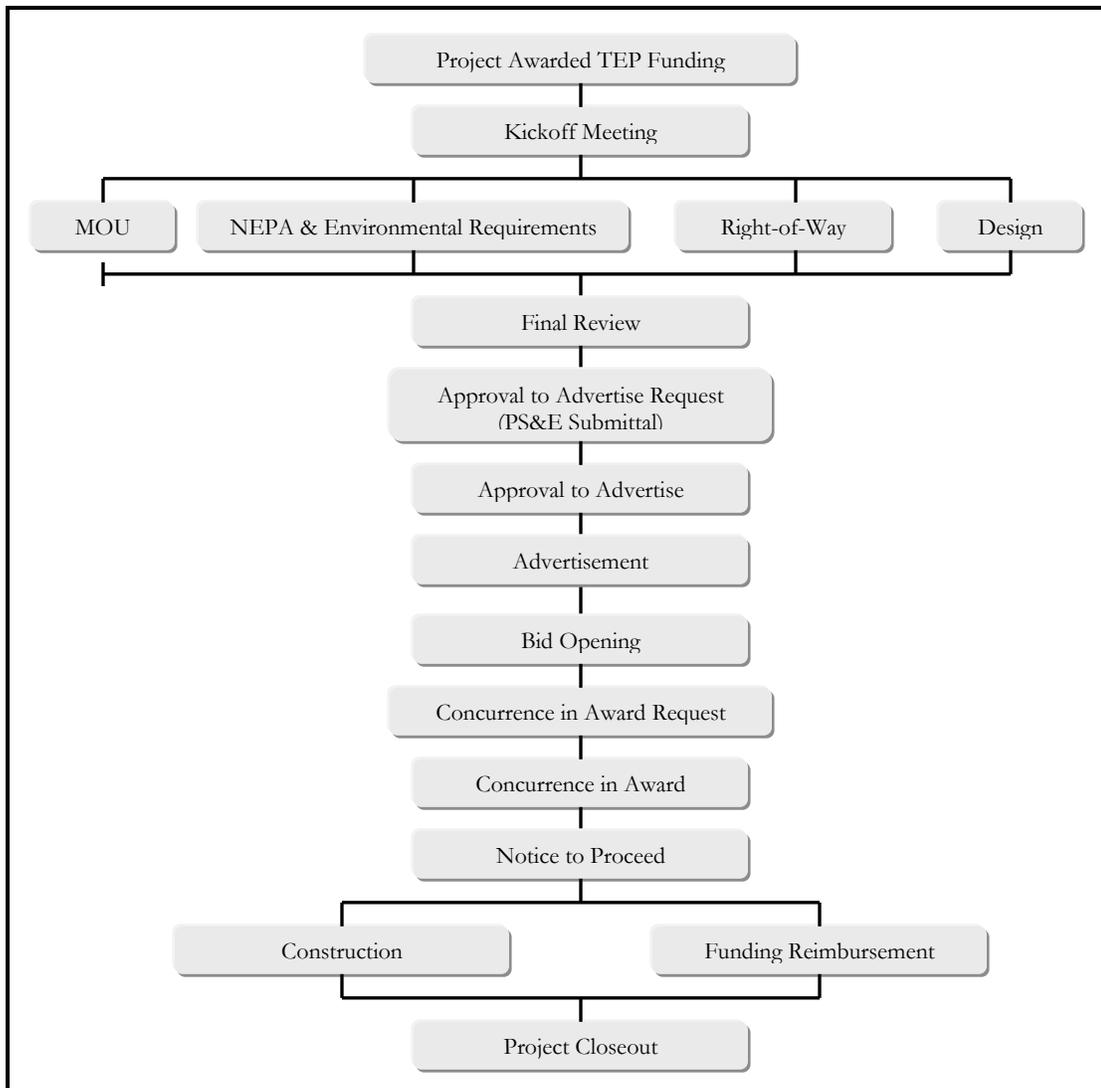
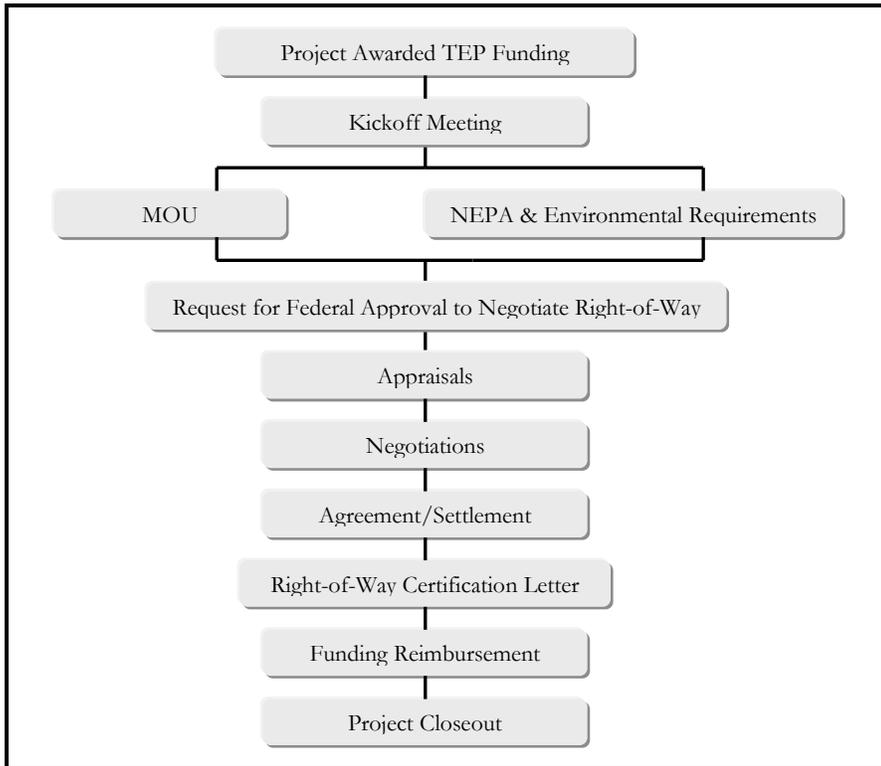


## V. Transportation Enhancement Program Project Process

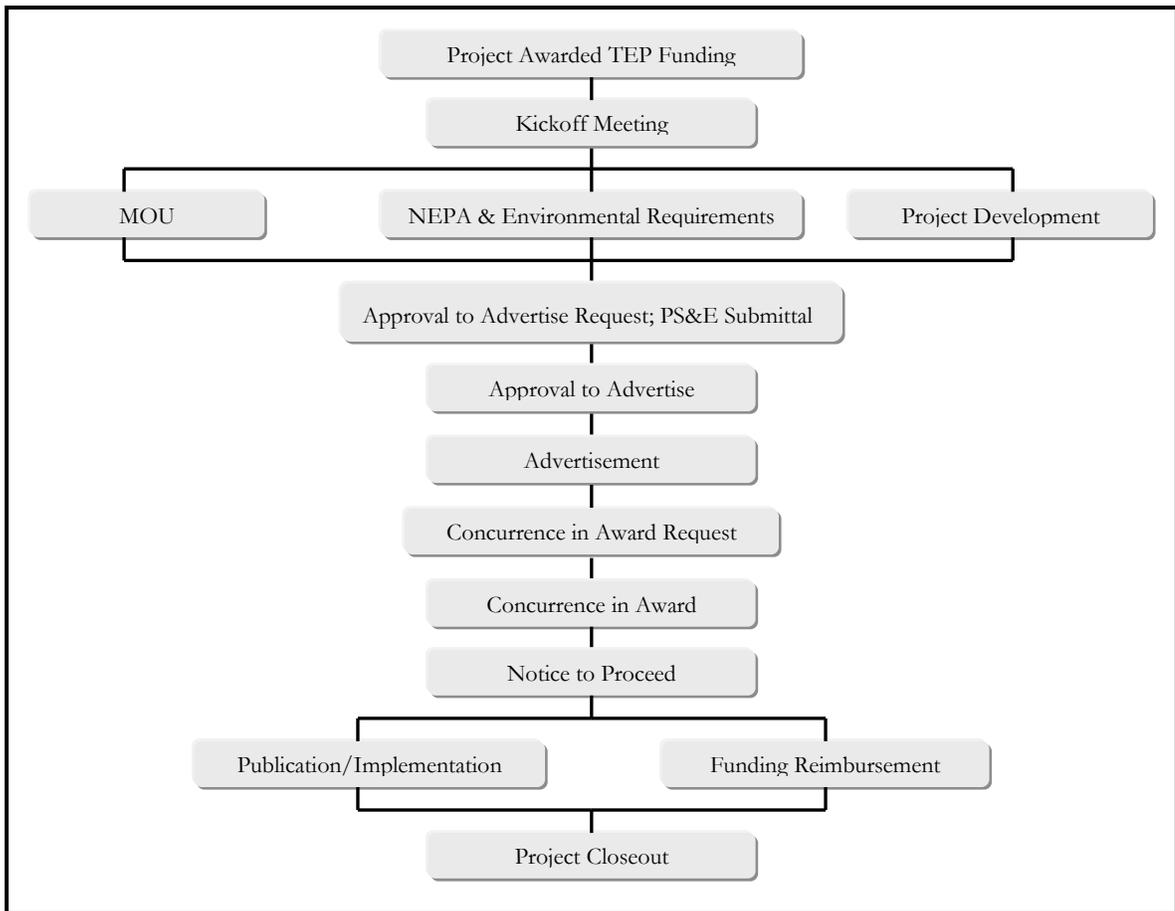
This section serves as a reference to assist project sponsors in understanding and meeting the requirements of each phase of a TEP project. The majority of projects will require some type of construction. Other projects will develop publications; implement pedestrian and bicycle safety programs; or acquire scenic easements or historic properties. Each type of project has a different general procedure, which are outlined in the following three flowcharts and explained throughout the chapter.



**FIGURE V-1 – GENERAL TEP PROCEDURE FOR CONSTRUCTION PROJECTS**



**FIGURE V-2 – GENERAL TEP PROCEDURE FOR RIGHT-OF-WAY PROJECTS**



**FIGURE V-3 – GENERAL TEP PROCESS FOR GENERAL NON-CONSTRUCTION PROJECTS**

SHA will advise and assist project sponsors during each phase of the project; SHA assistance includes:

- Informing project sponsors of general requirements specific to their project;
- Preparing an MOU for project sponsor review;
- Reviewing letters to environmental agencies;
- Requesting environmental or NEPA clearance from FHWA;
- Reviewing design plans;
- Approving requests to advertise;
- Providing Concurrence in Award;
- Processing requests for reimbursement;
- Reviewing close-out information; and
- Responding to issues and concerns throughout the project.

## Step 1 – Project Selection

**Please Note:** SHA acceptance or a favorable TEP Executive Committee recommendation of a project is NOT a commitment of funding.

In the application, project sponsors are responsible for clearly defining the project's scope and proving a reasonable and feasible schedule and budget, as well as all other necessary information. Upon receipt of the applications, SHA staff will screen all TEP applications for eligibility, completeness, and adherence to program criteria. Upon SHA's request and if time permits, project sponsors may be given the opportunity to revise their applications. Following SHA screening, eligible projects will compete for available funding.

Eligible applications, with complete information, will be forwarded to the TEP Technical Committee for review. The Technical Committee will make recommendations to the TEP Executive Committee. **The TEP Executive Committee will make funding decisions based on a summary of all project applications, availability of uncommitted program funds, categorical and statewide distribution of projects, and the Technical Committee's recommendations.** The TEP Executive Committee consists of the following:

- Secretary of MDOT,
- Secretary or Assistant Secretary of the Maryland Department of Natural Resources (DNR),
- SHA Administrator,
- Maryland Transit Administration (MTA) Administrator, and
- State Historic Preservation Officer.

Projects that are awarded TEP funding will receive notification from the Governor.

Once projects awarded TEP funding, SHA recommends that the project sponsor not proceed with design, development, and/or right-of-way acquisitions until after receiving SHA guidance at the project kickoff meeting. Any action performed that is not in accordance with federal requirements may make the project ineligible for TEP funding. The cost of project activities performed prior to the kickoff meeting cannot be reimbursed, although eligible activities may be used as match.

## Step 2 – Kickoff Meeting

### **IMPORTANT:**

After TEP funding is awarded and prior to the kickoff meeting, project sponsors should contact SHA before proceeding with any project activities.

SHA will schedule a kickoff meeting with the project sponsor after the project is awarded TEP funding. Kickoff meetings are technical discussions that are important to the implementation of the project. Generally, the project sponsor will discuss the project's scope in detail and update SHA staff on any developments since the application was submitted. SHA staff will familiarize the project sponsor with the major state and federal requirements for the specific TEP project. In addition to the project sponsor, the project manager and others that may play a major role in the project should attend the kickoff meeting, i.e., the project engineer. Elected officials typically do not attend. Topics of discussion include:

- Project scope and activities;
- MOU process;
- Environmental approvals determination;
- Project schedule;
- Cost estimate or budget;
- FHWA right-of-way acquisition process, if right-of-way is needed;
- Engineering design or project development update;
- SHA review process;
- PS&E and Advertisement processes; and
- Reimbursement process.

Following the kickoff meeting, **the project sponsor must begin submitting a Monthly Progress Report (MPR) to the TEP Assistant Liaison.** Due at the beginning of each month, the MPR can be submitted electronically or by mail. This form can be found in Appendix E – Transportation Enhancement Program Forms.

## Step 3 – Preparation for Advertisement

This section is important for all project sponsors whose projects require advertisement to solicit bids for supplies, construction, or other services, which include archeology, photography, printing, publishing,

**NOTE:**

If the project is not advertised within two years of the award date, all or any part of the award may be withdrawn, and all expenses incurred will be the responsibility of the project sponsor.

or right-of-way acquisition. Project sponsors are responsible for meeting certain requirements prior to requesting permission to advertise from SHA, and each of the processes described in this section must be completed before advertisement. Many of the following processes will apply to most projects, depending on the individual scope of work. **All TEP projects must have an executed MOU and obtain NEPA clearance**, both of which can be done concurrently with project design or development.

**MEMORANDUM OF UNDERSTANDING (MOU) PROCESS**

SHA will prepare an MOU for each awarded TEP project. The MOU is a formal agreement between SHA (on the behalf of MDOT), and the governmental agency that is either sponsoring or co-sponsoring the project. The MOU will list the mutual commitments of SHA and the project sponsor. SHA will begin to prepare an MOU for a project following its kickoff meeting, and the MOU will reflect the topics discussed in the meeting and the corresponding TEP application. The MOU will include the following:

- Project description;
- Activities eligible for reimbursement;
- Responsibilities of both SHA and the project sponsor;
- The TEP award and matching requirements;
- Change order requirements;
- Project close-out;
- Reimbursement process; and
- General program provisions.

It is the project sponsor’s responsibility to ensure that the scope and costs outlined in the MOU are accurate. **Failure to adhere to the requirements set forth or referenced in the MOU can make all or a part of the project ineligible for reimbursement.**

The project sponsor will be provided the opportunity to comment on the draft MOU. Once the MOU is signed by SHA, the originals will be sent to the project sponsor for signature, at which point the MOU will be executed. The project sponsor keeps one (or more, if required) executed copy, and must return the second executed original to the TEP Program Manager (Contact Information can be found in Appendix C – Transportation Enhancement Program Contact Information). The executed MOU must either be delivered to SHA in person or via a delivery service for tracking purposes.

**NOTE:**

SHA will hold the sponsoring agency accountable for all aspects of the project. The sponsoring agency may have separate MOUs or legal agreements with its non-governmental co-sponsors or other project stakeholders.

The MOU must be executed before federal funds can be set aside by FHWA for the project. An executed MOU is also a prerequisite for permission to advertise.

**Project sponsors should not wait for the MOU to be executed to continue project activities that occur prior to advertisement.**

### **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) AND ENVIRONMENTAL REQUIREMENTS**

All projects that receive federal funding need to conform to the requirements of NEPA, as well as the National Historic Preservation Act – Section 106, Section 7 of the Endangered Species Act, the United States Department of Transportation Act – Section 4(f), the Clean Water Act – Section 404, and the Chesapeake Bay Critical Area Act, as discussed below. Depending on the specific project activities, other federal and state laws and regulations may be pertinent. It is the project sponsor’s responsibility to ensure that all applicable environmental regulations and processes are adhered to for their project.

**NOTE:** All TEP projects must obtain NEPA clearance, including projects that do not require construction. Waivers will not be granted.

If not already underway, TEP project sponsors should begin the NEPA coordination and documentation process immediately following the kickoff meeting. The NEPA documentation and approval process generally takes four to six months to complete. **NEPA approval is required before a TEP project can be given approval to advertise.** The project sponsor’s responsibilities for the major federal environmental laws and regulations are outlined below.

**The National Environmental Policy Act (NEPA)** – requires sponsors of projects receiving federal funds to consider natural and socio-economic factors using a systematic, interdisciplinary approach, which requires coordination with various environmental agencies to obtain information on cultural, socio-economic, and natural resources within the project area, documentation of any impacts upon those resources, and consideration of ways to avoid or minimize impacts, as appropriate. To satisfy the requirements of NEPA, the project sponsor also needs to adhere to the following laws and regulations.

- *The National Historic Preservation Act – Section 106* (Section 106) – requires that the effect of federally assisted actions on significant historic sites or structures and archeological resources is considered.

For all projects involving construction, project sponsors should provide MHT and associated local organizations a letter that

includes a detailed scope of work; a historical and archeological inventory; and a determination of project effects on any historic resources eligible for or listed on the National Register of Historic Places. Project sponsors have to define the Area of Potential Effects (APE) for cultural resources, taking into account direct impacts, including visual intrusions, noise, and property acquisition. It must be determined if any significant historic structures, sites, or districts are present in the APE. Project sponsors need to provide SHA with copies of the letter to and the response or concurrence from the MHT, as part of the environmental documentation.

- *Section 7 of the Endangered Species Act – Section 7* (Section 7) – requires that federally assisted actions do not jeopardize the continued existence of any rare, threatened, or endangered (RTE) or anadromous fish species or adversely modify the critical habitat of such species.

Project sponsors are responsible for preparing letters to request information regarding the presence of any RTE or anadromous fish species in the project area for all TEP projects involving construction outside paved areas. The letters should be sent to the following agencies:

- US Fish and Wildlife Service (USFWS)
- DNR-Wildlife and Heritage Service
- DNR-Environmental Review Unit

**NOTE:** Drafts of all correspondences must be reviewed by SHA before being sent to the appropriate environmental agencies.

If there are documented species present within the immediate vicinity of the project area that are RTE or of special concern, or there is a RTE species cultural habitat that may be affected by the project, the project sponsor may be required to conduct a habitat assessment or species survey. Avoidance or mitigation may also be required. Project sponsors need to provide SHA with copies of the letters to and responses from the USFWS and DNR, as well as any survey reports, as part of the environmental documentation.

- *United States Department of Transportation Act – Section 4(f)* (Section 4(f)) – provides special protection for publicly-owned public parks, recreation areas, wildlife and waterfowl refuges, and significant historic sites.

Project sponsors are responsible for determining if any Section 4(f) resources are located in the project area, and if they will be permanently or temporarily affected. If Section 4(f) impacts are anticipated, the project sponsor will need to coordinate with the agency that has jurisdiction over the resource and undertake avoidance and minimization strategies. Project sponsors need to

provide all correspondence in regards to Section 4(f) coordination, as part of the environmental documentation.

- *Clean Water Act – Section 404* (Section 404) – regulates the discharge of dredged or fill material into wetlands and waterways by requiring a permit for all development projects. Appropriate steps to avoid and minimize impacts are required. Unavoidable impacts should be mitigated through activities provided to restore or create wetlands or waterways.

Project sponsors are responsible for determining if any wetlands, waterways, or floodplains are present, and if they will be impacted. If impacts are anticipated, the project sponsor has to coordinate with the United States Army Corps of Engineers (USACE) and the Maryland Department of the Environment (MDE). Project sponsors would then be responsible for a wetland delineation of the affected area, efforts to avoid or minimize impacts, preparation of permits, submission of permits, and preparation of mitigation plans, if required. USACE and MDE would confirm field delineations and assist with the determination of the appropriate type of permit. A copy of the permit application and/or the issued permit needs to be provided to SHA, as part of the environmental documentation.

- *Critical Area Commission (CAC) for the Chesapeake and Atlantic Coastal Bays* (Chesapeake Bay Critical Area Act) – establishes land use policies for development in the Critical Area to accommodate growth, minimize adverse impacts on water quality, and conserve fish, wildlife and plant habitat. The Critical Area is defined as any area within 1,000 feet of tidal influence.

If the project is located within the Critical Area, the project sponsor will need to coordinate with the Critical Area Commission (CAC) or the local planning and zoning agency to obtain necessary development approvals. The CAC will review project design plans. Project sponsors need to provide copies of letters to and approvals from the CAC and/or local planning and zoning agency, as part of the environmental documentation.

To comply with NEPA, project sponsors should also conduct some form of public involvement. The following table relates the environmental resources with the environmental regulation and agency that regulates the type of resource. NEPA requires that project sponsors comply with each of the environmental resources listed in the table, as they apply to the project.

**TABLE 7 – ENVIRONMENTAL IMPACTS**

<b>Environmental Resource</b>	<b>Environmental Regulation</b>	<b>Regulatory Agency</b>
Agricultural lands	NEPA	Maryland Department of Agriculture
Recreational, Parklands, or Wildlife and Waterfowl Refuges	Section 4(f); NEPA	Local Governments or National Park Service (NPS)
Historic sites - archeological resources or standing structures	Section 106; NEPA	MHT
Wetlands or Waters of the US	Section 404; NEPA	MDE; USACE
Floodplains	Section 404; NEPA	MDE; USACE
Forests	NEPA	Local Governments or NPS
Critical Areas/Coastal Zones	Chesapeake Bay Critical Area Act; NEPA	CAC
RTE species	Section 7; NEPA	DNR; USFWS
Hazardous Waste Sites/ Hazardous Materials	NEPA	EPA
Consistency with Local Development Plans	NEPA	Local Agencies
Community Cohesion/ Quality of life/Displacements	NEPA	Local Agencies
Air quality	NEPA	EPA; MDE
Noise	NEPA	EPA
Economic	NEPA	Local Agencies

**NOTE:** other state and/or local regulations may apply.

Examples of letters that project sponsors prepare for the various environmental agencies and other related reference information are located in Appendix G – National Environmental Policy Act Documents and Sample Letters. The project sponsor may request SHA review draft coordination letters prior to submission to the environmental agencies. **Final copies of all environmental documentation submitted to and received from environmental agencies must be submitted to the TEP NEPA Liaison**, who will be the project sponsor’s point of contact for questions and guidance concerning the environmental coordination, regulations, and documentation. Contact information is located in Appendix C – Transportation Enhancement Program Contact Information. Typically, it takes 30-60 days to receive responses from the agencies. SHA prefers that project sponsors send environmental documentation to SHA as soon as it is received. It is not necessary to submit everything at one time. Project sponsors should also submit evidence of public involvement to the TEP NEPA Liaison.

**NOTE:** Information provided in the original application will be used by SHA in completing the CE letter. Therefore, project sponsors must report any changes to the project description, scope of work, and public involvement to prevent delays in NEPA compliance

Using the environmental documentation and the project information from the submitted TEP application, SHA will summarize all NEPA

coordination efforts and environmental impacts in a Categorical Exclusion (CE) letter to FHWA or a Programmatic Categorical Exclusion (PCE) on behalf of the project sponsor. **Approval of a CE from FHWA serves as NEPA or environmental compliance. SHA approval of a PCE serves as NEPA or environmental compliance.**

For the vast majority of TEP projects, a CE letter or PCE will satisfy NEPA requirements because they do not result in significant environmental impacts, but usually provide significant social and environmental benefits. A project qualifies for a CE or PCE only if the proposed actions do not:

- Induce significant impacts to planned growth or land use for the area;
- Require the relocation of a significant number of people;
- Have significant impact on any natural, cultural, recreational, historic or other resource;
- Involve significant air, noise or water quality impacts;
- Have significant impacts on travel patterns; or
- Either individually or cumulatively, have any significant environmental impacts.

### **RIGHT-OF-WAY ACQUISITION PROCESS**

**NOTE:** There should be no pre-existing encumbrances against any right-of-way to be acquired.

All TEP project activities must be on publicly-owned right-of-way or right-of-way encumbered with a **permanent** easement held by a public agency. Any right-of-way not meeting those criteria must be acquired by fee-simple ownership or permanent easement by the public agency sponsoring or co-sponsoring the project. The term right-of-way encompasses not only the property on which the project will be constructed, but also any property needed for temporary use and other property rights required to complete the project. It would include land used for water drainage, land entered upon to adjust terrain slopes, land for stormwater management outfalls, land needed for construction staging, etc.

Although many types of construction-related TEP projects may require right-of-way acquisitions, only projects that qualify for the Acquisition of Scenic Easements and Scenic or Historic Sites, including Historic Battlefields category can receive federal TEP funds for right-of-way activities. Right-of-way information as it relates to both construction-related projects and scenic easement projects are described below.

**NOTE:** Generally, construction projects that have completed right-of-way acquisitions prior to submitting an application proceed to advertisement faster.

#### **Right-of-Way Process for Construction Projects**

For construction-related projects, the sponsoring agency is allowed to negotiate for or acquire right-of-way prior to submitting an

application. Once a project application is submitted for TEP funding, the local agency **must** follow the Federal Uniform Assistance and Real Property Acquisition Policies Act, as amended, and other applicable FHWA reimbursement regulations and requirements (See Appendix B – Online References to Guidelines, Policies, and Manuals). Because construction-related projects cannot receive TEP funds for right-of-way acquisitions, project sponsors can elect to continue right-of-way negotiations without interruption after the TEP application is submitted, or they can put all negotiation activities on hold until the project receives NEPA clearance. If the project sponsor chooses to wait for NEPA clearance, they may have continued contact with property owners; however, no offer to acquire the property or any other form of negotiation can be made between the time of application submittal and NEPA clearance. If the project sponsor chooses to continue with right-of-way negotiations after the application submission, they can forego obtaining federal approval and proceed with right-of-way acquisition at their own risk. If the latter is followed:

**All construction projects require a Right-of-Way Certification Letter,** even if all the right-of-way is publicly owned prior to requesting TEP funding.

- FHWA will not support the right-of-way acquisition process if project activities come under question legally, and
- Project sponsors will not be able to receive any type of federal funding for right-of-way acquisitions for the project at any time.

SHA’s TEP Right-of-Way Liaison will be available for guidance throughout the right-of-way process (see Appendix C – Transportation Enhancement Program Contact Information). The project sponsor has the option to take primary responsibility for completing the right-of-way process, or they may hire a private contractor to take primary responsibility. SHA’s Office of Real Estate (ORE) may be available to act as a private contractor for this purpose. Either way, an official, detailed negotiating record must be kept, and the general process is the same. In accordance with the Uniform Act, the general process to acquire right-of-way for construction-related projects is outlined below.

- ✓ **The property must be appraised by a SHA certified appraiser.**
  - Project sponsors must offer the property owners the option to accompany the appraiser when inspecting the property.
- ✓ **The property appraisal must be reviewed and accepted by a second certified appraiser.**
- ✓ **Following the appraisal review, the negotiator may begin making offers to property owners in order to acquire necessary right-of-way.**
  - A written Letter of Offer that details the components of each offer must be given to the property owner, along with a plan or

drawing of the property to be acquired and the deed or agreement needed to transfer the property rights.

- The offer must be based on fair market value.
  - The offer can be made in person or by mail.
  - After the first offer, the negotiator should keep in communication with the property owner, attempting to resolve any concerns or issues the property owner may have in order to make efforts to reach an amicable settlement with the property owner.
  - The sponsoring agency can request that the property owners donate the right-of-way required for construction-related projects. However, the property owner **must** be informed that they **have the right to be compensated at fair market value for any use of their property**, and by donating their property they are waiving their right to compensation.
- ✓ **Upon completion of successful negotiations, both parties will sign a deed, option contract, or easement agreement to transfer the property rights. The final settlement or closing may occur later when payment is made to the property owner.**
- A deed is a legal document which transfers certain property or property rights to the sponsoring agency. Upon execution, it must be recorded in the land records of the local jurisdiction.
  - An option contract is a legally binding contract that generally stipulates that the public agency has the option to acquire the right-of-way for an agreed upon amount within a specified duration of time, as well as any other agreed upon provisions.
  - An easement agreement is a legal document which conveys the legal right for the public agency to use the right-of-way for a specific purpose.
  - The negotiator must sign a negotiator's certificate.
- ✓ **Upon completion of the right-of-way acquisition, The TEP Right-of-Way Liaison will review the sponsoring agency's acquisition activities and records to ensure compliance with the federal procedures.**
- Records should include appraisal information, the negotiation certificate, and a comprehensive summary of negotiations that includes evidence of when and how the acquired right-of-way or easement was obtained.
- ✓ **If the right-of-way acquisition process complies with all federal regulations, ORE staff will prepare a Right-of-Way Certification letter and send it to the project sponsor and FHWA. At this point, the right-of-way acquisition is cleared.**
- The certification letter must be signed by ORE.

Generally, all right-of-way acquisitions should be completed before the project sponsor requests approval to advertise for construction bids. It is possible to advertise a project before all right-of-way is acquired

provided that the sponsoring agency has made offers to acquire all properties, and ORE has reviewed the acquisition process up to that point. ORE will issue a Limited Certification Letter, allowing the project sponsor to advertise for bids. Before the winning bid can be awarded, the sponsoring agency must complete the right-of-way process. The TEP Right-of-Way Liaison will review the completed right-of-way acquisition process records and issue a Letter of Certification stating that the right-of-way is cleared. This process is considered an exception and is allowed in emergency cases only.

If the required right-of-way is publicly-owned by an agency other than the agency sponsoring the TEP project, the property owner is usually supportive of the project and will willingly give permission to the sponsoring agency to use the property. In these cases, a Letter of Permission may be sufficient documentation of right-of-way requirements. In other cases, a more detailed acquisition process may be required, and the procedure would vary by incident.

**NOTE:** The TEP Right-of-Way Liaison in SHA's Office of Real Estate (ORE) serves as the point of contact for project sponsors with questions or guidance on acquiring right-of-way

#### **Right-of-Way Process for Acquisition of Scenic Easements and Scenic or Historic Sites, including Historic Battlefields Projects**

For Acquisition of Scenic Easements and Scenic or Historic Sites, including Historic Battlefields' projects, the sponsoring agency **must** comply with the Federal Uniform Assistance and Real Property Acquisition Policies Act, as amended, and other applicable FHWA reimbursement regulations and requirements (See Appendix B – Online References to Guidelines, Policies, and Manuals). Prior to submitting an application, the sponsoring agency is allowed to discuss the general terms and conditions of the intended acquisition and the acquisition process. There can be no formal offer made to acquire the property and no discussion of any compensation. Similar contact can continue throughout the TEP project selection process. Federal approval to negotiate and NEPA clearance **are required** before acquisition activities can begin or resume. Negotiations that occur after application submittal and before approval to negotiate is issued may make the project ineligible for federal funding.

Sponsors of these projects should obtain the following information for all necessary right-of-way. This information has to be provided to SHA upon request.

- Name/address of current property owner
- County
- Tax map and parcel number
- Acreage to be acquired; if only a partial acquisition, location within the property to be acquired (provide survey if available)
- Acquisition type preference (fee simple or easement)

- Proposed title holder and/or easement holder
- Description of any structures on the property, including historic information, if applicable
- Descriptions of any significant environmental resources, if applicable
- Occupants on the property, if any

Projects that will acquire a historic battlefield **must** develop, adopt, and utilize a Management Plan. The Management Plan will require review and approval from FHWA, DNR, and MHT. A general outline for Management Plans can be found in Appendix I – Historic Battlefield Management Plan Outline.

The project sponsor has the option to take primary responsibility for completing the right-of-way process, or they may hire a private contractor to take primary responsibility. SHA’s ORE may be available for hire to act as a private contractor for this purpose depending on its workload. Property rights must be transferred to the sponsoring agency as fee simple or by a permanent scenic easement, and an official, detailed project record must be kept. The general process to acquire right-of-way for construction-related projects is outlined below.

- ✓ **The project sponsor must supply a cost estimate to the TEP Right-of-Way Liaison**
  - ORE will use the information to prepare documents to request FHWA approval.
  - Right-of-way negotiations cannot begin until FHWA and NEPA approval is received.
- ✓ **The property must be appraised by a SHA certified appraiser.**
  - Project sponsors must offer the property owners the option to accompany the appraiser when inspecting the property.
- ✓ **The property appraisal must be reviewed and accepted by a second certified appraiser.**
- ✓ **Following the appraisal review and NEPA clearance, the negotiator may begin making offers to property owners in order to acquire a scenic easement or a scenic or historic property.**
  - A written Letter of Offer that details the components of each offer and a copy of the deed of property transfer must be presented to the property owner.
  - The offer can be made in person or by mail.
  - After the first offer, the negotiator must keep in communication with the property owner, attempting to resolve any concerns or issues that the property owner may have in order to make efforts to reach an amicable settlement.
- ✓ **Upon completion of successful negotiations, both parties will sign an option contract, easement agreement, or deed.**

- The negotiator must sign a negotiator’s certificate.
- An easement agreement is a legal document which conveys the legal right for the public agency to use the right-of-way for a specific purpose.
- A scenic easement should define the limits of use imposed on the current property owner and any future owners on the area acquired under the easement.
- A deed is a legal document which transfers certain property or property rights to the sponsoring agency. Upon execution, it must be recorded in the land records of the local jurisdiction.
- An option contract is a legally binding contract that generally stipulates that the public agency has the option to acquire the right-of-way for an agreed upon amount within a specified duration of time, as well as any other agreed upon provisions.
- ✓ **Upon completion of the right-of-way acquisition, The TEP Right-of-Way Liaison must review the sponsoring agency’s records to ensure compliance with the federal procedures.**
  - Records should include appraisal information, the negotiation certificate, and a comprehensive summary of negotiations that includes evidence of when and how the easement or property was obtained.
- ✓ **If the right-of-way acquisition process complies with all federal regulations, ORE staff will prepare a Right-of-Way Certification letter and send it to the project sponsor and FHWA. At this point, the right-of-way acquisition is cleared.**
  - The certification letter must be signed by ORE.
  - The certification letter is a requirement for TEP funding reimbursement.

## **DESIGN REQUIREMENTS**

Professional engineering design is required for all TEP projects involving any type of construction, rehabilitation, or mitigation. Generally, the design for a project should be about 30 percent completed at the time of application submittal, and design activities can continue without interruption after submission. Project sponsors are expected to proceed from the 30 percent plans, and not restart design until after funding has been approved. Major scope changes are discouraged. If the project, as proposed, cannot be accomplished, the project should be withdrawn. A new, revised project can be developed, and a new application can be submitted in a subsequent year. This will allow projects that are better developed to be funded and constructed, as the funding will not be tied up.

**NOTE:** Design should be done concurrently with the right-of-way, NEPA, and MOU processes.

If the project design changes notably after the application submission, the project sponsor is required to submit a letter to the TEP Program Manager requesting approval to change the scope before proceeding. The letter must clearly identify the proposed changes; the reason for the changes; and any associated schedule and/or budget modifications. Scope change requests should be sent as changes occur. Once the MOU has been executed or NEPA clearance has been obtained, only minor scope changes should be needed. The project should still be advertised in 24 months or less from the TEP award date.

All TEP projects are required to comply with the Americans with Disabilities Act of 1990 (ADA), which is a legislation that prohibits discrimination on the basis of disability. Some TEP project sponsors can use the *ADA Accessibility Guidelines for Buildings and Facilities* (ADAAG) as the basis for complying with ADA. If the project links to or includes a transportation facility, such as a trail, walkway, driveway, or access path, or it is located along or intersects with a state roadway, SHA's *Accessibility Policy & Guidelines for Pedestrian Facilities along State Highways* must be followed. In some cases, this policy is more restrictive than the ADA.

The ADAAG recognizes that some requirements cannot always be fully achieved for all elements of all facilities because of conditions like terrain and historic integrity. Professional design judgment and good faith effort must be exercised to assure that all new and rehabilitated facilities are made ADA accessible. **All** parking, restrooms, access paths, displays, water fountains, and telephones built as a part of a TEP project comply with ADA. Project sponsors must discuss any potential requests for design exceptions with the TEP Community Design Liaison for review and approval (see Appendix C – Transportation Enhancement Program Contact Information). Approval cannot be guaranteed.

The TEP design process for ALL construction projects should be guided by the latest version of the ***Bridge Replacement and Rehabilitation Program Guidelines for Local Governments***. A copy of these guidelines is available at each county's Department of Public Works. Additional policies and publications that provide design guidance include:

- AASHTO's ***Guide for Development of New Bicycle Facilities***;
- The ***Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation***;
- The ***ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)***;
- SHA's ***Accessibility Policy & Guidelines for Pedestrian Facilities along State Highways***;

- SHA’s *Standards for Highways, Incidental Structures and Traffic Control Applications by and for the Maryland State Highway Administration*;
- MDOT’s *Standard Specifications for Construction and Materials*;
- USDOT’s *Rails-with-Trails: Lessons Learned Literature Review, Current Practices, Conclusions*;
- The *Maryland Stormwater Design Manual*;
- The *Manual on Uniform Traffic Control Devices*; and
- The International Code Council publications, including the *International Building Code*.

**Note:** For online references to the design guidelines, see Appendix B – Online References to Guidelines, Policies, and Manuals

Maryland’s stormwater management and erosion and sediment control regulations apply to each project. The project sponsor is responsible for determining and meeting the requirements of any additional regulations relating to the design of approved TEP projects, including local zoning ordinances.

Project sponsors are responsible for obtaining all permits required by federal, state, or local authorities, including but not limited to Erosion and Sediment Control; Stormwater Management, Critical Areas, Joint Permit Application, Tree Permit, Building Permits, Utility Permits, Airport Permit, and Access Permit. An Access Permit from SHA is required for any project that will modify or create new access points to or across any SHA right-of-way.

**Failure to meet ADA and other required design standards may jeopardize TEP funding.** Project sponsors should contact the TEP Community Design Liaison for general questions regarding design.

**NOTE:** OBD review is concurrent with the design process and requires a minimum of 5 weeks per submittal.

### **Bridge or Structure Review**

A project that includes the construction of new or the alteration of any existing bridges, retaining walls, boardwalks, large culverts, or foundations to structures or that propose an improvement that may impact an existing SHA structure will require review and concurrence by SHA’s Office of Bridge Development (OBD). The project sponsor should submit a complete set of design plans, specifications, and estimates to OBD when they are approximately 50 percent and 95 percent complete. OBD will review the first submittal (50 percent) for Type, Size, and Location (TSL) of structures, soil boring reports, and foundation design. After the project sponsor addresses OBD’s comments, they must receive OBD’s concurrence before the second submittal at 95 percent. OBD will review the Final and Structural

designs during the second submittal. If the project's complexity warrants, OBD may request separate, independent submittals of necessary design components. For OBD's contact information, see Appendix C – Transportation Enhancement Program Contact Information.

For projects with structures located within the 100-year floodplain, a Scour Analysis Report must be submitted with the TS&L plans. The project sponsor is required to follow SHA's scour studies protocol. A HEC-RAS model should be used for the hydraulics analysis, and that data should be used to complete the scour analysis program – ABSCOUR. The scour report needs to contain the hydrology computations, the hydraulics model, the field survey info, floodplain maps, scour computation, and the scour cross section plot. The process is described in Chapter 11 of the OBD *Hydrology and Hydraulics Design Manual* (See Appendix B – Online References to Guidelines, Policies, and Manuals).

**NOTE:** The scour analysis requirement cannot be waived.

OBD's review and concurrence of the structural design will be needed prior to requesting SHA approval to advertise.

#### **State Historic Preservation Office (SHPO) Review**

Projects that involve any historic site or structure will require a design review by the SHPO, which is MHT in Maryland. This review is in addition to any NEPA requirements.

The project sponsor should submit the design plans to MHT when they are approximately 30 percent complete. Design plans should be developed to a stage where, at a minimum, the location and size of all proposed improvements are shown. However, they should be submitted early enough in the process to allow for requested design changes, if any. Also, MHT must be invited to the Final Review meeting with SHA. For contact information, see Appendix C – Transportation Enhancement Program Contact Information.

#### **Design Build**

TEP project sponsors can use a Design Build approach to construct their project. The Design Build method is different from the more typical Design-Bid-Build method in that it shifts the responsibility of completing the final design and construction to a Design Build Team. The advertised design plans for a Design Build project are completed to about the 30 percent stage to establish bidding, product, and construction requirements. For more information on an approach to Design Build projects, please contact SHA's Design Build Coordinator,

see Appendix C – Transportation Enhancement Program Contact Information.

This approach should be carefully evaluated as it may not meet the needs of the project and will require extensive project sponsor participation as the design and construction progress.

### **Utility Relocations**

Project sponsors are responsible for coordinating all necessary utility relocations with the appropriate public or private agency, business, or owner. Utilities relocation should be addressed early in the design phase, as it could affect costs and schedules. A utilities statement should be prepared to document the utilities relocation process. Concurrence of the utilities statement from the SHA District Office that corresponds with the project’s location is needed before project sponsors can request permission to advertise. For more information, contact the Utility Engineer in the appropriate SHA District Office (see Appendix C - Transportation Enhancement Program Contacts).

**NOTE:** Coordinating utilities relocations is especially important for projects involving an active railroad, as it can be a lengthy process.

If the project would impact utilities within SHA right-of-way, the project sponsor must determine the date that the right-of-way was acquired by the utility company or its installation date, and the date that SHA acquired the right-of-way. If the utility company’s right-of-way ownership or installation preceded SHA’s ownership, the project sponsor is solely responsible for the design and relocation of the utilities. If SHA’s ownership preceded the utility company’s right-of-way ownership or installation, SHA may consider exercising its prior rights and may request the utility company move the utility at the sole expense of the utility company. The latter will be evaluated on a case-by-case basis. For more information on utilities relocation within SHA right-of-way, see SHA’s *Utility Policy* (see Appendix B - Online References to Guidelines, Policies, and Manuals)

### **Traffic Control Plan**

Project sponsors are responsible for preparing a traffic control plan for all projects that will affect vehicular or pedestrian movement during construction. SHA District Office concurrence to the traffic control plan is needed before project sponsors can request permission to advertise.

### **Additional Approvals and Concurrences**

Other SHA approvals and concurrences may be necessary, depending upon the scope of the project. Project sponsors may need:

- The SHA District Office’s approval to construct within or to cross SHA right-of-way, or
- Design exception from SHA if established design guidelines or regulation cannot be met after due diligence.

Consult the TEP Community Design Liaison for more information on design exceptions (See Appendix C – Transportation Enhancement Program Contact Information).

All required SHA reviews and concurrences of all TEP projects must be completed prior to requesting SHA’s approval to advertise.

### **Specifications Book**

**NOTE:** The state contract and federal identification numbers must be included on the design plans and specifications book.

Project sponsors are responsible for preparing the project’s specifications book, invitation for bids, or project manual. It must include all required permits, approval letters, and specifications required for the construction of the project. The specifications book should contain general provisions; terms and conditions; technical requirements for construction and materials; a bid proposal form; and any other associated project information that may be needed to comply with COMAR, SHA, FHWA, state and other applicable regulations. Specification books are considered a legal document, and it is recommended that project sponsors use the general SHA format – *Standard Specifications for Construction and Materials* – in preparing the specifications book (see Appendix B – Online References to Guidelines, Policies, and Manuals). The specifications book will be used in conjunction with the design plans as the primary source for potential contractors to determine bids for construction. These documents, together with the design plans, comprise the advertisement documents, or contract, that potential bidders will use to develop bids for construction.

### **PUBLICATION REQUIREMENTS**

Project sponsors of projects that will result in any type of publication or program material **must contact the TEP Liaison prior to proceeding with advertising for any service.** All publications are required to comply with the ADA, which prohibits discrimination on the basis of disability.

**NOTE:** The SHA logo must be included in any publication

All publications or program materials must be reviewed by SHA when they are approximately 30 percent complete. Subsequent SHA reviews and reviews by other agency may be necessary and will vary depending on the type of project.

## Step 4 – Final Review Meeting

**NOTE:** Allow a minimum of 4-5 weeks review time for Final Review participants to review documents. Coordinate SHA invitations with the TEP Community Liaison.

All TEP construction projects are required to have a Final Review meeting. Participants should include key persons on the project sponsor's team, SHA staff with insight on any of the project design, and all other project stakeholders or interested parties, whose participation would not affect the contractor's bidding process. The meeting can be described as a peer review of the proposed design and will provide the last opportunity for SHA and other stakeholders to make comments or edits prior to the submission of a request for approval to advertise. Each page of each document will be reviewed during the meeting. To prepare for this meeting, the project sponsor must submit 15 copies of design plans, specifications book, and engineer's estimate to SHA that represents the proposed advertised document. The documents should be about 90-95 percent complete. Project sponsors are responsible for soliciting reviews of the Final Review package from all non-SHA project stakeholders. All stakeholders should be prepared to discuss project details and offer comments in the Final Review meeting. General topics of discussion include design, the engineer's estimate, constructability, project goals and/or restrictions, contract, advertisement, construction, and future maintenance of the project.

After the Final Review meeting has been held, it is the project sponsor's responsibility to develop and provide a Final Review Report. The report must reflect a summary of all comments, recommendations, and edits presented at the final review meeting, and indicate how each was addressed and resolved by the project sponsor following the meeting.

## Step 5 – Advertisement

### **APPROVAL TO ADVERTISE AND BID PACKET**

Project sponsors are required to submit a written request to obtain SHA's approval to advertise. In advertising for bids, project sponsors are soliciting vendors for bids to provide materials or services needed for a project. For projects involving construction, a ready to advertise Plans, Specifications & Estimates (PS&E), or Bid packet, must accompany the request for approval to advertise. It should be completed before it is delivered to SHA. The PS&E Checklist is provided to ensure that the packet is complete and should accompany the packet (see Appendix G – Plans, Specifications, and Estimates Packet Checklist). **Two identical** packets should be sent to the TEP

Community Design Liaison (see Appendix C – Transportation Enhancement Program Contact Information). It takes approximately 4-6 weeks for SHA and FHWA to review completed packets and provide approval to advertise. The PS&E packet must include all of the following information:

**NOTE:** Incomplete PS&E packets will result in a delay in processing the approval to advertise.

- ✓ **100% Complete Design Plans and Specifications Book**
  - Design plans and specifications book must provide all details necessary to bid on and construct the proposed project.
- ✓ **Engineer’s Estimate itemizing all construction items, anticipated bid cost, and associated funding source**
  - The estimate should be presented in a spreadsheet that lists all construction elements, their quantities, predicted bid unit price, and the total project cost.
  - The estimate should identify what elements will and will not use TEP funding and the amount of funding for each element.
- ✓ **Environmental Permit Form**
  - The form should indicate the status of all required permits on this project.
  - See Appendix E – Transportation Enhancement Program Forms for an example.
- ✓ **Public Awareness letter/documentation**
  - The documents should describe how the public was informed of the proposed construction and the majority position on the project.
  - Letters of support from elected representatives are recommended.
- ✓ **Final Review Report**
  - Report should reflect edits and comments presented at the final review meeting.
- ✓ **Traffic Control Plan concurrence, if applicable**
- ✓ **Utilities Statement concurrence, if applicable**
- ✓ **Design Exception approval, if applicable**
- ✓ **OBD concurrence of structural design, if applicable**
- ✓ **Executed MOU**
- ✓ **FHWA approved PCE, CE, EA, or EIS, which serves as environmental clearance**
- ✓ **Right-of-Way Certification Letter, if applicable**
  - All construction projects require a right-of-way certification letter.
- ✓ **Other SHA approvals and concurrences, if applicable**

**NOTE:** Any proposed PS&E requirement modification will be made on a case by case basis.

Written approval to advertise will be issued by SHA after all requirements are met and FHWA has obligated federal funds for the individual project. It is very important to note that if a project is advertised prior to this approval, the project sponsor will have to cancel the advertisement, or reject bids and re-advertise in order to

maintain eligibility for reimbursement of federal funds. After the project has received SHA and FHWA approval to advertise, any modifications to the contract must obtain SHA approval prior to issuing the modification or addendum. If approved, addendums have to be provided to all purchasers of bid documents and made a part of the contract document.

If a non-construction project requires advertisement for supplies and services, then the project sponsor must coordinate with the TEP Community Design Liaison before submitting a written request for SHA's approval to advertise. This includes advertisement for services like archeology, publishing, printing, document production, graphic design, etc.

### **ADVERTISEMENT**

SHA must sign-off on the completed advertisement packet before the project is advertised. Afterwards, the project sponsor has to notify the TEP Community Design Liaison of the advertisement date prior to that date. Advertisements for construction bids must be in accordance with state and federal regulations.

All TEP construction projects are required to be advertised for a minimum of 21 calendar days. The advertisement must include project title, SHA and FHWA project numbers, and the project sponsor's contact information. It is required to appear on Maryland's Department of General Services website, [www.emarylandmarketplace.com](http://www.emarylandmarketplace.com). Additional advertising is encouraged, and options include:

- A newspaper with the primary circulation in a major metropolitan area;
- A newspaper with a local circulation relative to the project's geographic location;
- A newspaper that is certified by MDOT as a MBE; and
- Direct and indirect notices.

**NOTE:** An award based on a weighted system is not allowed, such as, preference to geographic location of contractor.

Project sponsors are encouraged, but not required, to conduct pre-bid meeting(s) with potential contractors. Attendance at any pre-bid meeting cannot be mandatory, but should be strongly recommended. Records of all pre-bid meetings have to be shared with all plan purchasers and included in the project document.

Project sponsors may also request qualifications from contractors to qualify a bidder prior to opening their price bid. This is usually done when highly specialized work is required. If qualifications are

requested, a two stage sealed bid opening – qualification and price – will be conducted. Qualifications of the contractor must be in a separate envelope, which will be opened prior to the bids.

### **BID OPENING GUIDELINES**

Once the advertisement period is over and bid proposals are received, the project sponsor must conduct a public opening of the sealed bid proposals, which an SHA representative will attend. After all bids are open, the apparent bidder with the lowest responsible, responsive bid must be awarded the contract to construct the project unless the project sponsor must reject all of the bids. It is the project sponsor's responsibility to review and evaluate all bid documents to determine the lowest responsive, responsible bidder, which is the lowest bid submitted in response to an advertisement that conforms to the requirements contained in the specifications book and design plans.

If the project sponsor systematically rejects all bids, the project must be re-advertised. Prior to re-advertisement, project sponsors must submit a written request for SHA's approval. An updated PS&E packet must accompany the written request, as well as copies of rejection letters for the previous bids and justification for those rejections. The updated PS&E packet should:

- Be modified to address the reasons for the rejection of all bids,
- Be modified to improve competitive bidding, and
- Include an outline of all PS&E modifications.

Project sponsors should review **the entire PS&E packet** before resubmitting, because some changes may affect multiple documents. If any modifications significantly affect the approved scope or limit of work, as outlined in the MOU, a scope change must be requested and approved prior to receiving approval to re-advertise.

### **CONCURRENCE IN AWARD (CIA)**

CIA is SHA's written concurrence that the project sponsor followed appropriate state and federal regulation in selecting the contractor and the corresponding bid proposal. Project sponsors must request SHA's CIA after bids have been opened and evaluated, and prior to awarding the contract and issuing the contractor NTP. The project sponsor's written request for CIA should include a package of documents and information for SHA review, which should be sent to the TEP Community Design Liaison (see Appendix C – Transportation

**NOTE:** SHA requires a minimum of 4 weeks to review the CIA package.

Enhancement Program Contact Information). The CIA request should include the following:

- ✓ **MBE forms 00C44 and 00C45, that document plans to meet or surpass the contract MBE percentage goal**
  - The MBE goals are determined by SHA Office of Construction (OOC) prior to advertisement.
  - Original signatures are required on all MBE forms.
  - If the MBE goal is not met, the contractor is required to demonstrate and document their Good Faith Effort to obtain MBE participation, which must be sent to SHA along with MBE Form 00C45. The project sponsor must then review, verify, and support the contractor's request for a reduction of the MBE goal, the documentation of Good Faith Effort, and the project's affirmative action plan.
- ✓ **Copy of advertisement, as posted**
- ✓ **Copy of contractor-signed bid proposal**
- ✓ **Certified bid tabulation**
  - It should show the bids, by unit price, of all bidders, and information announced or inventoried at the bid opening, such as bid bond.
  - The project sponsor must certify that the document is true and correct.
- ✓ **Certified bid analysis**
  - It should compare and calculate line item cost and the percent difference between the lowest responsive, responsible and the approved engineer's estimate for each bid.
  - The project sponsor must certify that the document is true and correct.
- ✓ **Non-collusion affidavit from bid proposal**
- ✓ **Experience and Equipment Form**
  - Project sponsors should use SHA's standard form.
  - The contractor must get the form notarized.
- ✓ **Bid justification, if applicable**
  - A bid justification letter is required if the contractor's bid is 10% or more greater, or more than 15% less than the approved engineer's estimate.
- ✓ **Request for an exception to contract requirements, if applicable**

**NOTE:** Failure to comply with any design, advertisement, or concurrence in award requirements could jeopardize federal funding.

Examples of the MBE forms, bid tabulation, bid analysis, experience and equipment form, and bid justification can be found in Appendix H – Concurrence in Award Documents.

## **NOTICE TO PROCEED (NTP)**

Project sponsors may issue NTP to the contractor only after receiving SHA's written CIA. The SHA District Office that corresponds with the project's location should be invited to the pre-construction meeting with the contractor and given a proposed construction schedule. To determine the SHA district that corresponds to each Maryland county, as well as contact information, see Appendix C – Transportation Enhancement Program Contact Information.

### **Step 6 – Construction**

**NOTE:** If a public event is scheduled for the Project, SHA's Office of Communications must be notified at least thirty (30) days prior to the event.

Project sponsors of projects that require construction, have to contact the SHA District Office prior to commencing construction (see Appendix C – Transportation Enhancement Program Contact Information). The District Office will assign a project engineer to provide general oversight for SHA during construction to assure that the project is adhering to its scope and responsibilities, and ensure that SHA's interests are being addressed. The frequency and depth of the District Office's oversight will vary depending on the scope of the project. The project sponsor may contact the project engineer for questions regarding the type of work that requires a certified inspection, the materials that have to be sampled or tested, and the types of changes that would require a change order.

During construction, project sponsors are encouraged to use the *SHA Office of Construction; Construction Manual*, which reflects the SHA Standards Specifications and current construction practices and techniques. See Appendix B – Online References to Guidelines, Policies, and Manuals.

## **PRECONSTRUCTION AND CONSTRUCTION MEETINGS**

The preconstruction meeting is the responsibility of the project sponsor. Every person or agency with a stake in the project should be invited to the meeting, including the District Office project engineer. The details of construction, including the schedule, are discussed in the meeting.

It is recommended that the project sponsor hold biweekly meetings with the contractor to discuss construction progress. The minutes of all construction progress meetings should be sent to the District Office.

## **CONSTRUCTION MANAGEMENT, INSPECTION AND MATERIALS TESTING**

Project sponsors are responsible for the management, construction inspection, and materials testing of their projects. The construction manager should oversee the project construction, and have the capacity to approve minor modifications to the original design in order to facilitate construction. The project sponsor is responsible for ensuring that the construction inspectors are SHA certified with experience in the type of inspection that they are required to oversee. The materials testing must be done in a SHA certified lab or in the field by an inspector that has been certified by SHA. The SHA District Office may be available for hire to perform inspection services depending on its workload. If this is desired, it is highly recommended that contact with the SHA District Office be made at the Final Review meeting. For contact information, see Appendix C – Transportation Enhancement Program Contact Information.

### **CHANGE ORDERS**

**NOTE:** Failure to receive SHA approval for change orders could jeopardize TEP reimbursement.

Change orders are required for moderate to significant deviations from the contract. All change orders or extra work orders during construction must be approved by SHA prior to issuance. Change orders should be sent to the District Office for approval. SHA will notify the project sponsor of approval or rejection of change orders in writing. The District Office project engineer may approve emergency change orders by telephone; however, a written change order must be submitted within 14 days.

Change orders may be approved for amounts that exceed the original amount of the contract awarded to the contractor; however, approval of the change order does not imply that the additional construction costs will be reimbursed. The TEP Award cannot be increased after the contractor is awarded NTP.