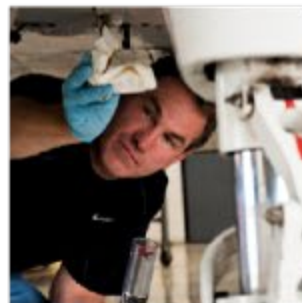


# ODOT CONFLICT OF INTEREST



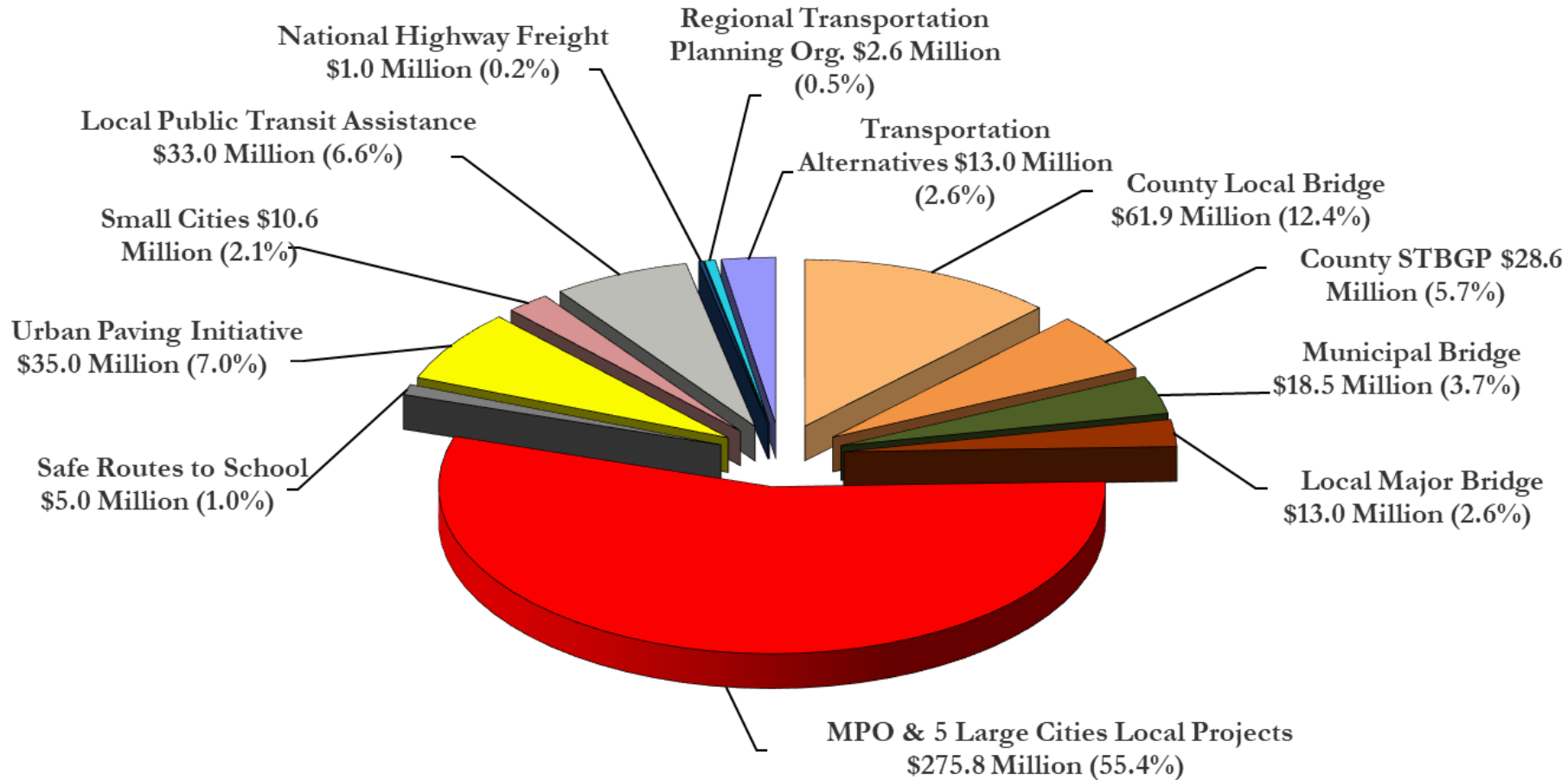
**Brian Davidson**  
**Office of Local Programs**



**Department of  
Transportation**

# FEDERAL FUNDING OPPORTUNITIES

## FY 2023 Traditional Federal-Aid Highway Funding \$498 Million Allocated to Local Government Programs



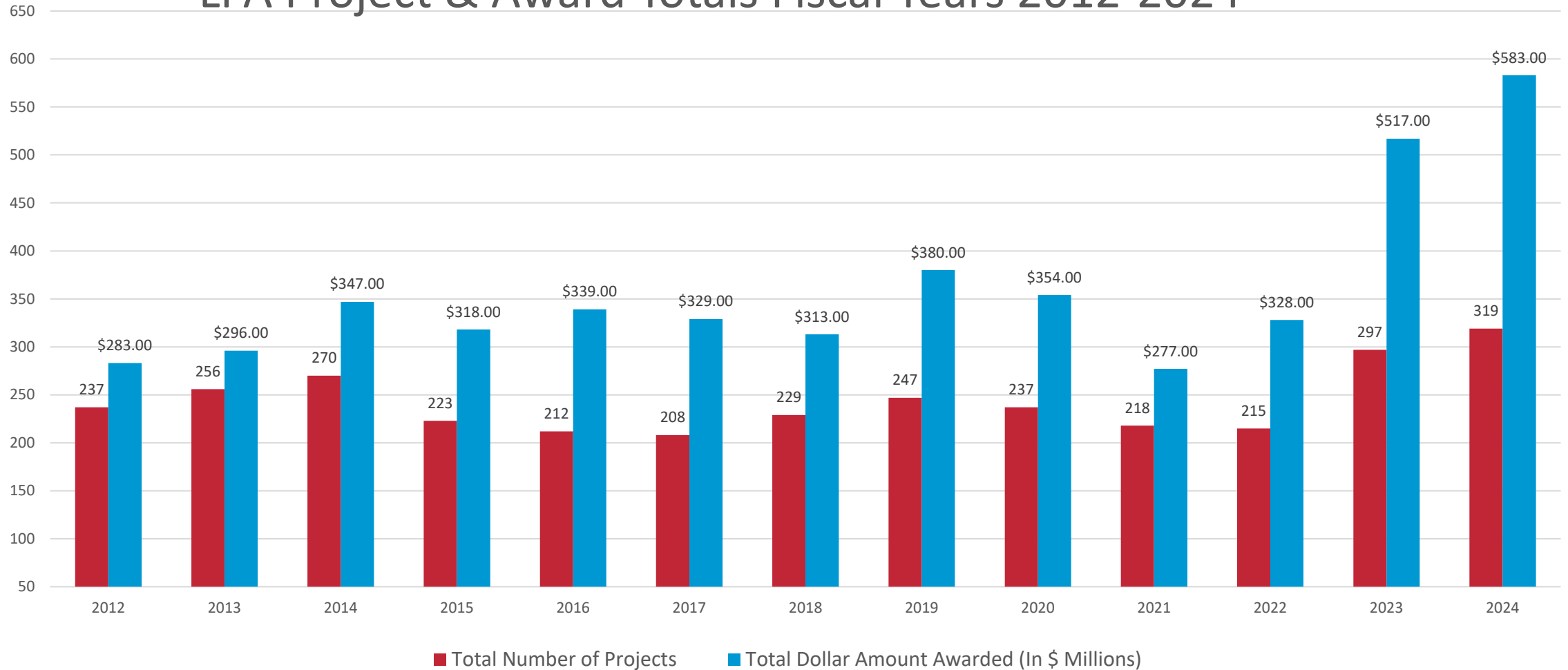
# OHIO'S LOCAL-LET PROGRAM

- Locals are permitted to administer Federal-aid projects as a subrecipient, with ODOT oversight
- ODOT's Local-let program is the 6th largest in the country
- 172 unique qualified locals, includes counties, cities, villages and townships
- SFY24 – 319 projects statewide - \$583 million construction value
- 18 + different funding program opportunities



# PROGRAM GROWTH

## LPA Project & Award Totals Fiscal Years 2012-2024



# FEDERAL FUNDING ON LOCAL PROJECTS

- 23 CFR 1.9 - Local project with federal funding in any phase federalizes the entire project.
- The federal funds invokes the requirement for design contracts to follow the federal law.
- In this case we are discussing conflict of interest, specifically 23 CFR 1.33.



# CONFLICTS OF INTEREST - 23 CFR 1.33

“No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.”



# ODOT'S CONFLICT OF INTEREST POLICY

In accordance with 23 CFR 1.33, the following eligibility requirements apply:

1. Definitions:

- a. Engineer of Record - A Professional Design Firm engaged by the municipality to perform project specific Professional Design Services for the municipality.
- b. Contracted Municipal Engineer - A Professional Design Firm engaged by the municipality to serve as the municipal engineer.
- c. 3<sup>rd</sup> Party Consultant - A Professional Design Firm engaged by the municipality to perform Owner's Representative Services when the Contracted Municipal Engineer is serving as the Engineer of Record.
- d. Professional Design Services – Per Ohio Revised Code (ORC) §153.65(C), services within the scope of practice of an architect or landscape architect registered under Chapter 4703. of the Revised Code or a professional engineer or surveyor registered under Chapter 4733. of the Revised Code.
- e. Professional Design Firm – Per ORC §153.65(B), any person legally engaged in rendering Professional Design Services.
- f. Owner's Representative Services - Services that include: Project management, contract oversight, design review, contract negotiations, invoice review, on-going services in construction, etc.



# ODOT'S CONFLICT OF INTEREST POLICY

## 2. Pre-Funding Services

- a. A Contracted Municipal Engineer may perform pre-funding Professional Design Services in support of a Federal Aid LPA project funding application, such as conceptual design, cost estimates, technical assessments of existing infrastructure, various studies, application forms, etc.
- b. This same Contracted Municipal Engineer may be eligible to serve as the Engineer of Record and provide Professional Design Services to the Federal Aid LPA project if the municipality allows, and if the municipality and the Contracted Municipal Engineer meet the requirements of the QBS Process described in #3 below and the 3<sup>rd</sup> Party Consultant requirements in #4 below. All pre-funding services information must be made available with the programmatic posting to all consultants during the QBS process.





# ODOT'S CONFLICT OF INTEREST POLICY

3. Quality Based Selection ("QBS") Process
  - a. When the municipality has hired a Contracted Municipal Engineer, the municipality shall select the project specific Engineer of Record for Professional Design Services via the QBS process (ORC 153.65 to 153.71) in accordance with the ODOT Consultant Services Manual and ODOT LPA Manual.
  - b. When the Contracted Municipal Engineer is seeking to be hired to perform project specific Professional Design Services as the Engineer of Record, neither the Contracted Municipal Engineer nor its firm shall have any involvement with the QBS process for the selection of the Engineer of Record.
  - c. Documentation, including solicitation documents, Q&A records, evaluation scores, etc., of the QBS Process shall be provided by the municipality to the ODOT District LPA Manager.



# ODOT'S CONFLICT OF INTEREST POLICY

## 4. 3<sup>rd</sup> Party Consultant

- a. If a municipality desires to hire their Contracted Municipal Engineer to provide project specific Professional Design Services as the Engineer of Record, special considerations apply on Federal Aid LPA projects to comply with 23 CFR 1.33 to provide transparency to the public and avoid a conflict of interest.
- b. The Contracted Municipal Engineer may be eligible to provide project specific Professional Design Services as the Engineer of Record on Federal Aid LPA projects under the following conditions:
  - i. the Contracted Municipal Engineer that carries the necessary ODOT prequalifications prescribed in the Request for Qualifications is selected via the QBS Process;
  - ii. the municipality shall follow applicable state law to hire a qualified 3<sup>rd</sup> Party Consultant to work on behalf of the municipality to provide Owner's Representative Services on the Federal Aid LPA project; and
  - iii. the municipality provides documentation of the 3<sup>rd</sup> Party Consultant agreement, and, if applicable, the QBS Process documentation shall be provided to the ODOT District LPA Manager.



# ODOT'S CONFLICT OF INTEREST POLICY

## 5. Other Situations

- a. Municipalities that have a publicly employed engineer may use that employee to perform Owner's Representative Services and Professional Design Services. If the LPA hires an outside Engineer of Record or an outside Professional Design Firm, they must follow all applicable selection requirements including a QBS process where required.
- b. Municipalities that have engaged multiple Contracted Municipal Engineers that are independent from one another may designate one Contracted Municipal Engineer to perform Owner's Representative Services and select another as the Engineer of Record if selected through the QBS process.



# CONFLICT OF INTEREST/ETHICS DISCLOSURE FORM

As the LPA/Consultant (Municipal Engineer, Engineer of Record and/or 3<sup>rd</sup> Party Consultant providing Owner's Representative Services) for the above local federal-aid transportation project, I have:

1. Reviewed the ethics and conflict of interest information found in Ohio's [Local Let Manual of Procedures](#), and for Safety funded projects [ODOT's Safety Analysis Guidelines Section 6.0](#).
2. Reviewed the Ethics and Conflict of Interest laws, including 23 CFR § 1.33, 23 CFR 636.116, and Ohio Revised Code sections 102.03, 2921.42 and 2921.43.

And, to the best of my knowledge, determined that, for myself, any owner, partner or employee, with my firm or any of my sub-consulting firms providing services for this project, including family members and personal interests of the above persons, there are:

- No real or potential conflicts of interest or ethics issues.  
If no conflicts have been identified, complete and sign this form and submit with executed LPA Agreement and/or project application.
- Real conflicts of interest or the potential for conflicts of interest/ethics issues have been resolved with the roles established below. Complete and sign this form, and submit with executed LPA Agreement, consultant contracts and/or project funding application.



# CONFLICT OF INTEREST/ETHICS DISCLOSURE FORM

## LPA – Person in Responsible Charge

Project Owner (LPA): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Engineer of Record

Firm Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Consultant – Municipal Engineer

Applicable  Not Applicable

Firm Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## 3rd Party Consultant

Applicable  Not Applicable

Firm Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



# FHWA CONFLICT OF INTEREST Q&A

## VIII. Conflicts of Interest

1. [What are the conflict of interest related laws and regulations applicable to engineering and design related consultant services funded with FAHP funding?](#) (Updated 08.01.2016)
2. [May a contract be awarded to a single consulting engineering firm to provide both preliminary design and final design engineering services on a single FAHP funded project?](#) (Updated 08.01.2016)
3. [May a contract be awarded to a single consulting engineering firm for the preparation of relevant environmental documents and associated analyses as well as both the preliminary and final design engineering services on a single FAHP funded project?](#) (Updated 08.01.2016)
4. [May a contract be awarded for final design services to a consulting engineering firm, prime or sub-consultant, which provided services during the environmental review and preliminary design engineering phase of the project?](#) (Updated 08.01.2016)
5. [May a consulting engineering firm that performed design services on a FAHP funded project be procured to perform subsequent construction engineering/management and/or inspection services on the project?](#) (Updated 08.01.2016)
6. [What are the controls necessary to mitigate the potential for conflicts of interest with consultants providing services on subsequent phases of a project or serving in management roles?](#) (Updated 08.01.2016)

[Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers](#)

[Using Consultants: Organizational and Consultant Conflicts of Interest | FHWA](#)

## Using Consultants: Organizational and Consultant Conflicts of Interest

Defining conflicts of interest and how to prevent and mitigate them



# CONTACT INFORMATION

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**Department of  
Transportation**

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**THANK YOU**