



MDOT Update

House Transportation Committee

*Office of Auditor General Performance
Audit: Negotiation of Consultant
Contracts (March 2022)*



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ENGINEERING SERVICE (CONSULTANT) CONTRACT QUALIFICATIONS BASED SELECTION

- Required by U.S. Statute (e.g. the Brooks Act) and Federal Regulation
- Contract negotiation focuses on elements of the independent estimate (23 CFR 172.7), based on level of effort, not the total cost

VERSUS

CONSTRUCTION CONTRACT LOW BID

Lowest bidder awarded contract based on pay items to complete the work provided all other contract requirements are met (23 U.S.C 112; 23 CFR 635.114)



OAG Performance Audit Negotiation of Consultant Contracts

Summary for September 2021 Objective:

MDOT uses a Qualifications-Based Selection (QBS) process for procuring consultants for services such as engineering and architectural design. Using QBS, MDOT selects a consultant after a comprehensive evaluation of qualifications, such as knowledge, skill, experience, and other project-specific factors, rather than focusing on cost. After selecting the most qualified consultant, MDOT negotiates a fair and reasonable cost for the agreed-upon scope of services based on its independent cost estimates. MDOT negotiated 2,047 consultant contracts totaling \$1.35 billion between October 1, 2017 and May 15, 2020.



OAG Performance Audit
 Negotiation of Consultant Contracts

Report: 591-0211-20
 Released: March 2022

Audit Objective		Conclusion		
Assess the sufficiency of MDOT's negotiation efforts when procuring consultant contracts.		<u>SUFFICIENT</u> , with exceptions		
Findings Related to This Audit Objective		Material Condition	Reportable Condition	Agency Preliminary Response
Consultant's final priced proposals and contract awards exceeded MDOT's estimated hours and/or costs by 10% or more in 42% of sampled consultant contracts. Variances between consultants' proposals and contract awards and MDOT's estimated hours and costs indicated MDOT's estimates were not always reliable and did not serve as the basis for negotiation. In addition, MDOT's estimates did not include sufficient information to demonstrate MDOT had confirmed with federal regulations by considering all required cost components.		NO	YES	AGREES

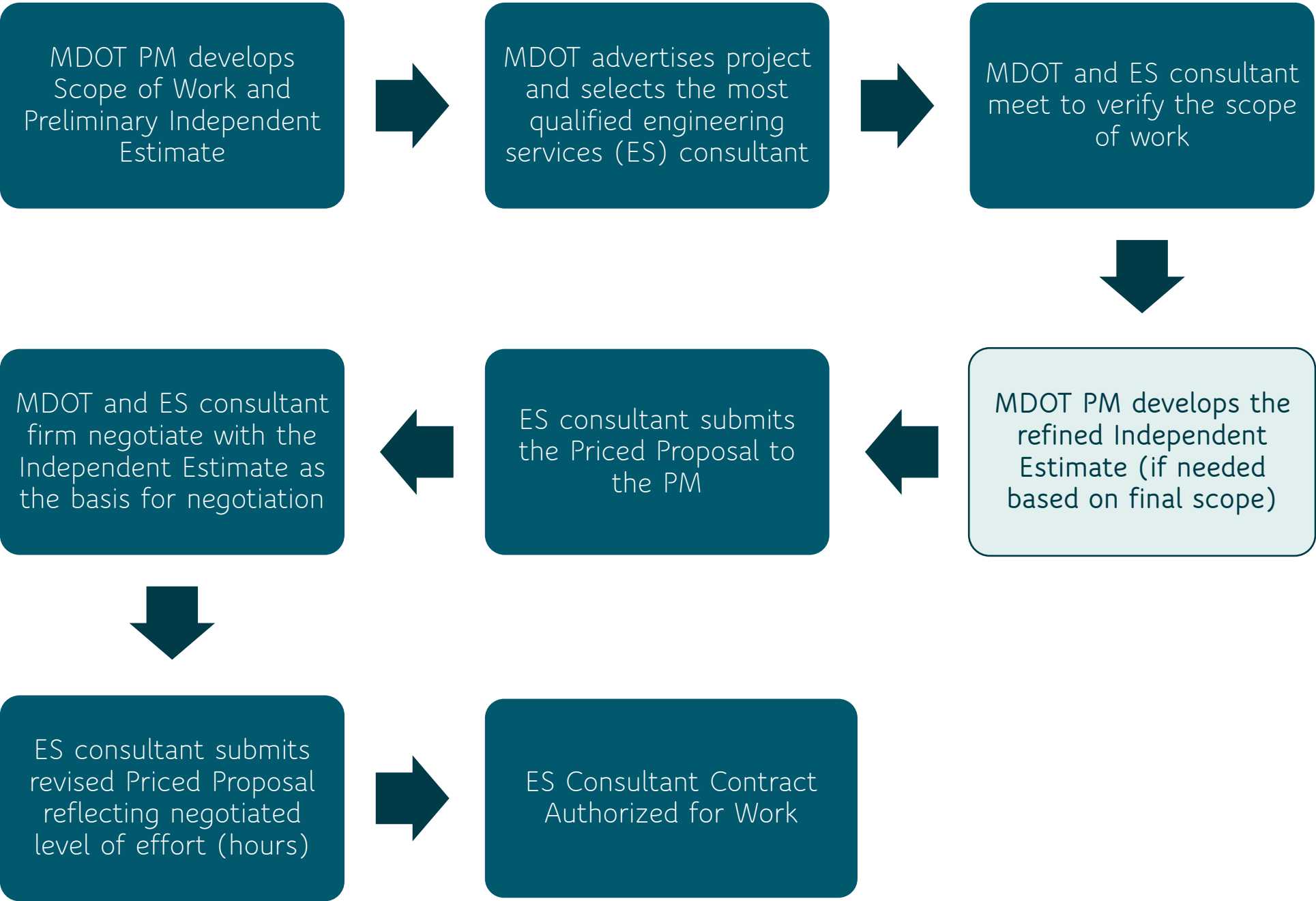


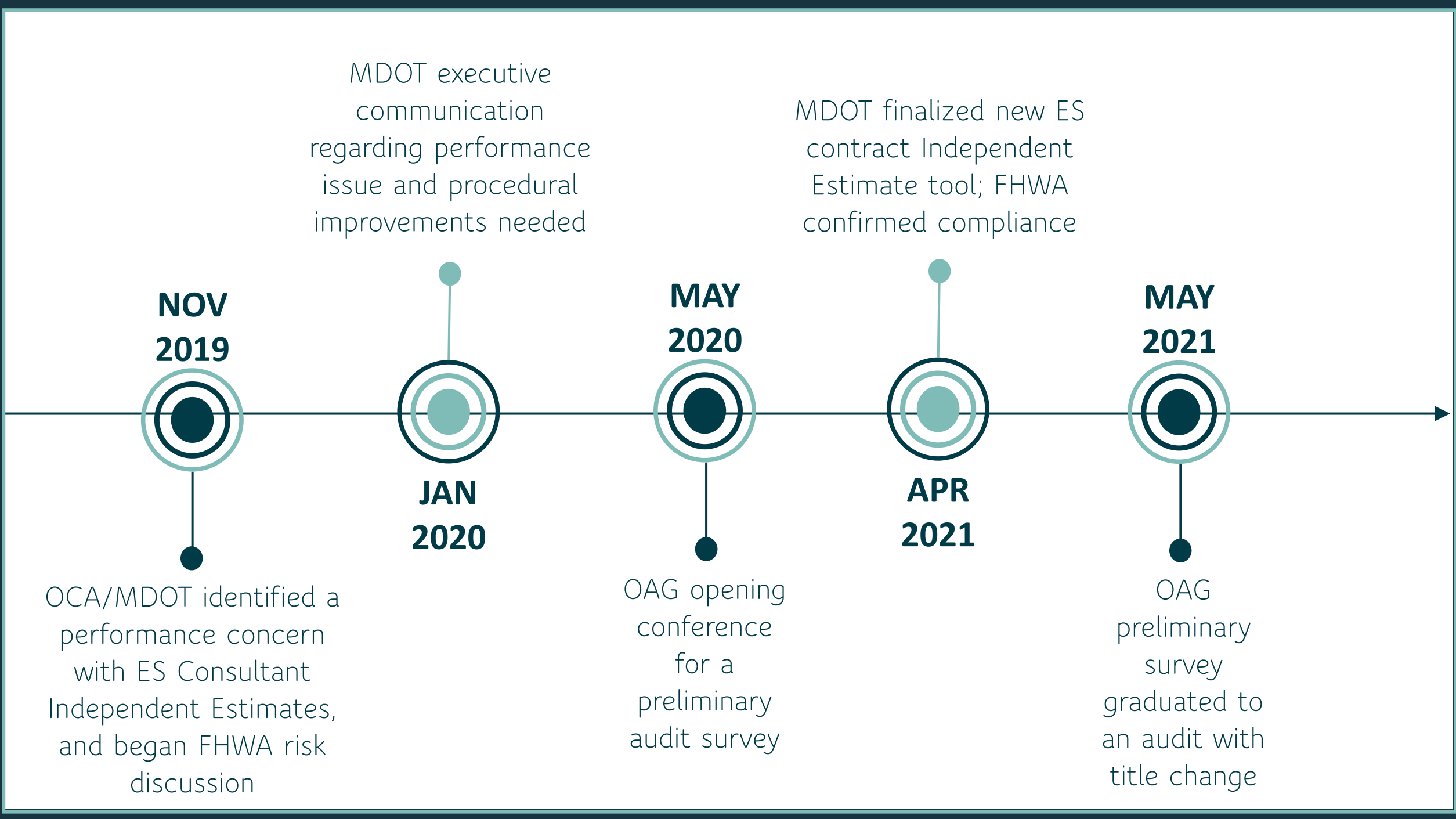
OAG FINDING AND RECOMMENDATION

Improvement is needed to establish independent cost estimates and negotiate consultant contracts.

MDOT needs to continue to improve its efforts to establish independent cost estimates (estimates) and negotiate consultant contracts. Improved estimates will help MDOT ensure it has a suitable basis to negotiate a fair and reasonable level of effort with selected consultants and ensure compliance with federal regulations.







MDOT executive communication regarding performance issue and procedural improvements needed

MDOT finalized new ES contract Independent Estimate tool; FHWA confirmed compliance

NOV 2019



JAN 2020



MAY 2020



APR 2021



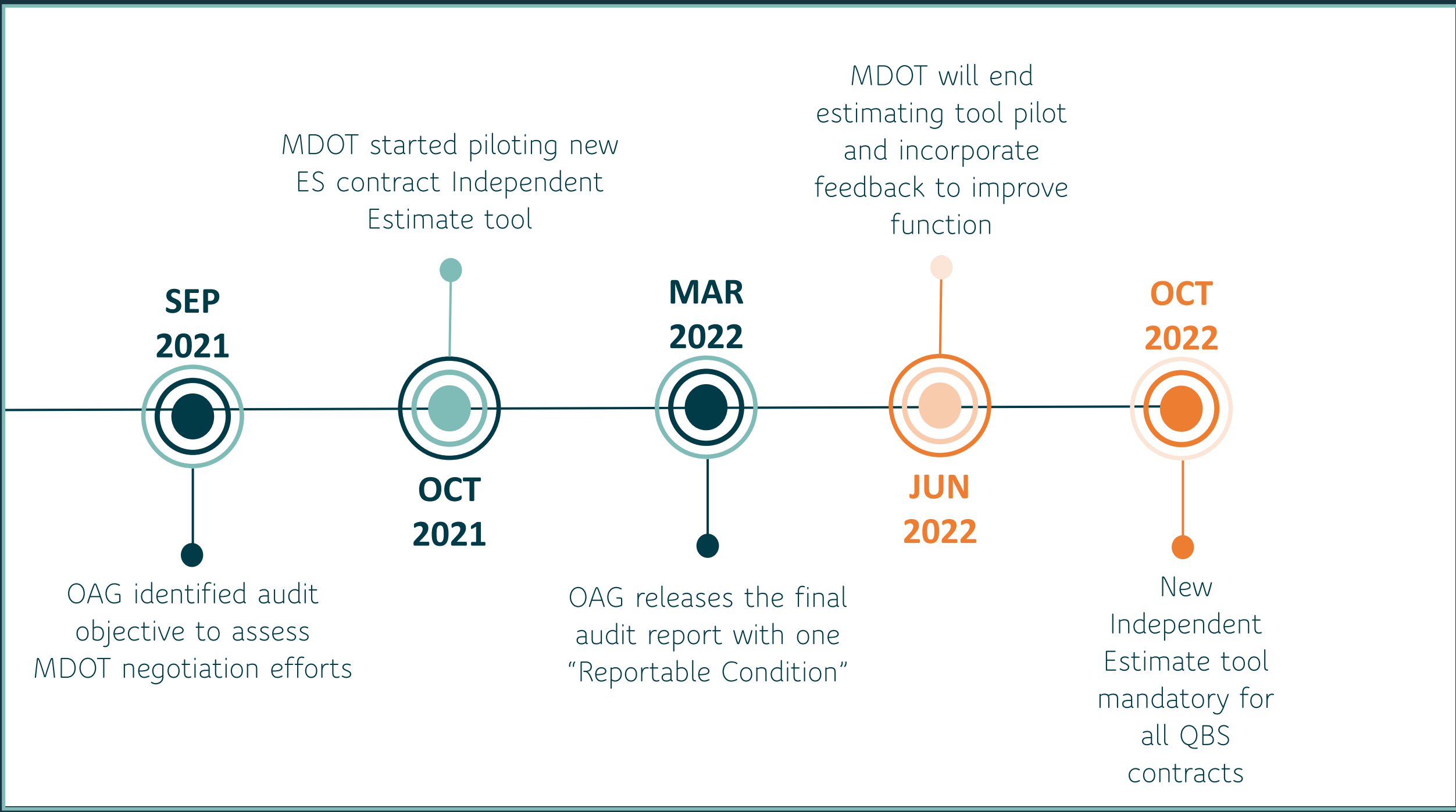
MAY 2021



OCA/MDOT identified a performance concern with ES Consultant Independent Estimates, and began FHWA risk discussion

OAG opening conference for a preliminary audit survey

OAG preliminary survey graduated to an audit with title change



MDOT will end estimating tool pilot and incorporate feedback to improve function

MDOT started piloting new ES contract Independent Estimate tool

SEP 2021



OAG identified audit objective to assess MDOT negotiation efforts

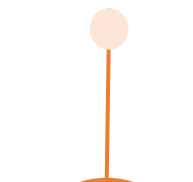


OCT 2021

MAR 2022

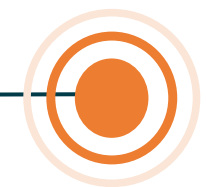


OAG releases the final audit report with one "Reportable Condition"



JUN 2022

OCT 2022



New Independent Estimate tool mandatory for all QBS contracts

MDOT Project Management Support



2012, Established a Statewide
PM Support Specialist



2020, PM Community of
Learning



CONSULTANT CONTRACT ESTIMATING TOOL

Unique QBS Cost Estimating Worksheet

Requisition Number: XXXX
 Contract Number (If Available): XXXXX-XXXXXX
 Job Number (If Available): XXXXXX

Directions: Fill in only the *red* fields to estimate your contract needs.

Cost Estimate Based off Hours Estimate

<u>Route (CS)</u>	<u>Location Description</u>	<u>Grand Total Estimated Hours</u>
List Trunkline Routes & corresponding Control Sections in this area	Describe Location of Project/Limits of Work in this area	0

Consultant Labor: Estimate Resources Needed and % of Total Hours They'll Work on Contract


<u>Resource Classification</u>	<u>% of Total Hours</u>	<u>Hours</u>	<u>RATE/HR</u>	<u>Labor Cost</u>
Project Manager	#DIV/0!	0	\$0.00	\$0.00
CAD Tech	#DIV/0!	0	\$0.00	\$0.00
Staff Engineer	#DIV/0!	0	\$0.00	\$0.00
Senior/Lead Engineer	#DIV/0!	0	\$0.00	\$0.00
Principal	#DIV/0!	0	\$0.00	\$0.00



OFFICE MEMORANDUM

DATE: July 15, 2021

TO: Bradley C. Wiefelich, Director, Bureau of Development
Gregg Brunner, Director, Bureau of Field Services
Matthew J. Chynoweth, Director, Bureau of Bridges and Structures
Patrick J. McCarthy, Director, Bureau of Finance and Administration
Todd White, Director, Bureau of Transportation Planning
Peter Anastor, Director, Office of Rail
Regions Engineers

FROM: Tony Kratofil, Chief Operations Officer  Joseph A. Kratofil, Jr.
Jul 16 2021 11:39 AM

SUBJECT: Consultant Contract Estimating Tool – Pilot Announcement

MDOT will be conducting a pilot session for a sample of QBS contracts regardless of the Selection Tier to obtain feedback on the functionality of the tool. The pilot window will begin October 1, 2021 and run through June 30, 2022. This window will ensure a variety of contracts can be captured to test the tool and collect feedback. MDOT will review feedback based on the pilot projects to implement modifications to the tool as needed prior to expanded use or in future phases. **The Consultant Contract Estimating Tool will be implemented for mandatory use on October 1, 2022, for all applicable QBS contracts.**

Applicable Statute and Regulations

The following is a sampling of ES contract statute and regulations:

- [40 U.S.C. Chapter 11](#) - Selection of Architects and Engineers (commonly referred to as “The Brooks Act” (PL 92-582, 1972); establishes policy to negotiate contracts for architectural and engineering services based on demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices (i.e. not low bid contracting).
- [23 CFR PART 172](#) - Procurement, Management and Administration of Engineering and Design Related Services; §172.7(a)(v)(B) establishes that prior to receipt or review of the most qualified consultant’s cost proposal MDOT shall prepare a detailed independent estimate with an appropriate breakdown of the (1) work or labor hours, (2) types of classifications of labor required, (3) other direct costs, and (4) consultant’s fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation.

QUESTIONS?

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