
Consultant Contract Administration



Ohio Department of Transportation

Consultant Contract Administration

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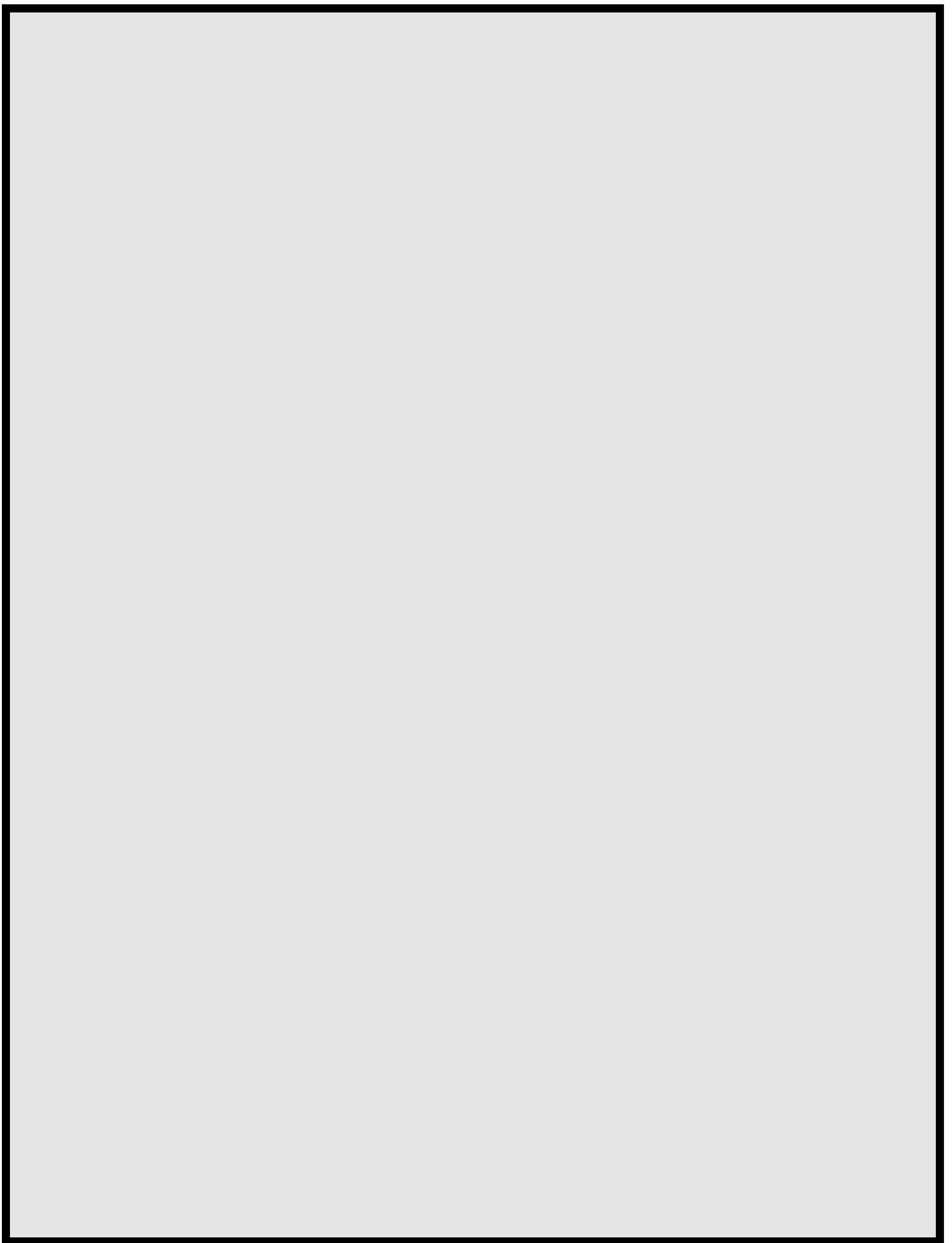
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Part I.
General Information

Introduction to the Manual

Purpose and Procedures

In this chapter look for:

- ✓ Purpose of Consultant Contract Administration manual
-

Purpose of Consultant Contract Administration Manual

The purpose of this manual is to provide uniform guidelines for ODOT employees to follow in administering contractual agreements between ODOT and consultants who are hired to provide technical services. These services include, but are not limited to, environmental studies, design and plan preparation, construction inspection, bridge inspection and right of way acquisition. It is intended that this manual be a single source of reference for ODOT's internal procedures regarding consultant administration and the consultant selection process. Any and all ODOT employees having any role in the administration of a consultant contract must either possess or have ready access to a copy of this manual.

The benefits of "active" administration of consultant contracts include:

- ✓ Helping to ensure that a quality product will be delivered on schedule.
- ✓ Providing early identification of technical and/or contractual issues that must be resolved.
- ✓ Helping to ensure that ODOT upholds all contractual obligations including terms of site access, prompt review of submittals and prompt payment.
- ✓ Providing an accurate historical record for use in documentation of the project development process and contractual disputes.

This manual does **not** replace ODOT's "Specifications for Consulting Services". Those specifications, most recently revised in January, 1998, have been written from the standpoint of a contractual relationship between ODOT and a consultant. References to internal procedures were eliminated. This manual addresses those internal procedures removed from the Specifications and more.

In addition to providing the user guidelines on internal procedures, this manual also includes chapters that explain the laws and regulations that govern ODOT's procedures as well as chapters that describe the various types and forms of contracts with consultants.

A few of the important points that are emphasized throughout this manual include:

- ✓ Uniform application of consultant administration activities from contract to contract.
- ✓ The identification of an ODOT Project Manager, the single contact person, for each consultant contract. (See Chapter 4 for further definition)
- ✓ The importance of good documentation and filing practices which are fundamental to effective contract administration.
- ✓ What to do when contractual obligations are not met.

It is recognized that, not unlike many other ODOT activities, consultant contract administration is dynamic and standard procedures change periodically. This manual is formatted such that updates and revisions can be easily made to single chapters without rewriting the entire manual. ODOT's Consultant Services section of the Office of Contracts will monitor these revisions and update the manual on a timely basis, allowing the user access to the most current procedures.

CHAPTER 1

LAWS AND REGULATIONS

In this chapter look for:

- ✓ Relevant sections of the Ohio Revised Code (ORC)
 - ✓ Federal Highway Administration (FHWA) and Other Federal Documents
 - ✓ ODOT Documents and Procedures
-

This Chapter provides a listing and brief explanation of Federal laws, State laws, Federal Highway Administration requirements and ODOT documents that govern consultant selection and contract administration. The Department's policies and procedures are based on these external requirements and ensure compliance when followed.

These "foundation" documents provide insight into the development of the Department's policies and procedures and also serve as a reference in situations not clearly addressed in the Department's policies.

Ohio Revised Code (ORC)

Section 5501.17

Empowers the Director to employ "such assistants as are necessary to prepare plans and surveys."

This section of the ORC is used in the hiring for nearly all consultant agreements for traditional engineering and/or environmental services.

Section 5501.18

Empowers the Director to procure services involving real estate acquisition.

Sections 153.65 through 153.71

Documents procedures that must be utilized in procurement of professional design services. The Department's selection procedures as documented in the Specifications for Consulting Services are based on this section of the ORC.

Sections 127.12 through 127.16

These sections enumerate the duties and powers of the State Controlling Board.

Section 126.07

This section requires encumbrance of funds prior to authorization of an agreement.

Federal Highway Administration (FHWA) and Other Federal Documents

23 CFR 172 - Administration of Engineering and Design Related Service Contracts

FHWA policies that govern ODOT's consultant procurement policies are included in this document. ODOT operates under the alternate procedures permitted by Section 172.15. Copies of relevant correspondence with FHWA concerning the alternate procedures are attached.

48 CFR, Part 31 - Federal Acquisition Regulations

Chapter 31 of the Federal Acquisition Regulations is invoked by 23CFR172.9 (FHWA requirements) and is further adopted by ODOT in chapter 3 of Specifications for Consulting Services. Chapter 31 addresses contract cost principles and procedures.

Additionally, Chapter 15 of the FARS, although compliance is not required of ODOT, includes useful guidance on a number of topics, including estimating and negotiation procedures.

49 CFR, Part 18.42- Records Retention Requirements

This document is invoked by 23 CFR 172.7 and addresses records retention requirements and procedures.

United States Code, Title 23, Section 112 -

Section 112(b) requires ODOT to follow Title IX of the Federal Property and Administrative Services Act of 1949 (the "Brooks" law) or an equivalent State qualifications based requirement.

ORC Sections 153.65 through 153.70 and ODOT's Specifications for Consulting Services are based on this Federal Requirement and ensure compliance.

Section 112(B) also was amended by Section 307 of the 1995 NHS Act to prohibit limits on indirect cost rates (overhead) and requires ODOT to accept overhead rates established by a cognizant Federal or State government agency.

Chapter 1
Appendix

CHAPTER 2

Cost Accounting and Definitions

In this chapter look for:

- ✓ Cost accounting and definitions
 - ✓ Statewide consultant wage rate survey
 - ✓ Facilities capital cost of money
 - ✓ Net fee
 - ✓ Fee calculation
 - ✓ Pre-award evaluations
 - ✓ Final cost review
-

This Chapter is provided for the use and information of District and other ODOT personnel called upon to analyze consultant costs, negotiate fees and review invoices. A basic knowledge of fee calculation and cost accounting principles is necessary to properly carry out these functions.

~~Please note, however, that all indirect cost calculations and reviews, pre-award audits and final cost audits will continue to be performed by the Office of Payroll and Federal Accounting. Questions concerning allowable overhead rates should continue to be addressed to that Office.~~

Cost Accounting and Definitions

Cost Definitions and Information

Total Contract Cost is the sum of:

- ✓ All direct and indirect costs allocable to the contract
- ✓ Allocable cost of money
- ✓ Less any allocable credits

Allowable Costs

Definition of allowable costs:

Allowable costs are actual costs incurred by the consultant which are:

- Reasonable* - an amount that would have been incurred by a prudent person in a competitive situation.

-
- ❑ *Allocable* - Necessary costs incurred by the consultant to comply with the requirements of the contract.
 - ❑ *In accordance with generally accepted accounting principles* - cost recognition using generally accepted accounting principles.
 - ❑ *In accordance with the contract terms* - costs authorized in the contract.
 - ❑ *In accordance with 48 CFR Part 31, Contract Cost Principles and Procedures (Federal Acquisition Regulations)* - and applicable agency supplements.

Direct Cost

Direct cost is any allowable cost that can be identified specifically with a particular final cost objective. (Costs relating to a specific contract are direct costs of that contract and are to be charged directly to it.) Direct costs are divided into two (2) components as follows:

1. *Direct Labor Cost* is the cost of employee compensation for work performed directly on a project. (i.e. wages, bonuses, stock options, etc. paid to employees for time worked directly on a particular job.)
2. *Direct Non-Labor Cost* is the cost of materials and supplies benefitting a particular project or job. (i.e. travel, copies, printing, survey stakes, etc.)

Indirect costs

Definition of Indirect Costs - Indirect costs (overhead cost) is any allowable cost incurred by the consultant which cannot be identified with a particular contract or project. Indirect costs are also divided into two (2) components as follows:

1. *Indirect labor cost* is employee compensation for work performed on tasks for which there is no direct benefit to any one project. (i.e. wages paid for the performance of the accounting function.)
2. *Indirect non-labor cost* is any non-employee cost not directly identified with a particular final cost objective. (i.e. insurance, taxes, utilities, etc.)

Distribution of indirect costs

Indirect (overhead) costs are distributed costs based upon their relationship to direct labor. (Total allowable overhead costs are divided by total direct labor costs to determine a percentage relationship so that the proportionate amount of overhead cost can be applied to each contract (i.e. the overhead % X direct labor cost = applicable overhead cost)).

Variable nature of indirect costs

Indirect (overhead) costs are variable costs, which generally vary from year to year. Therefore, overhead costs used for billing purposes are based upon either prior year actual costs or current year projections which, in either case, must be adjusted upon completion of the business year and the contract. For actual cost agreements (or parts of agreements), both the overhead and direct costs are subject to a final cost audit by ODOT which could result in a negative adjustment to the costs claimed by the consultant.

The following summary from the Federal Acquisition Regulations (Exhibit 2.1) is provided to illustrate the types of costs normally included in overhead, along with costs that are normally unallowable. Exhibit 2.2 provides an example overhead schedule and calculation of an overhead rate. Questions concerning allowable overhead rates should be directed to the Office of Consultant Services.

Example of Overhead Schedule

Acct No.	Description	Amount	Adjustments	Amount Claimed	Reference 48 CFR 31.205
601	Indirect Labor	\$1,155,962.27	(\$252,000.00)	\$903,962.27	
604	Payroll Taxes	\$196,647.30		\$196,647.30	
605	Profit Sharing	\$129,543.31		\$129,543.31	
606	Medical & Disability	\$244,992.24		\$244,992.24	
608	Promotion	\$19,708.72	(\$19,708.72)	\$0.00	31.205-1
610	Utilities	\$32,204.52		\$32,204.52	
611	Telephone & Postage	\$33,204.52		\$33,204.52	
613	Equipment Supplies	\$118,307.05		\$118,307.05	
614	Equipment Depreciation	\$94,616.36		\$94,616.36	
615	Vehicle Gas, Oil & Repairs	\$34,959.97		\$34,959.97	
616	Vehicle Depreciation	\$26,593.38		\$26,593.38	
617	Building Depreciation	\$14,387.44		\$14,387.44	
618	Bank & Check Charges	\$280.06		\$280.06	
619	Seminars	\$9,085.10		\$9,085.10	
620	Advertising	\$1,387.40		\$1,387.40	
621	Rent	\$12,866.61		\$12,866.61	
622	Office Cleaning	\$11,234.10		\$11,234.10	
624	Amortization Leasehold Impr	\$698.26		\$698.26	
626	Real Estate Tax	\$4,109.40		\$4,109.40	
627	Personal Property Tax	\$7,108.92		\$7,108.92	
628	City Income Tax	\$220.86		\$220.86	
629	Employee Publications	\$8,143.76		\$8,143.76	
630	Professional Dues	\$14,355.25		\$14,355.25	
Acct No.	Description	Amount	Adjustments	Amount Claimed	Reference 48 CFR 31.205

631	Accounting & Legal Fees	\$3,661.66		\$3,661.66	
632	Comprehensive Business Insurance	\$43,163.94		\$43,163.94	
633	Professional Liability	\$70,186.00		\$70,186.00	
634	Miscellaneous Administrative	\$14,507.62		\$14,507.62	
636	Corporation Tax	\$15,494.00	(\$15,494.00)	\$0.00	31.205-41
637	Employee Disability Insurance	\$10,585.40		\$10,585.40	
701	Interest on Capital	\$111,585.03	(\$111,585.03)	\$0.00	31.205-20
706	Entertainment	\$3,891.98	(\$3,891.98)	\$0.00	31.205-14
708	Donations	\$7,665.00	(\$7,665.00)	\$0.00	31.205-8
709	Partners Life Insurance	\$20,196.00	(\$20,196.00)	\$0.00	31.205-19
711	Bad Debts	\$14,649.50	(\$14,649.50)	\$0.00	31.205-3
	Total Direct Cost	\$2,486,202.93	(\$445,190.23)	\$2,041,012.70	
	Direct Labor	\$1,338,734.19	\$0.00	\$1,338,734.19	
	*Overhead Rate	185.71%		152.46%	
	Productivity Ratio = Direct Labor/Total Labor	53.66%		59.69%	

* Overhead Rate = Indirect Costs/Direct Labor

Treatment of overtime/premium time wages

- Overtime or premium time is a charge for direct labor hours worked in excess of the consultant's standard work week. This additional time is normally paid to hourly workers at one and one-half or occasionally twice their normal hourly rate.
- Overtime charges can be treated in one of two ways:
 1. Overtime premium can be charged directly to the job based upon the company's written policy which provides for the consistent treatment of overtime, or
 2. Overtime premium can be charged to the overhead cost pool.
- Full overhead rates are normally not applied to the premium portion of wages, i.e. only the straight time labor dollars excluding the premium portion of wages should be multiplied times the overhead rate. Questions concerning the allowability of these costs should be directed to the Office of Payroll and Federal Accounting.
- Exempt employees in the private sector are normally not compensated with premium or overtime and, therefore, none should be billed for any additional hours worked.

Treatment of CADD costs

CADD costs must be consistently billed as either a direct charge to the job or part of the consultant's overhead and, when billed directly, the direct charge should be an hourly rate.

Statewide Consultant Wage Rate Survey

Consultant Services maintains a statewide database of wage rates paid by prequalified consultants, for use in estimating fees for consultant design activities. This wage rate information is intended for use in preparing an independent estimate of labor costs for a project for the Department's use in determining the fairness/reasonableness of proposed fees. These wage rates do not constitute contractual limits. A consultant may propose fewer hours at a higher cost per hour or more hours at a lower cost per hour, and still achieve the same objective at a similar cost.

The wage rate system utilizes a "weighted average" system, based on the number of individuals in each wage category in order to provide composite rates for project management, roadway design, bridge design and field surveying. The composite rates should be utilized for most projects, but appropriate adjustments should be made for more complex projects. For specialized studies and other non-design projects, these rates should be utilized with caution or not at all.

Additionally, current year rates must be escalated for use in estimating the costs of work that will be performed in future years.

Facilities Capital Cost of Money

- Facilities Capital Cost of Money (Cost of Money) is a return on capital assets at interest rates specified by the Secretary of the Treasury.
- Cost of money is expressed as a percentage of direct labor.
- Cost of money is a form of reimbursement. If money was not tied up in capital assets, then it could be used for investment earning a rate of return.
- Reference FAR Title 48 Part 31.205-10 and Cost Accounting Standard 8-414 1g on Page 864.

An example of cost of money calculation:

Consultant Name
Cost of Money Rate Calculation
Fiscal Year Ended December 31, 1995

<u>Account Number</u>	<u>Description</u>	<u>FYE 12/31/94</u>	<u>FYE 12/31/95</u>
XXXX	Land	575,000.00	575,000.00
XXXX	Equipment	205,487.00	350,126.00
XXXX	Acc. Depr.- Equipment	(90,103.44)	120,356.00
XXXX	Autos & Trucks	21,231.34	93,571.25
XXXX	Acc. Depr. - Autos & Trucks	<u>(21,231.34)</u>	<u>(23,491.88)</u>
	Net Book Value	690,383.56	1,115,561.37
	Average Net Book Value		902,972.47
	Weighted COM Rates		<u>7.250%</u>
	Cost of Money		65,465.50
	Direct Labor		<u>1,671,250.00</u>
	C.O.M. Rate:		<u>3.92%</u>

Note: As specified in Cost Accounting Standard 414 Section 8g. "Where the consultant elects to exclude the cost of money from its proposal or claim for reimbursement, such costs should be designated as unallowable and may not be included in profit."

Interest Rates specified by the Secretary of the Treasury

<u>Year</u>	<u>Jan - June</u>	<u>July - Dec</u>	<u>Cal Year Average</u>
1990	8.500%	9.000%	8.750%
1991	8.375%	8.500%	8.438%
1992	6.875%	7.000%	6.938%
1993	6.500%	5.625%	6.063%
1994	5.500%	7.000%	6.250%
1995	8.125%	6.375%	7.250%
1996	5.875%	7.000%	6.438%
1997	6.375%	6.750%	6.563%
1998	6.250%	6.000%	6.125%

Net Fee

Definition of Net Fee

Net fee is a dollar amount established to cover the consultant's profit, miscellaneous expenses and other factors that may be considered under the applicable regulations and that are not paid for in other provisions of the contract. (Basically profit)

Discussion Concerning Net Fee

Net fee is normally calculated as a percentage of the total of:

1. Direct labor costs
2. Indirect costs (overhead) based on an average statewide overhead rate (See below)

The use of an average overhead rate in calculating net fee provides the same rate of return for all firms relative to direct labor. A separate rate is calculated for geotechnical work in recognition of the typically higher cost structures for this work. These rates will be revised annually on May 1 as new fiscal year information becomes available. Average overhead rates are calculated based on a weighted average with the weighting based on funds encumbered over the most recent five year period.

The prime consultant is normally not allowed net fee on the actual work performed by subconsultants as this would constitute two (2) firms profiting from the same work. However, the prime consultant is allowed net fee for his efforts in administering the subconsultant contract.

The net fee percentage is based on several factors including the size, complexity, duration and degree of risk involved in the work.


Net Fee Analysis Form - The Department's net fee analysis form follows as Exhibit 2.3

STANDARD NET FEE PERCENTAGES

Project Description	Net Fee Percentage
Major Design New alignments in urban areas Urban and multilevel interchanges Major urban freeways and expressways Generally Level 3 Bridge Design	12%
Median Design New alignments in rural areas Small urban projects Rural interchanges Rural freeways Generally Level 2 Bridge Design	11%
Minor Design Small rural projects Generally Level 1 Bridge Design	10%
Bridge Inspection Major Bridges Minor Bridges	11% 10%
Construction Inspection	9%
Preliminary Development Multiple Corridor Projects Single Corridor Projects and Categorical Exclusions	11% 10%

- Notes:**
- 1) For projects with expedited schedules that require exceptional staff commitments, add one half percentage point to the above.
 - 2) For projects that do not meet any of the above project descriptions, a net fee percentage shall be determined based on the size, complexity, duration and degree of risk involved in the project, with the above percentages used as guidance.
 - 3) For task order agreements, use a weighted average (rounded to the nearest half point) of the expected mix of services.

Fee Calculation

 The basic calculation of consultant fees, for use on both lump sum and costs plus net fee type contracts, is:

Hourly Rate	X	Total Hours	=	Direct Labor Costs
Overhead Rate	X	Direct Labor Cost	=	Overhead Costs
Cost of Money Rate	X	Direct Labor Cost	=	Cost of Money

Other Direct Costs = As justified in proposal direct cost summary

Subconsultant Costs = Justifiable subconsultant costs

(Direct Labor costs + Statewide Average Overhead Costs) X Net Fee Percentage = Net Fee

	Direct Labor Costs
+	Overhead Costs
+	Cost of Money
+	Other Direct Costs
+	Subconsultant Costs
+	<u>Net Fee</u>
	Total Fee

Example Fee Calculation and Contract Language

The example fee calculation shown in Exhibit 1 would be used for both lump sum and costs plus net fee type contracts; however, the consultant contract would be written differently for each fee type as follows:

1. Fee type = Lump Sum Compensation

"Part 1: Construction Contract Plans.

Lump sum compensation of Three Thousand Three Hundred Eighteen Dollars (\$3,318.00)."

2. Fee type = Costs Plus Net Fee Compensation

"Part 1: Construction Contract Plans.

Actual costs plus a net fee of Two Hundred Ten Dollars (\$210.00). However, the maximum prime compensation shall not exceed Three Thousand Three Hundred Eighteen Dollars (\$3,318.00)."

Pre-Award Evaluations

Pre-negotiation (pre-award) audits of consultant proposals are required by 23 CFR 172.5, as follows:

“(1) Prenegotiation audits and the resultant audit opinions are required for all contracts expected to exceed \$250,000 and for contracts of less than \$250,000 where:

- (i.) There is insufficient knowledge of the consultant's accounting system,
- (ii.) There is previous unfavorable experience regarding the reliability of the consultant's accounting system, or
- (iii.) The contract involves procurement of new equipment or supplies for which cost experience is lacking”

Pre-award audits, when required, are performed by the Office of Consultant Services. ~~Payroll and Federal Accounting. The Office of Contracts evaluates each consultant proposal, determines the need for a pre-award audit, and forwards each proposal that meets the above criteria to the Office of Payroll and Federal Accounting.~~

Upon completion of the pre-award audit, the Office of Consultant Services ~~Payroll and Federal Accounting~~ will issue an opinion regarding the acceptability of proposed costs and provide explanations concerning any unacceptable or questionable costs. ~~The Office of Payroll and Federal Accounting assigns~~ An Audit Control Number is assigned to the opinion, which is later referenced by the Office of Contracts in the Encumbrance Request.

- The normal Scope of Review utilized by the Office Consultant Services ~~of Payroll and Federal Accounting~~ is as follows:
 1. *Cost Accounting System* - Ensure consultant is pre-qualified with the Department and has adequate cost accounting system. If the consultant is not pre-qualified with the department, evaluate the consultant's cost accounting system for adequacy.

2. *Math Calculations* - Check the accuracy of math calculations in the proposal.
3. *Labor rates* - Determine that the proposed labor rates are reasonable. Compare the rates to previously audited rates, submitted rate information, industry averages, etc.
4. *Overhead rate* - Determine if proposed overhead rate is reasonable. Check the firm's historical rates. Should be reasonably close.
5. *Non-salary Direct Cost* - Ensure that direct costs are reasonable and necessary. Examples of direct costs - travel costs, blueprints & reproductions, automobile expenses, subcontract costs, etc. Consultant travel costs are contractually limited by the State's travel policy, which is posted on ODOT's Website under Business Management/Finance/OBM Links/Travel Policy.
6. *Fixed fee* - Determine proposed net fee does not exceed 15% of the consultants costs or the maximum net fee percentage established by the Office of Contracts, whichever is lower.
7. *Subcontract cost* - Ensure that subcontract costs are supported by written price quotations. Subconsultant proposals are subject to the same audit procedures as the prime consultant.

Final Cost Review

Projects subject to Final Cost Review:

- ✓ Contracts that include actual cost fees greater than \$100,000 are reviewed when the project becomes final.

Scope of Final Cost Review

Remember that for cost based contracts, contractual fees (and invoices to a lesser extent) are based on estimated costs. A final cost review is conducted by the Office of Payroll and Federal Accounting to determine actual costs based on hindsight. Such reviews are generally conducted after the close of the consultant's last fiscal year of the contract so that actual overhead calculations will be available. The review may determine that the consultant is owed additional funds or the State may invoice the consultant for any excess payment.

The normal scope of review by the Office of Payroll and Federal Accounting is as follows:

1. Review the consultant invoices and summarize the invoice data.

	Direct Labor Costs
+	Overhead Costs
+	Cost of Money
+	Direct Costs
+	Subconsultant Costs
+	Net Fee
	Total Costs

-
2. Ensure maximum fees and net fee are within limits specified in the proposal.
 3. Provisional overhead rate billed is adjusted to actual overhead rate.
 4. Invoice the consultant when the Department has been over billed for overhead or other costs, or approve additional payment to the consultant if the actual costs exceed the invoiced amount.

CHAPTER 3

Agreements

In this chapter look for:

- ✓ Agreement documents
 - ✓ Form of agreement
-

Agreement Documents

General

The Department's standard agreements for engineering and related services must be utilized. The use of a personal services agreement may be acceptable for minor studies or surveying etc., but the personal services agreement does not include the referenced documents (specifications, etc.) and contractual protections that are included in the standard engineering agreement.

Personal services agreements and procedures are further addressed in Chapter 12 of the Purchasing and Contract Administration Manual.

Engineering Agreements

The Department's standard engineering agreement is utilized for environmental/preliminary development services, bridge inspections, design, and various task order services. For "No Review" design agreements, in which the Department has a very limited role in plan review, specific clauses are added to reflect this limited review by the Department.

In instances where a design consultant is scoped to provide construction inspection services to supplement the District's staff, a separate agreement (with the original agreement incorporated) is preferred. The use of a separate agreement permits timely closeout of the design agreement and ensures that contractual clauses specific to construction inspection services are included (see below).

In the event that an engineering agreement includes services during construction, the agreement should be reviewed for the need to include specific clauses that are standard in construction inspection agreements, as described below. At a minimum, the "Health and Safety Requirements" clause should be included.

Construction Inspection Agreements

Construction Inspection agreements reflect the Department's practice of supplementing the Districts' staff through the use of consultant inspectors. The agreement includes clauses for scope of work, consultant staff requirements, equipment, compliance with health and safety requirements, and invoicing that are specific to construction inspection agreements.

FORM OF AGREEMENT

General

Determining the most appropriate form of agreement at the outset of a project will contribute greatly to the overall success of the contract. A form of agreement that is best suited to the nature of the work and associated decisions that must be made during the course of the agreement will reduce the need for modifications and provide a "frictionless" means of accomplishing the work.

For example, lump sum type agreements are most easily administered but are relatively inflexible in accommodating changes in the work. Actual cost agreements (costs plus a net fee) provide more flexibility but require relatively more administrative effort.

Descriptions of the four forms of agreement utilized in ODOT contracts follow. Multiple forms of agreement may be incorporated in the same contract to accommodate different aspects of the work.

Lump Sum Compensation

A Lump sum compensation is a remuneration that establishes a specific total amount payable for the performance of the work.

Lump sum compensation is appropriate if the State establishes, with precision, the:

- Scope
- Character
- Complexity
- Duration

of the work and that just compensation for the work can be evaluated in advance with reasonable accuracy. ***A Pre-award audit evaluation is required when the fee exceeds \$250,000.*** Refer to Chapter 2 for additional information.

Lump sum agreements are the preferred form of agreement when the above conditions are met, based on simplified administrative requirements (primarily adherence to schedule and

completion of scope of services).

Cost plus a Net Fee Compensation

Cost plus a net fee compensation is a form of reimbursement that is a combination of two factors:

1. The consultant's actual allowable costs and
2. A net fee as set forth in the agreement

Cost plus a net fee compensation is appropriate if the extent of the work cannot be well defined and a lump sum, or a unit of work application is not feasible. The cost plus a net fee compensation method is preferred for projects in the preliminary development phase and other projects where the work is indeterminate in nature. Payment is based on the actual allowable costs incurred and the completion percentage times (x) the applicable net fee listed in the agreement. Actual allowable costs include:

- Salaries for time directly chargeable to the work (including principals for time productively engaged)
- Direct non-labor costs applicable to the work
- Indirect costs to the extent they are properly allocable to the work

The amount of the net fee is specified. The proposal is subject to pre-award audit evaluation and the final cost is subject to post contractual audit. A maximum prime compensation amount (upset value) must be established.

Rate of Pay Compensation

Rate of pay compensation is a type of remuneration that establishes a specific rate of pay in the agreement applicable for each classification of employee.

Rate of pay compensation is appropriate if indirect costs and profit are tied directly to extent of services utilized, and applicable for work of indeterminable extent where the State monitors time and class of employee such as:

- Surveying
- Construction supervision
- Testing

Rate of pay compensation requires contractual rates for each classification. Travel and subsistence, and other direct costs, as actually incurred, are additionally eligible. Rate of pay compensation requires pre-award audit evaluation, and maximum prime compensation (upset value) is required.

Part II.
Initiation through Authorization

CHAPTER 4

Contract Managers and Project Managers

In this chapter look for:

- ✓ Roles and duties of the Project Manager
 - ✓ Roles and duties of the Contract Manager
-

This chapter addresses the concept of Contract Managers and Project Managers and the general responsibilities of each. See Chapter 7 for more detailed information of individual responsibilities.

There must be one person who will serve as the primary contact in ODOT for administering a consultant contract, and that person is called the Project Manager. It is important that the Consultant gets direction from only one person for day to day matters involving plan reviews, deliverables, schedules, etc., to avoid conflicting directions and to establish the authority of that one person. It is equally important that this one person be accountable for and have the authority to administer those day to day activities in order to develop a sense of ownership of the project and to make sure that the person closest to the project is able to directly see that the contract requirements are met. In a sense, this approach equates with most Consulting Engineering firms which also assign a Project Manager to oversee that contract requirements are met.

Additionally, there must be, within ODOT, a counterpart to the Consultant's vice-president, or managing partner. That person is called the Contract Manager. The Contract Manager will have the responsibility for oversight of the consultant selection process. He or she will not manage each consultant contract directly, but will be involved in any contract modifications or breach of contract decisions. A more detailed description of the duties of the Contract Manager is later in this chapter.

Roles and Duties of Project Managers

The duties of the Project Manager officially begin when the consultant contract is authorized (except that we recommend the Project Manager be involved in developing the pre-Scope of Services, conducting the scope of services meeting with the consultant, evaluation of the consultant's proposal and negotiation of the fee if required.) The basic components of the contract that are to be monitored by the Project Manager are:

- ✓ Compliance with scope of services
- ✓ Schedule
- ✓ Cost
- ✓ Quality
- ✓ Record keeping

Compliance with Scope of Services

The Project Manager's responsibilities will include:

- Verify that contract deliverables meet the scope of services requirements and that all required deliverables are received.
- Coordinate and schedule internal reviews. Plan submissions go directly to the Project Manager.
- Coordinate and schedule plan reviews.
- Provide technical guidance to the Consultant, or see that such guidance is provided by others.
- Hold progress meetings or visits to the Consultant's office.
- Coordinate processing of any design exceptions needed
- For design contracts, coordinate all activities necessary to certify plans to Central Office, such as:
 - R/W clear
 - Utilities clear
 - All permits acquired
 - Railroad agreements
 - Cost estimate
 - Environmental clear

(See Chapter 7, Technical Reviews Section for additional details)

If the Project Manager finds that a Consultant has not performed according to the scope of services, the Project Manager must immediately inform the Consultant of the deficiency and require an acceptable method and timeframe for a corrected item. Typically, this would happen during one of the various staged reviews (for final design contracts), and can either be addressed in the next stage review or the Project Manager can require another compliance review at the same stage. In either case, the Project Manager should keep the Contract Manager informed.

Schedule

The Project Manager will monitor the schedule requirements of the contract:

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- ❑ Commitment or milestone dates for various submissions or deliverables.
 - ❑ Internal and external reviews or activities to make sure that ODOT meets its contractual time lines for responses to the Consultant.

If the Consultant has not delivered on schedule, the Project Manager will contact the Consultant and re-establish a schedule that is satisfactory to correct the problem. If the Consultant fails to perform duties timely, the Project Manager will inform the Contract Manager that the consultant is in breach of contract and request that the Contract Manager notify the Consultant that he or she is in breach of contract (see Chapter 10).

If the schedule slips due to ODOT's failure to meet review times or failure to provide responses, the Project Manager must notify the Contract Manager to adjust the schedule and completion date accordingly, and the Contract Manager will notify the Consultant.

Costs

The Project Manager will review invoices to verify that invoiced work has been completed. The Project Manager will forward the invoice to the Contract Manager (or designee) for processing and payment, or note to withhold payment until the invoiced work is completed.

If the Consultant requests additional compensation, the Project Manager must discuss the Consultant's request with the Contract Manager. Only the Contract Manager or his/her designee will have approval authority to request modifications to the contract (see Chapter 9).

Quality

The Project Manager must:

- ❑ Monitor the Consultant's work product for compliance with ODOT's plan format requirements and with the scope of services.
- ❑ Perform the consultant evaluation at the completion of the contract. See Chapter 7 for additional details.

Record Keeping (Files and Documentation)

See
Chapter 7.

Project Manager's Responsibilities and Authority:

- ✓ Duties begin at authorization of contract.
- ✓ Administer day to day activities of Consultant's performance of contract requirements.

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- ✓ Coordinates all internal and external reviews necessary to insure compliance with scope of services
 - ✓ Monitor schedule
 - ✓ Review invoices and forward to Contract Manager for payment
 - ✓ Perform Consultant evaluation
 - ✓ Serve as primary contact with the Consultant for all of the above. Inform Consultant when problems arise and work out plan to correct problem areas.
 - ✓ Recommend schedule and milestone date adjustments, as necessary, to the Contract Manager.
 - ✓ Keep Contract Manager informed of all problem areas.
 - ✓ Serve as primary contact with Consultant for plan questions during construction.
 - ✓ Ensure that the Consultant is not given verbal or written direction to perform work that is outside the scope of services (Scope creep initiated by the Department is not acceptable).
 - ✓ Identify the need for contract modifications.

Roles and Duties of Contract Manager

The duties of the Contract Manager begin at the point a decision is made to utilize a Consultant, and carry throughout the life of the contract. The Contract Manager will generally be responsible for the non-technical, administrative processes of many (or all) Consultant contracts.

Contract Manager's Responsibilities and Authority:

- ✓ All activities leading up to authorization of a contract, including the entire consultant selection process.
- ✓ Process invoices for payment, after review by Project Manager.
- ✓ Initiate contract modification procedures.
- ✓ Issue breach of contract notices.
- ✓ Issue stop work orders.
- ✓ Extend contract completion date and adjust schedules.
- ✓ Attend consultant evaluation meeting with the Project Manager.

The authors of this manual realize that all Districts are not organized in exactly the same way. Some may choose to have one person act as both Project Manager and Contract Manager for one, several, or all Consultant contracts in that District. Other Districts could have one person as Contract Manager and have many different Project Managers. The most significant variables will probably be in the number of contracts in the District and the types of contracts.

What is most important, however, is that there must always be one point of contact in ODOT for administering the Consultant contract, and that the duties of both the Project Manager and the Contract Manager are performed. And, whenever the Project Manager and Contract Manager are not the same person, good communication between the two is absolutely essential for good contract administration.



Notes:

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CHAPTER 5

Consultant Selection Process

In this chapter look for:

- ✓ Authority to Select Consultants and Approve Fees
 - ✓ Determination of need
 - ✓ The Pre-Scope of Services Phase, Responsibilities and Objectives
 - ✓ Initiation of the Selection Process
 - ✓ Authority of District and Central Office Consultants Committees
 - ✓ Selection Procedures for Major New/Centrally Funded Projects
 - ✓ Selection Procedures for District Allocation Projects
 - ✓ Selection Procedures for Programmatic Projects
 - ✓ Disclosure of Selection Information
-

General

Chapter 5 addresses the consultant selection process from initiation through receipt of the price proposal(s). Chapter 6 addresses the remainder of the process from receipt of price proposal through authorization. The selection activities through receipt of a price proposal are primarily District responsibilities, with the Office of Contracts providing support for some activities.

The Office of Contracts maintains a file of standard correspondence on the O: drive for the use of District personnel, including IOCs, letters, Scope of Services documents, and other documents used in the selection process. A complete listing of the subdirectories and documents is included in the Appendices of this Chapter, along with flow charts and timelines of the various selection processes included in this Chapter.

Authority to Select Consultants and Approve Fees

Section 5501.17 of the Ohio Revised Code empowers the Director of Transportation to employ “such assistants as are necessary to prepare plans and surveys”. This section of the ORC is the statutory basis for nearly all procurement of consultant services by the Department.

The Director delegates that authority by appointing a three person Consultants Committee in District Offices and Central Office. The Consultants Committee has the authority to:

- ✓ Prequalify consultants
- ✓ Select consultants
- ✓ Approve fees
- ✓ Make other decisions that are central to consultant selection, authorization and administration of agreement.

The decision making authority and responsibility of the Project manager and Contract Manager as

defined herein are extensions of Consultants Committee authority granted by the Director under ORC 5501.17.

The Department's policy requires that prior to initiating the selection process, the need for the services of a consultant must be clearly established and the preliminary scope of services must be developed. Sections addressing the determination of need, the pre-scope of services phase and the Department's consultant selection procedures follow.

Determination of Need

Acceptable reasons for the use of a consultant are:

- Insufficient staff to perform the work within the desired period of time
- Lack of special expertise needed for the work
- Need for study by a recognized expert

A definitive need for the services of a Consultant shall be established by the District or other ODOT office prior to proceeding with any subsequent steps.

The Pre-Scope of Services Phase, Responsibilities and Objectives

The Contract Manager is responsible for the pre-scope of services phase of the consultant selection process. The Contract Manager shall involve District and Central Office personnel and conduct meetings as required to achieve the objectives of this phase of the process.

Projects that should include Central Office involvement in the pre-scope of services phase are those that will include Central Office involvement in plan review or other decisions in conducting the agreement. Examples include preliminary development (environmental) agreements, design of Level 3 (prequalification) bridges and complex geotechnical projects.

The objectives of the pre-scope of services phase are as follows:

- Define the services to be provided.** The Department's standard scope of services documents are available under the subdirectory O:\other\contract\consult\district forms\scopes\. An index listing the documents and a short description of each is included. This manual is not intended to provide detailed instructions for preparing scope of services documents but the documents included in the subdirectory should be utilized in most cases.

The scope of services shall address the number and frequency of progress meetings and on-site visits by the Project Manager.

- Determine the form of agreement** - refer to Chapter 3.

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- ❑ **Determine if the project is eligible for competitive price selection.** Competitive price selection should be limited to design and bridge inspection projects with very defined scopes and lump sum fees. Projects that require the consultant to evaluate design decisions and recommend solutions are not good candidates for competitive price selection.
 - ❑ **Determine the required prequalification to provide the services** - Refer to the Department's "Consultant Prequalification Requirements and Procedures" for prequalification categories and definitions.
 - ❑ **Identify any selection subfactors that will be considered in the selection process. A simple definition of the use of a subfactor is: "Tell the consultant what is important so the consultant knows how your decision will be made and may respond accordingly".**

Subfactors are defined in "Specifications for Consultant Services" as follows:

Subfactors are defined as important aspects of a project that will play a large role in the consultant selection process. Subfactors are considered in the scoring through normal selection criteria, but firms with experience or a record of good performance in the subfactors would receive relatively higher scores. Subfactors may play a predominant role in evaluating the categories of Project Manager, strength/experience of assigned staff including subconsultants, and consultant's past performance. Examples of subfactors would be an unusual bridge type, a complex geotechnical or foundation situation, or a very complex interchange configuration.

- ❑ **Determine the Selection Process to be Utilized**

The Department utilizes three basic selection processes, each of which is based on the size and complexity of the project. Following is a brief summary of the selection processes.

Direct Selection of Consultants for Exempt Projects

The Department may directly select consultants for projects that are exempt from the technical proposal selection process, as follows:

- ✓ Projects for which the estimated design fee does not exceed \$40,000.

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- ✓ Projects determined by the Director to be an emergency requiring immediate action.
 - ✓ Projects requiring special expertise which only a limited number of consultants can provide.

Programmatic Selection Process

The Programmatic Selection Process is a one step, simplified selection process designed for projects that are routine in nature. Selection is based on an enhanced letter of interest that includes a two page technical approach, with the total selection/authorization time intended to be 90 days or less. Consultants respond with a single letter of interest for projects advertised as a group.

The Programmatic Process should be utilized for most projects in lieu of the Technical Proposal process with the decision based on the amount of information and level of detail required to make an informed selection decision. If a lengthy technical proposal will not benefit or improve the Department's selection design, the Programmatic process should be utilized.

Technical Proposal Selection Process

The Technical Proposal selection process is a two step process (Letter of interest/select three to submit Technical Proposals/ Select One consultant) intended for use on larger, more complex projects for which a more informed selection decision can be made based on a (more elaborate) Technical Proposal.

- Determine the submittal and review process to be utilized, either the Department's standard process in accordance with Chapter 14 of the L&D Manual or the "Limited Review" procedure.

Initiation of the Selection Process

- All consultant selections shall be processed through the Office of Contracts which maintains the Department's official project file through authorization of the agreement.

- Following are the elements required to initiate consultant selection process:
 - ✓ A definitive determination that the services of a consultant are required. Refer to Determination of Need as previously discussed in this chapter.
 - ✓ Approval of a Deputy Director
 - ✓ Approved programming as indicated by:

PDMS Screen 405 showing funding of engineering (PE), construction (CO) and right-of-way (RW) broken down by Federal, State and Local government participation.

PDMS Screen 192 indicating assignment of a State job number.

For LPA consultant agreements, (non-LPA program) being processed through the Office of Contracts, copies of local government legislation.

- ✓ Determination of fund allocation source, either District allocation or Major New / Major Bridge. The SAC codes on PDMS Screen 405 will indicate the source of funds allocation. Consultant selection procedures differ for Centrally funded projects versus District allocation projects, with District Consultants Committees having an expanded role in selection of consultants for District allocation projects.
- ✓ For final development projects that utilize Federal funds in the PE phase, an approved environmental document or assurance that the document will be approved prior to the encumbrance of funds.
- ✓ For projects that utilize Federal funds in the PE phase, FHWA approval to proceed with preliminary engineering (FHWA Form PR-1240).
- ✓ A location map identifying the project location and limits.
- ✓ The required level of prequalification. Refer to the Department's "Consultant Prequalification Requirements and Procedures" for prequalification categories and definitions.
- ✓ Identification of "subfactors" that will be important in the selection process as described earlier in this Chapter under the Pre-Scope of Services Phase.
- ✓ Determination of the appropriate selection process as described earlier in this Chapter.

- ✓ For projects that will utilize the Technical Proposal selection process, determination of the eligibility of the project for competitive price selection. Competitive price selection should be limited to those projects with very well defined scopes of services. Projects that must be completed on an actual cost basis or involve significant decision making as a result of investigations during the agreement should not be selected through competitive price competition. Competitive price selection should normally be limited to projects involving straight forward design and plan preparation, and bridge inspections.

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- ❑ A standard IOC intended to address these required elements is included in the appendices and available on the O: Drive as O:\other\contract\consult\District Forms\District Select\IOCreqcs.wpd

 - ❑ Upon receipt of an IOC requesting the use of a consultant, the Office of Contracts will evaluate the request for completeness and, if acceptable, publish the request on the next website posting. Letters of interest will be directed to the appropriate Deputy Director.

Authority of District and Central Office Consultants Committees

The authority of the District and Central Office Consultants Committees is delineated as follows:

ALLOCATION/ ACTIVITY	ACTION	APPROVAL AUTHORITY	
		DISTRICT	CENTRAL OFFICE
Consultant Selection - Technical Proposal Process - District Allocation	Select 6 Consultants for Consideration	X	
	Select 3 Consultants for Technical Proposal	X	
	Select 1 or more Consultants for Price Proposal	X (Note 1)	X (Note 1)
Consultant Selection- Technical Proposal Process - Centrally Funded Major New Major Bridge Other	Select 3 Consultants for Technical Proposal		X
	Select 1 or more Consultants for Price Proposal		X
Programmatic Selection Process	Recommend 2 consultants in order of preference	X	
	Final Consultant Selection		X
Approval of Fees	New Agreements		X
	Individual Task Orders for Task Order Type Agreements	X	
	Modification of District Allocation Projects (except major re-scopes)	X	
	Major re-scopes of District Allocation Projects		X
	Modification of Centrally Funded Projects		X
Prequalification of Consultants	Approve or Deny Requests for Prequalification, Remove Prequalification based on Poor Performance		X
Breach of Contract Letter		X	
Negligence Actions			X
Termination			X

Note 1: The District Consultant Committee recommends one or more consultants. The Central Office Consultants Committee must approve the selection.

The activities required to support and document the decisions of the Consultants Committee for the Technical Proposal selection process (Major New and District Allocation) and the Programmatic selection process follow.

Selection Procedures for Major New/Centrally Funded Projects

Letters of Interest Review - by District Office

- Following receipt of the letters of interest, the receiving office (normally the District) Consultants Committee shall review the letters received and recommend those firms the team believes to be most qualified, normally six (6) but not more than eight (8). The selection factors set out in Exhibit 2 of the Specifications for Consultant Services shall be used in developing the recommendations but no documentation is required.

The recommended firms shall be listed alphabetically and forwarded, by IOC, from the Deputy Director to the Administrator, Office of Contracts, Consultant Services. The original letter of interest from each firm recommended for consideration shall be included. The submission shall also contain an alphabetical listing of the names and addresses of all consultants that submitted letters of interest.

Selection of Consultants For Technical Proposals - by Central Office Consultants Committee

- The Administrator, Office of Contracts, will forward the Deputy Director's recommendations, the list of respondents and the Letters of Interest to the Consultants Committee. The Consultants Committee may accept or not accept all or part of the Deputy Director's recommendations. If the Deputy Director's recommendations are not accepted, the Consultants Committee may consider those firms submitting letters of interest and identify the firms the Committee considers to be most qualified.

The Consultants Committee then rates the firms using Exhibit 2 and selects those firms, usually three (3), they consider most qualified.

- Following the decision of the Consultants Committee, the Office of Contracts will notify the selected firms in writing and request a technical proposal from each firm (4 copies plus an informational copy to the District Deputy Director). A copy of the pre-scope of services minutes and the technical proposal form

(Exhibit 6 of the Specifications) is provided to each firm as part of the request. A due date is established with two weeks being the normal time.

- The Office of Contracts places the names of the selected firms on the ODOT Website following selection. Firms not selected obtain this information from the Website.

Evaluation of the Technical Proposals - by Central Office Consultants Committee

- Upon receipt, the Office of Contracts will forward the technical proposals received to the Consultants Committee for evaluation. The Consultants Committee will schedule a selection meeting at their convenience and may invite the District Deputy director and appropriate technical representatives from Central Office. The Committee may schedule interviews with the firms if deemed appropriate.
- The Committee then rates the technical proposals using Exhibit 3 and selects the highest rated firm. If the project is eligible for competitive price selection (as noted in the original Website notification) , all firms with scores within 5% of the highest rated firm are selected to submit competitive price proposals.
- The Office of Contracts will then notify the firms in writing and place the name of the firm or firms selected to attend the scope of services meeting on the ODOT Website following the selection. The District will contact person will be notified by E-mail.

Scope of Services Meeting - Scheduled and Administered by the District

- The consultant(s) selected to submit price proposals shall be invited to attend the Scope of Services meeting.

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- Attendance at the scope of services meeting shall include:
 1. The Project Manager and other appropriate District or Office representatives.
 2. Representatives of the selected consulting firm(s) and appropriate subconsultants.
 3. The project analyst from the Office of Contracts.
 4. The same Central Office representatives that participated in the pre-scope of services process, if any.
 5. Local government representatives, if appropriate.
 6. Others as deemed appropriate by the contracting officer.

 - Following the scope of services meeting, the Contract Manager shall resolve all comments, revise the minutes accordingly and send the final scope of services minutes to the Consultant(s). All scope of services attendees shall receive a copy of the final minutes. The due date for price proposal(s) shall be announced at the scope of services meeting and included in the letter of transmittal of the final scope of services minutes.

Selection Procedures for District Allocation Projects

The District allocation selection process is identical to the major new selection process, except that the District Consultant's Committee has a larger role in the selection process and copies of all decisions and other documents must be sent to the Office of Contracts. The following table provides a list of selection activities and identifies the responsible office.

<u>Activity</u>	<u>Responsible Office</u>	<u>Notes</u>
Receive letters of interest	District	
Select approximately 6 consultants for consideration	District	Copy to Office of Contracts

Select 3 consultants to submit technical proposals	District	Copy to Office of Contracts (may be combined with step above)
Post selection on the Website	Office of Contracts	
Send letters to consultants noting selection and to request technical proposal	District	Copy to Office of Contracts (may be combined with above 2 steps)
Select 1 or more consultants to submit price proposals	District recommendation with C.O. approval	District sends recommendation to Office of Contracts, then forwarded to Central Office Consultants Committee
Send letters to each consultant noting selection or rejection	Office of Contracts	Office of Contracts will notify District of selection approval and send copies of letters
Schedule scope of services meeting	District	
All subsequent activities		Same as Major New process

Selection Procedures for Programmatic Projects

Letters of Interest Review/selection Recommendation - by District Office

- Upon receipt of Letters of Interest, District Offices will initially choose approximately 6 consultants for each project based on selection factors similar to those listed in the Programmatic Selection Rating Form, and then formally rate those consultants using the Form. Districts may discuss their selections with other Districts to avoid concentrating selections within a few firms.

The District then provides a recommendation, in rank order, of the two top scoring firms (per project) to the Central Office Consultants Committee attention Administrator, Office of Contracts. Copies of all selection scoring sheets and a list of consultants that submitted on each project shall be included.

Final Selection and Notification of Consultants

- The Central Office Consultants Committee will consider all District selection recommendations concurrently and select a consultant for each project based on

the factors set out in the Programmatic Rating Form.

Disclosure of Selection Information

To ensure the integrity of the Department's selection process, Section 4.06 of Specifications for Consulting Services states:

“All selection information including consultant letters of interest, technical proposals and price proposals, and the Department’s selection ratings and estimate, shall be considered confidential and will not be available for public disclosure until after an authorization to proceed has been issued by the Department.”

- Based on the above, the only selection information that can be disclosed prior to authorization are the names of firms chosen to submit technical proposals or the names of firms selected to submit price proposals. These decisions are posted on the website and may be disclosed verbally only after the decision is signed by the selection committee.
- The list of consultants (normally 6) being considered for technical proposal submission should not be disclosed during the selection process.
- Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant as part of a pre-award audit. This type of information should be forwarded to the Office of Payroll and Project Accounting and shall not be included in the project selection file.
- Upon authorization of an agreement, the selection file becomes public information and may be disclosed to consultants and the public.

CHAPTER 6

Price Proposal, Negotiation and Authorization

In this chapter look for:

- ✓ Preparation of the State's Estimate
 - ✓ Price Proposal - Direct Selection (non-competitive fee)
 - ✓ Price Proposal - Competitive Fee Projects
 - ✓ Negotiation of Consultant Agreements
 - ✓ Schedules
 - ✓ Controlling Board Approval and Procedures
 - ✓ Encumbrance Procedures
 - ✓ Authorization to Proceed
 - ✓ Disclosure of selection Information
-

General

Chapter 6 is an extension of the consultant selection process begun in Chapter 5, with receipt of the price proposal(s) being the dividing point. Selection activities to this point are primarily District activities/decisions (or Central Office Consultants Committee). Upon receipt of a price proposal the Office of Contracts becomes responsible for processing the proposal through analysis, negotiation (if required) Controlling Board approval, encumbrance and authorization.

Preparation of the State's Estimate

Prior to receiving the price proposal(s), the Office of Contracts, in consultation with other ODOT offices as appropriate, prepares the State's estimate. The State's estimate is the initial estimate of a fair and reasonable price for the services. After receipt of the price proposal, the "analysis" process may result in a revision of the State's estimate either upward or downward. The State's estimate may be based on:

1. Person hour estimate
2. Standardized wage rates
3. Appropriate overhead rate and net fee
4. Price analysis (the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit, such as the use of "rough yardsticks" or comparison to other similar projects)

Price Proposal - Direct Selection (non-competitive fee)

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- ❑ If a Consultant's price proposal is not received when due or if the proposal does not include the requested Controlling Board information, that Consultant may be dropped from further consideration.
 - ❑ If the proposal exceeds \$250,000 the Office of Contracts forwards a copy of the Consultant's price proposal to the Office of Payroll and Federal Accounting, External Review Section for a pre-award audit evaluation.

The Office of Payroll and Federal Accounting, External Review Section will attempt to resolve any differences of opinion with the consultant prior to issuing the final audit recommendation. The audit evaluation must be completed before ODOT's cost analysis is finalized.

Once the audit evaluation is returned to the Office of Contracts, negotiations will be conducted with that consultant, as instructed by the Consultants Committee, to arrive at a mutually agreed upon fee.

- ❑ Participation of subconsultants including DBE and MBE firms is required to the extent described in the Consultant's Technical Proposal. The Office of Contracts reviews each price proposal to ensure that the project team selected remains intact in the price proposal.
- ❑ If negotiation with the highest ranked consultant fails to result in a mutually agreed upon fee, the Consultants Committee will authorize the Office of Contracts, Consultant Services to notify that firm in writing of the termination of negotiations. The next highest ranked consultant, as determined by the earlier technical proposal evaluation, will be invited to a scope of services meeting and to submit a price proposal.

If negotiations again fail, the same procedure shall be followed with each next most qualified firm until an agreement has been negotiated. If the remaining consultants are considered not to be qualified, the notification and selection phases will be repeated.

Price Proposal - Competitive Fee Projects

- ❑ When multiple firms are determined to be substantially equal following technical selection, the firm submitting the lowest responsive total fee shall be considered most qualified.
- ❑ Prior to the receipt of multiple price proposals, the Office of Contracts shall make arrangements to open and read the competitive price

proposals in a public place.

- Prior to announcing the selected consultant, the competitive price proposal shall be checked:
 1. To ensure that the consultant and ODOT have a mutual understanding of the essential requirements in providing the required services.
 2. To determine that the firm can make available the necessary personnel, equipment and facilities to perform the services within the required time.
 3. Against the State's pre-prepared estimate to ensure the compensation is fair and reasonable taking into account the estimated value, scope, complexity and nature of the services.
 4. To ensure participation of DBE and MBE subconsultant firms to the extent described in the Consultant's Technical Proposal.

- If any of these checks reveal that:
 1. The proposal does not meet the intent of the scope of work, or
 2. The firm, in the opinion of the Consultants Committee, cannot perform the work, or the proposal does not include participation of DBE and MBE subconsultant firms to the extent described in the Consultant's Technical Proposal or
 3. The fee is not reasonable for the work defined by the scope of work, or
 4. The Consultant has sent a letter to ODOT requesting withdrawal of its price proposal,

The Consultants Committee may declare the proposal non-responsive. In that event, the next lowest priced proposal shall be evaluated.

- If all price proposals are declared non-responsive, the Consultants Committee may:
 1. Select from those firms that submitted a technical proposal but were not invited to attend the scope of services meeting and schedule another scope of services meeting, or
 2. Select from those firms submitting letters of interest to the District and considered to be qualified and schedule another scope of services meeting, or

-
3. Repeat the notification and selection phases.

Negotiation of Consultant Agreements

The Department's negotiation of the terms of consultant agreements is governed by the following documents:

- ORC Section 153.69.
- Federal Acquisition Regulations (48 CFR 15.8).
- Section 307 of the National Highway Designation Act of 1995.

The following contractual elements may be negotiated to reach an agreement that is acceptable to ODOT and the consultant:

- Scope of services
- Price
- Time of delivery
- Form of agreement

The documents listed above require that:

- ✓ Compensation must be "fair and reasonable"
- ✓ Section 307 prohibits ceilings on overhead rates and wages that are included in overhead rates. ODOT's use of a Statewide consultant wage survey to determine fair and reasonable compensation remains acceptable. Section 307 also requires that ODOT accept overhead rates determined to be acceptable through audits conducted by Federal agencies or other States
- ✓ ODOT's wage survey should be utilized in determining direct labor costs - not as a limit on wage rates. The composite wage rates are most applicable to "median" difficulty design work - for complex or unusual projects the wage surveys should be used with judgement or not at all.
- ✓ Auction techniques or other artificial or arbitrary ceilings cannot be used, based on the "fair and reasonable" requirements of 48 CFR 15.8. Examples of arbitrary ceilings would be PE/CO ratios (prohibited as a form of agreement by 23 CFR 172.9) or even the State's estimate if it could be demonstrated that the estimate was not fair and reasonable.

Price Negotiation

State's Estimate

The Department's negotiation of consultant agreements are nominally conducted by the Office of Contracts but nearly always involve District or other Central Office personnel. The negotiation team must reach internal agreement concerning the State's estimate prior to negotiation to ensure an effective team approach to the negotiation.

For most agreements, the Department's estimate (State's estimate) of a fair price for services is based on statewide surveys of wages and overhead rates, an estimate of person hours based on historical information, and allowances for non-salary direct costs and profit (net fee). For some agreements such as preliminary development, the Department utilizes "rough yardsticks" such as cost per square kilometer.

For projects that are very routine and similar to past projects, the State's estimate may be based on "price analysis" - comparison to prior contract prices.

Conducting Negotiations

This section addresses the negotiation of contract price, although scope, time and form of agreement may also be negotiated to reach an agreement that is acceptable to the Department and the consultant. Price negotiation is the most complex element of negotiating consultant agreements and therefore addressed specifically in this section.

Price negotiations should be conducted in accordance with the following objectives and limitations:

- ✓ ODOT's objective is to reach agreement on the total fee and should not seek to limit a specific cost element such as labor or overhead (except that overhead rates are limited by audit).
- ✓ Overhead rates (indirect costs) should never be negotiated directly as this practice is prohibited by Section 307 of the Highway Designation Act of 1995. Negotiation must be limited to the total price, based on the State's estimate of a fair and reasonable price.

This method of negotiation is applicable in limiting maximum fees and net fees for actual cost agreements, but the State cannot place artificial limits on the overhead rate used in actual invoicing, per Section 307.

- ✓ The detailed "State's Estimate" should never be disclosed to the consultant. The entire negotiation and selection file becomes public information only after authorization of the agreement.

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- ✓ Specific areas of the consultant's proposal that the State believes to be excessive should be identified and discussed.

Documentation of Negotiations

At the conclusion of each negotiation, the Contract Manager shall promptly prepare a memorandum of the principal elements of the negotiation. The memorandum shall be included in the contract file and as an attachment to the agreement. The memorandum shall include the following minimum information:

- ✓ The name, position and organization of each person representing the consultant and the State in the negotiation.
- ✓ Documentation of any changes in scope of services, time of delivery (required submittal schedule format must be utilized) and changes in form of agreement, if any.
- ✓ Documentation of the agreed price, including an explanation of the resolution of significant differences in the two initial positions.

Schedules

Along with "services to be rendered" and "price," "time" is one of the key elements of any contract. The schedule of submittal dates and delivery of reports or final plans constitutes the time element of a consultant's contract. The time element is very important to the success of a project, but in the past it has carried the least importance and has not been aggressively enforced.

A typical consulting contract with ODOT will call for several interim submissions throughout the course of the contract. In the case of a contract for final design plans, the Staged Review process defines those interim submissions (see Technical Reviews, Chapter 7). In the case of a preliminary development project, there are also several interim reports and studies required of the consultant before the final report is due.

Why require many interim submissions instead of simply requiring a final product? Because, with the exception of plans developed under the "No Review Policy," ODOT staff wants to be involved in decision making throughout the course of the plan development. We recognize that there can be situations where it is not possible to follow 100 percent of Location & Design manual requirements, especially when trying to upgrade existing facilities. Choices must often be made to establish the priority of competing requirements and consideration must be given to construction costs. The various submissions also give the opportunity for quality control by ODOT staff to make sure that the scope of services is being followed.

The following parts of this chapter give the procedures for establishing schedules for submittals, final plan delivery, invoice milestones, and a project Gantt chart.

- ❑ For final design contract, submittals of interim work products should follow the Staged Reviews process, and several of these submittals constitute activities which require “commitment dates” to be entered into PDMS.
- ❑ For preliminary development contracts, there are still interim reports and work products that should be identified as submittals to the District. Some of these submittals will become invoice milestones. Invoice milestones are those submittals which become the basis for compensating the consultant throughout the course of the contract life and are used to determine the percent of completion of the contract.
- ❑ The scheduling process begins at the Pre-Scope of Services stage. The end product is an agreed upon Project Schedule and an Invoice and Project Schedule (IPS) that will be used as the format for all invoices.

Preliminary Project Schedule

The preliminary project schedule is developed at the pre-scope of services stage. It should show:

- ✓ Required submittals - Mark with an X.
- ✓ Invoice milestones - Mark with an *.
- ✓ Review times for each required submittal.
- ✓ Overall completion time - Note the agreement length in months.

As shown in the example in this chapter, there are typically four or five invoice milestones in a final design contract:

- ✓ Stage 1 plans
- ✓ Stage 2 plans
- ✓ Right-of-Way plans
- ✓ Stage 3 plans
- ✓ Final Tracings

These form the basis for payment of invoices (Invoice Processing is addressed in Chapter 7).

- ❑ Submittals selected as invoice milestones should be limited to work included in Phase B - Part 1: Construction Contract Plans portion of the project.

-
- ❑ Each additional “if authorized” part of the agreement will form a separate basis for payment and will be governed by the submittal and approval (commitment) dates included in the project schedule.
 - ❑ When the pre-scope of services is finalized, and the Contract Manager is ready to proceed, the Contract Manager will forward the preliminary project schedule to the Office of Contracts who will prepare the proposed Project Schedule (blank) for use at the Scope of Services meeting and for submittal with the Consultant’s price proposal.

Proposed Project Schedule

The Proposed Project Schedule form will include only required submittals as noted with an “X”, invoice milestones as noted by an “*”, and review times as noted.

- ❑ The form will provide blank spaces for scheduled submittal durations (measured in calendar days from the date of authorization) and percentages of the total lump sum fee attributable to each milestone submittal. These percentages are not cumulative. They represent “added value” and must equal 100%.

For example, the percentage of the total fee attributable to a Stage II submittal would represent the effort required to progress Stage I plans to Stage II completion.

- ❑ Please note that approval of final Plan Tracings has a value of 5% that is standard to all projects. Payment cannot exceed 95% until tracings are approved.
- ❑ The Consultant will be required to submit (with its price proposal) completion times measured in days from authorization for all required submittals and the proposed percentages of the total fee attributable to each invoice milestone. The Consultant’s proposed schedule must show completion within the overall completion time specified. The scheduled approval duration for each required submittal will equal the submittal duration plus review time.

The District and the Office of Contracts will review the Consultant’s proposed schedule and invoice percentages and either accept them as proposed or negotiate an acceptable schedule and acceptable invoice milestone percentages. Upon authorization of the agreement, the Office of Contracts will then generate and transmit a Project Schedule that includes actual dates, an Invoice and Project Schedule transmittal letter, and an IPS.

Actual Project Schedule

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- ❑ The Project Schedule will include dates for submittal and approval of each required submittal. Additionally, space is provided to record actual submittal and approval dates, and review times. This document will be submitted with monthly progress reports to the District.

 - ❑ The Consultant will prepare a Gantt chart of the project schedule showing all activities, including invoice milestone activities. The chart should contain all important activities, even though they may not be required submittals. The Consultant will identify the Critical Path on the Gantt chart. This chart will form the baseline schedule and will be updated monthly and submitted with the progress report. The Consultant should also evaluate the Critical Path activities to determine if those activities are on schedule, or if the Critical Path has changed.

Controlling Board Approval and Procedures

Background

The Controlling Board was created in June 1975. Its primary purpose is to ensure that no State Agency purchases, from any one supplier, more than \$50,000 in goods and services during a fiscal year, unless the purchase was competitively bid or approved by the Controlling Board (Competitive bidding in this instance refers to construction or purchasing contracts that can be legally bid by any qualified vendor. Competitive price selection of consultants is a tie breaking procedure and does not constitute true competitive bidding as defined by the Controlling Board). In essence, the Board was created as a watchdog of State funds. The duties and powers of the Board are set forth in Ohio Revised Code 127.12 through 127.16. The Board meets generally every two weeks and reviews non-competitively bid contracts submitted to them by State Agencies.

The Controlling Board consists of seven members: the President of the Controlling Board (appointed by the Governor), Chairman of the Finance-Appropriations Committee of the House of Representatives, Chairman of the Finance Committee of the Senate, two members of the House of Representatives and two members of the Senate (one from the majority party and one from the minority party).

When is Controlling Board Approval Needed?

If a contract/purchase **does not** meet one of the following criteria, then Controlling Board approval is needed:

1. Purchase from another state agency (this included research projects with universities). However, when ODOT is purchasing land (whether in fee title or a lesser estate) from another department of the State, or public agency, and the purchase price is forty thousand dollars (\$40,000) or more, the purchase must be approved by the State Controlling Board (ORC 5501-46).

2. Personal service contracts (consultant agreements are included in this

definition) less than \$50,000 (with the contractor not exceeding the \$50,000 non-bid limit on a cumulative basis per fiscal year).

3. Purchase from State term contract.
4. Contracts/purchases going through the normal bid process (ie. advertising, letting, competitively bid selection process, and awards committee action, etc.)

In summary, consultant agreements utilize a qualifications based selection process and are therefore unbid contracts that require Controlling Board approval. Each consultant is permitted a \$50,000 exclusion per fiscal year which means that ODOT can contract for services up to the available vendor limit without Controlling Board approval. Agreements approved by the Controlling Board do **not** count against the \$50,000 exclusion. The available exclusion amount for any given vendor can be determined through the Central Accounting System (CAS).

Modification Procedures

The same basic rules apply to modification (amendment) of unbid agreements. However, the following practices may permit the use of previously obtained Controlling Board approvals in modifying consultant agreements.

For most Controlling Board requests ODOT includes a contingency amount of approximately 10% of the agreement amount. This amount is not encumbered but does constitute spending authority that can be utilized during the fiscal biennium in which the original agreement was approved by the Board. However, encumbrance of funds and a signed modification agreement are required to legally authorize services by a consultant. The Office of Contracts should be contacted to determine the spending authority available through a contingency amount.

In certain instances, ODOT is able to group a number of projects together and obtain Controlling Board approval as a "blanket request". The contingency associated with an individual project in a blanket Controlling Board approval may be used as above, and this amount may be exceeded if:

1. The total spending authority of the blanket approval will **not** be exceeded.
2. The total spending authority of the blanket request is balanced by decreasing the spending authority from another project (or projects) included in the blanket.
3. The Department provides a non-substantive change request for approval by the Controlling Board. This consists of a letter to the president of the Controlling Board.
4. The contingency amount (any unencumbered balance) has not expired by crossing a biennium limit.

Personal Liability

Section 127.16 of the Ohio Revised Code provides that any person who authorizes a purchase in violation of the Controlling Board rules shall be personally liable to the State for any funds spent under the contract.

Waiver for Emergencies

If a project is an emergency or public health and safety is involved, a 21-day waiver can be obtained; but these exceptions to the rule should be avoided. This waiver allows the Department to act immediately in situations where conditions warrant.

Executing a Controlling Board Request

The Office of Contracts is responsible for preparing Controlling Board requests and for ensuring that the requests are filled out correctly and all pertinent documents are attached. Controlling Board Request Forms as required by the Office of Budget and Management are provided herein for reference.

The request is submitted to the ODOT Division of Finance, who reviews it then routes it to the appropriate Assistant Director's Office for signature. Then the request is submitted to the Controlling Board.

After requests are sent to the Controlling Board, the State office of Budget and Management (OBM) and Legislative Budget Office (LBO) analysts review the requests for Controlling Board members. They often have questions or need further information. The ODOT Division of Finance is responsible for obtaining answers to these questions. The Controlling Board **must** receive all information eighteen (18) days prior to its scheduled date of being considered by the Board. Prompt responses to the LBO and OBM requests for information are extremely important! Often a clear, concise response will answer Controlling Board members concerns prior to the meeting and contribute toward successful Controlling Board action.

Office of Legislative Services

The ODOT Office of Legislative Affairs plays a key role in the Controlling Board process. They have direct contact with Controlling Board members and help the Department answer any questions that arise prior to the formal meeting. Accurate, complete and concise responses to the questions asked by Legislative Affairs will help ensure timely approval of Controlling Board requests.

Legislative Affairs will recommend a contract be pulled from the agenda and resubmitted at a later date when it looks like it may not be approved by the Board. This will give the Department time to resolve any significant issues preventing approval.

Time Provisions

Controlling Board requests must be filed with the Secretary of the Controlling Board 18 days prior to the scheduled Board meeting, and the Division of Finance needs 3 days to ensure the package is complete and has all internal approvals. Therefore, with ODOT's review time and Controlling Board filing requirements, requests should be in the Division of Finance 21days before the Board meets. In most instances, the processing time in Finance is less than one day, however to ensure there is time to obtain any missing or additional information, three days is preferred.

Encumbrance Procedures

Section 126.07 of the Ohio Revised Code requires that:

“No contract, agreement, or obligation involving the expenditure of money chargeable to an appropriation, shall be valid and enforceable unless the Director of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations. Any written contract or agreement entered into by the State shall contain a clause stating that the obligations of the State are subject to this Section.”

- ❑ This language requires that ODOT encumber sufficient funds to meet our contractual obligation to compensate consultants prior to entering into an agreement. Encumbrance requests are initiated by the Office of Contracts after Controlling Board approval (if such is required).
- ❑ Requests are forwarded to the Office of Payroll and Project Accounting in a standard IOC format, a copy of which is attached. The Office of Payroll and Project Accounting evaluates the most recent programming documents and calculates funding splits between various appropriation codes. The Office of Payroll and Project Accounting then forwards the request to the State Office of Budget and Management. Upon approval by OBM, the encumbrance will be posted in the Central Accounting System and the agreement will be authorized by the Office of Contracts.

Authorization to Proceed

The Department's policy concerning the Office that issues the authorization to proceed varies according to the type of project. The normal policy is as follows:

<u>Project Type</u>	<u>Office</u>
Preliminary Development	Office of Contracts
Final Development	Office of Contracts
Bridge Inspection	District
Construction Inspection	District
Task Order Agreements	District

-
- ❑ For preliminary and Final Development agreements, the Office of Contracts will include language authorizing the consultant to proceed in the letter transmitting the executed agreement to the consultant. If the agreement includes multiple parts, only the first part will be authorized (unless the District instructs that other parts be included in the initial authorization), and all other parts must be authorized by the District as needed.

 - ❑ For bridge inspection, construction inspection, and task order agreements, the Office of Contracts will send an executed agreement to the consultant with instructions that work shall not proceed until authorized by the District.

Disclosure of Selection Information

Disclosure of selection information was also addressed in Chapter 5 but is repeated verbatim in this Chapter as the policy is equally relevant and bears repeating.

To ensure the integrity of the Department's selection process, Section 4.06 of Specifications for Consulting Services states:

“All selection information including consultant letters of interest, technical proposals and price proposals, and the Department's selection ratings and estimate, shall be considered confidential and will not be available for public disclosure until after an authorization to proceed has been issued by the Department.”

- ❑ Based on the above, the only selection information that can be disclosed prior to authorization are the names of firms chosen to submit technical proposals or the names of firms selected to submit price proposals. These decisions are posted on the website and may be disclosed verbally only after the decision is signed by the selection committee.

- ❑ The list of consultants (normally 6) being considered for technical proposal submission should not be disclosed during the selection process.

- ❑ Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant as part of a pre-award audit. This type of information should be forwarded to the Office of Payroll and Project Accounting and shall not be included in the project selection file.

- ❑ Upon authorization of an agreement, the selection file becomes public information and may be disclosed to consultants and the public.

Part III.
Contract Administration

CHAPTER 7

Consultant Contract Administration/December 1998, REV 03/01/06

Basic Duties in Administering a Contract

In this chapter look for:

- T Project monitoring
 - T Documentation requirements
 - T Periodic progress reviews
 - T Technical reviews
 - T Invoice processing
 - T Change of project team
 - T Stop work orders
 - T Agreement finalization
 - T Closing agreements
 - T Consultant evaluation system
-

Project Monitoring

The primary objective of Consultant Contract Monitoring is to ensure a quality product is produced in a timely fashion. The process begins with an authorized contract which includes a previously determined schedule.

There is the potential for problems and these must be anticipated so delays can be avoided. All involved agencies, departments, functional units and individual units need to be informed at the earliest possible time to be aware of these problems. If the potential problems are addressed in the beginning, they can be averted or at least minimized.

' Effective monitoring requires early identification and resolution of difficulties and issues as they occur. Most of these problems are more often due to a lack of understanding of ODOT's requirements, rather than to poor engineering judgement or practice.

' Early resolution of these problems requires close coordination and communication with relevant members of the design team. Often this is achieved through regular contact (by phone or meeting) with the consultant's or local agency's Project Manager. In certain cases meeting with the consultant's or local agency's technical staff (at their office) will be necessary. The frequency for these contacts will depend on the project, the project team, and the stage of the project.

Documentation Requirements

Definitions

Records - Includes all accounts, papers, maps, photographs or other documentary materials regardless of physical form or characteristics, made or received by any agency, firm, or individual in connection with the transaction of Federal-aid highway business. This includes, but is not limited to, financial records, supporting documents, statistical records and other records pertinent to Federal-aid highway projects.

Retention period - The minimum period of time records are required to be held by the Federal Highway Administration (FHWA). The minimum length of time for retention of records is three years, per Federal and State regulations. However, records shall be retained until released by the Administrator, Office of Contracts to ensure that adequate documentation exists in the event of litigation, claims or audits (See Records Retention Schedule in Appendix 7 and the Records Retention Requirements and Procedures on Page 7.7)

Federal-aid highway program - All activity undertaken by a non-Federal governmental agency, business firm, or individual in connection with Federal grants-in-aid related to title 23, United States Code.

Files and Record Keeping

Record keeping is one of the most important aspects of contract administration and is vital to the success of contract administration. The Department must be able to respond quickly and accurately to disputes with consultants, internal and external audits, the State's fiscal control agencies, the Legislature and the public. Only by maintaining accurate and complete contract records can the Department provide honest, fair, and efficient administration and ensure compliance with all applicable laws, regulations, policies and procedures. The Contract Manager is responsible for maintaining an accurate and complete filing system.

A complete and properly organized filing system is also vital to the success of the Department's administration of agreements. Filing procedures that produce this result should be regarded as a means of **reducing** the overall effort of administering an agreement. The time required to maintain good records will ease the burden on all those involved in contract administration. Most consultant contract administration activities required by this document depend to some extent on knowledge of past activities. Accurate, organized and readily accessible records will help to ensure fact based decision making and keep important items from "falling through the cracks".

Selection Files/Agreement Files - Where is the Dividing Line? Who is Responsible?

Administration of consultant agreements officially starts upon authorization of an agreement, but selection, scope, price proposal and negotiation activities have preceded authorization. All these activities are relevant to administration as they provide the basis to form a contract. Responsibility for carrying out these activities (selection/scope/negotiation) are also divided between the District or other responsible Office, and the Office of Contracts. However, there is a clear dividing line at the point of authorization that separates the objectives in maintaining records. Prior to authorization, the Department has a legal responsibility to

document all selection activities including responses from firms that were not selected. Based on the centralized nature of this obligation (many questions and reports are based on Statewide activities and not restricted to a single District), complete files (the Selection File) that document selection activities through authorization are maintained by the Office of Contracts. The Agreement File that officially begins upon authorization of an agreement is the responsibility of the District Contract Manager. The Agreement File is specific to the selected consultant and contains only information that is relevant to the Department's agreement with the consultant.

Certain documents from the selection phase will necessarily be retained in the Agreement File (there will be some duplication with the Selection File), but only those documents relevant to formation of the agreement. Upon authorization, disposition of selection phase documents in the District or other receiving Office shall be as follows:

Retain for Agreement File

1. Selected consultant's Letter of Interest.
2. Selected consultant's Technical Proposal.
3. Scope of Services (final Scope only).
4. Selected consultant's Price Proposal.
5. Negotiation records if any.
6. A copy of the Agreement, authorization letter, IPS and Project Schedule (The Office of Contracts will provide copies to the District upon authorization)

Discard

1. Pre-scope of Services documents etc. that have been superceded.
2. Letters of Interest from firms not selected.
3. Technical Proposals from firms not selected.
4. Selection rating forms and associated transmittals to the Office of Contracts.
5. Any other documents not relevant to the agreement.

The Agreement File - What to Include, What to Exclude

In addition to the selection phase documents, all documents directly relevant to the agreement shall be included in the file. Related project documents that are only indirectly related to the agreement should be maintained in a separate project file. The following documents shall be included in the Agreement File:

1. All correspondence to or from the consultant
2. Records of all substantive conversations with the consultant. Standard conversation record forms should be utilized to document the who talked to who, date, subject, conclusions, etc. This requirement applies to all Department personnel that may have interaction with or provide direction to the consultant, including District or Central office review staff.
3. Meeting minutes. All meetings with the consultant must be documented, including an attendance list, subjects discussed and conclusions reached.
4. Marked plan sets (or other large documents not compatible with a legal size file

folder) that are used to transmit comments to the consultant in lieu of extensive written comments shall be clearly marked, saved as an externally referenced part of the file and described in a transmittal letter or meeting minutes that are included in the file. One quarter size plan sets should be utilized as this size is easily microfilmed.

5. Paper printouts of all E-mail messages. Electronic mail is preferred as a means of routine communication based on the built-in documentation feature.
6. Copies of invoices and the transmittal IOC to the Office of Accounting.
7. All other relevant documents.

Physical Filing Systems and Procedures

The objective of maintaining a systematic and orderly physical filing system is to ensure reliable and efficient document retrieval when needed. The following filing guidelines and procedures are offered as a suggested method to accomplish this objective. Following this particular method is not required, but a filing system which accomplishes the above stated objective is.

- T Utilize a top two hole punch system (ACCO system 2.75" center to center) to maintain the physical integrity of files, ensure the order of documents placed in the file and for consistency in project closeout and records retention procedures.
- T Label each file with the Project Designation (County-Route-Section), agreement number, file number and P.I.D.
- T For consistency and ease of access to information and documents that are referenced most often, maintain separate file folders. Place documents in each folder chronologically. The Agreement File folder numbering system and purpose are as follows:
 1. File Number 1 shall include all selection phase documents retained as noted above. Copies of all modifications shall be added to File 1.
 2. File Number 2 shall include all consultant invoices, IOCs to Accounting, and directly related correspondence.
 3. File Number 3 shall include all other post authorization documents as described herein, filed in chronological order.
 4. Additional files as needed based on the volume of documents. Such additional files shall be numbered consecutively.
- T Keep all files together in an expandable file pocket also labeled with the Project Designation, consultant's name and agreement number.

Electronic Chronological Record

In addition to the physical filing requirements, an electronic file shall be established to provide a brief chronological history to supplement the physical files. The purpose of this document is to provide an easy means to locate specific documents, and to provide a "big picture" snapshot of the contract history without having to read the contents of the physical

files. Each document that is placed in the Agreement File shall generate a brief entry in the "Chrono" including the date and a very brief description. This file shall be accessible to all District personnel with any interest in the contract, but only the Project Manager, Contract Manager and any assistant to the Contract Manager charged with filing duties should have "write access".

Examples of typical entries in such a document are as follows:

Chronological History

Project Designation: AAA-111-00.00
Consultant: Goodplan, Inc.
Agreement Number: 0000

<u>Date</u>	<u>Document/Description</u>
10/29/98	Stage 2 submittal received. Distributed for review.
10/30/98	Mr. Consultant called. Discussed need for modification for added project length. Conversation record in file.
11/13/98	Met with consultant re: Stage 2 review. Submittal acceptable. Minutes in file.

Records Retention Requirements and Procedures

Retention of contractual records is required by 23 CFR Part 17 and further governed by Ohio Department of Administrative Services Retention Schedules. Such records may be required in any future dispute concerning the agreement or may be needed for a variety of other reasons.

Upon completion of the agreement or completion of construction for design contracts, the Selection File and the Agreement File shall be merged and microfilmed for records retention purposes. Marked up quarter size plan sets shall be included for microfilming if marked comments are not otherwise described in the file. The electronic chronological file shall be printed and added to the file prior to microfilming. The Microfilm Cassette Number shall be recorded in Consultant Services database. Copies of the microfilm cassette shall be retained in the District and the Office of Contracts.

Upon completion of an agreement, the agreement files shall be forwarded to the Office of Contracts. The Office of Contracts will combine the Selection File and Agreement File and forward it to the Division of Business Services, Microfilm Section.

Periodic Progress Reviews

Kickoff Meeting

Establishing effective communication between the consultant and the district is critical to the delivery of a quality product in a timely manner. The best means of establishing this communication early is by holding a "project kickoff meeting" immediately following authorization of the contract.

All players who might have any involvement in the project should be present at this meeting. At a minimum this would include, from the district, the Contract Manager and the Project

Manager. Others to attend may include:

- T District Real Estate Administrator (or designee) - to discuss R/W plans
- T District Utilities Coordinator (or designee) - to discuss utilities
- T District Survey Operations Manager (or designee) - to discuss the project survey
- T District Environmental Coordinator (or designee) - to discuss environmental commitments
- T Any other engineer/technician who has a specialty related to the project; i.e. bridge design
- T Office of Environmental Services representative for preliminary development projects for Major New projects
- T Local Public Agency representative

The kickoff meeting should be run by the district's Contract Manager and minutes of the meeting must be recorded. Copies of the minutes must be distributed to all attendees as well as the project file after processing.

Anticipated accomplishments gained from holding a kickoff meeting include:

- ' A partnership is formed between the district and the consultant.
- ' The consultant design team and the district contract/project administration team get to meet face to face and know one another.
- ' The consultant will be introduced to the district **key** people, i.e. R/W **specialist**, bridge **specialist**, etc.
- ' Review of the project scope of services which allows the consultant to ask questions regarding their responsibilities.
- ' A review of what submissions will be required and when they are to be made.

The district can also answer questions that the consultant may have concerning items received at the scope of services meeting, such as old/original construction plans, existing right of way information, existing survey control information, etc.

Progress Meetings

The Project Manager shall schedule regular progress meetings to help confirm that a project is on schedule or to determine that an adjustment in the schedule is necessary. These meetings also serve as an avenue for communication between all parties. Again, a gathering of more than one mind allows the sharing of ideas that may avert problems.

The frequency of progress meetings depends on many variables. For example, a very large project may require more frequent meetings, while a smaller, less-complex project may not require as many weekly meetings. Some firms prefer more frequent meeting, while others prefer to meet less often. The only guidance to be given here is that each meeting planned should enhance completion of the project.

Consideration should be given to periodically holding progress meetings at the consultant's office.

On-site visits enable the Contract Manager and/or Project Manager to discuss the project with the consultant's staff, to clarify instructions and intent. The Project Manager should set aside some time to answer questions by the consultant's staff. In addition, ODOT's staff representing special functional areas should be present to answer technical questions related to their expertise, and nontechnical staff assigned to administrative duties (such as invoicing and payments) should be available to answer administrative questions.

Aspects to examine when visiting the consultant's office might include:

- ' Are the individuals named in the proposal working on the project?
- ' Are the consultant's personnel cooperative?
- ' What progress has been made?
- ' Discussions of issues and on-going problems to be resolved
- ' Have past comments been addressed?

All meetings with the consultant shall be documented in accordance with Files and Record Keeping.

Technical Reviews

The purpose of construction and right of way plan review is to provide the assistance and review needed to ensure that work performed by the consultant conforms to the contract scope of service and meets all applicable state and federal standards. It is not to ensure delivery of error-free plans - that is not practical. Review and refinement of the consultant's work reaches a point of diminishing returns when improvement of the product does not coincide with the dollars spent. Good judgment must occur when dealing with consultants. It is intended that the work produced by consultants achieve the same level of quality as work produced by ODOT staff.

Most standard technical reviews will not be performed on projects designated as "No Review" or "Limited Review." Required submittals for "No/Limited Review" projects are limited to final plan submissions and those required for utility coordination, permit applications, constructibility reviews and major design decisions that significantly impact the project. For additional details on "No/Limited Review" projects, see the guidelines located at "O:\Other\Contract\Consult\Policies\norevioc.wpd".

References:

Construction Plans

ODOT has standard review processes and schedules for construction plan development. The staged review process, the process for review of construction plans, is found in Section 1400 of Volume Three of ODOT's Location & Design Manual. With this process reviews are performed at essentially three stages of plan development between the authorization to

proceed and the filing of the final plan tracings. Some reviews need to take place intermediate of these major stages to facilitate the stage review process. The stage review process is meant to be a general guideline for review. The Project Manager has discretionary rights to modify this process if a revised process better suits the type of project being administered. It is vital that the revised process is defined in the scope of services so the consultant is aware of the process being used. If the review process is not described in the scope of services then the consultant needs to be in agreement with the revision.

Right of Way Plans

The submission schedule for right of way plan review is also included in the stage review process but reference should be made to Section 3.10 of ODOT's Real Estate Administration Policy and Procedures Manual for more detailed right of way review procedures. This section of the manual is also known as ODOT's Right of Way Plan Manual.

Preliminary Development Documentation:

The preliminary development phase scope of services clearly defines the reports and exhibits to be submitted for review and the timing of these submissions.

Role of ODOT's Project Manager:

The role of ODOT's identified Project Manager in the plan/document review process shall be as follows:

- ' Contact person through whom all communication between the consultant and ODOT regarding the plan/document reviews are made.
- ' Logs in the review submission and monitors the status of the review.
- ' Identifies which agencies/offices/specialists need to review the submission and distributes the necessary plans/documentation to those agencies/offices/specialists.
- ' Verifies that the plans/documents are in compliance with the scope of services.
- ' Collects all comments from the various review agencies/offices/specialists, determines which comments are appropriate and transmits them to the consultant.
- ' Document all discussions (by all individuals) with the consultants especially if key decisions are made whether by phone conversation or by meeting. This documentation must be filed with the project file.
- ' Document the performance of the consultant for the purpose of Consultant Evaluation.

The above role descriptions apply to both construction plan reviews and right of way plan reviews.

Field Review

A field review of the project shall be made somewhere around the Stage 3 review to assure that the site conditions have not changed subsequent to when the scope of services were written. Should something be changed in the field conditions, a determination can be made on how to address it. The field review would also serve as a means of checking to make sure the consultant has not missed any pertinent item such as a utility or a lawn section or a drainage structure, etc.

For preliminary development projects, it is important that the consultant perform a field review of the study area at a minimum of once during each of the Steps 2 through 6 of the preliminary development phase. The steps are described in the scope of services.

Documentation

Comprehensive documentation of plan/documentation reviews is vital to effective consultant administration. At minimum, proper review documentation must include the following:

- T A log of all reviews performed on the project. The log must indicate the date of submission, the reviewing agency/office, name of reviewer and the date comments were transmitted to the consultant.

- T A copy of the comments transmitted to the consultant. These comments may be delivered in one of three ways:
 - Written comments
 - Marked up prints
 - Annotated comments on documents or reports

If marked up prints or annotated comments are used as the official means of communicating the comments to the consultant then it is the Project Manager's responsibility to ensure that the comments are legible and clear. A copy of the marked up prints or annotated comments shall be kept in the project file or elsewhere in the district office where they can be easily accessed until such time that the project construction has been finalized. At this time, the Project Manager should make the determination whether the copy of the marked up plans or annotated comments can be discarded. For instance, if there is a pending dispute with the consultant, then the plans or comments must remain on file until such time the dispute is resolved.

It is recommended that checklists be used whenever possible on plan reviews. These

Invoice Processing

General

This section addresses only the review and processing of invoices for payment. Chapter 5 addresses the basic Invoice and Progress Schedule format and development of the agreed schedule prior to authorization. Adherence to schedule is addressed elsewhere in this Chapter. This section also addresses only lump sum and costs plus net fee type agreements. Unit of work and rates of pay compensation are used infrequently and the Department's review and processing of invoices for these types of agreements will utilize essentially the same procedures described in this section. Closing agreements is also a related subject that is addressed elsewhere in this Chapter and will be further referenced herein.

The Contract Manager's responsibilities in processing invoices are as follows:

- T Review the invoice as described below and return unacceptable invoices to the consultant for correction.
- T For approved invoices, forward the entire original invoice and two copies of the IPS Transmittal Letter to the Office of Accounting for payment. The Certification page/consultant transmittal also includes a signature block for "State Review". The original and copies must be signed by the Contract Manager and forwarded to the Office of Accounting within 15 days. Utilize the attached standard transmittal IOC for transmittal to Accounting.
- T For final invoices, ensure that the required Summary of Actual Cost parts has been received and close the agreement in accordance with the "Closing Agreements" Section of this Chapter.

Review of Invoices

General procedures for all invoices:

- A. All invoices shall be date stamped upon receipt by the Department.
- B. Most agreements require that invoices be submitted every 30 days - contact the consultant concerning invoice status if an invoice is more than 10 days late.
- C. Review the invoice for proper format in accordance with the Department's standard invoice format as transmitted to the Consultant with the agreement (Refer to Chapter 5).
- D. The invoice form must be updated to reflect all authorization dates and modified fees, if any.
- E. The invoice must be signed by the consultant.
- F. Review the arithmetic for mathematical accuracy.

Additional Procedures for Lump Sum Agreements:

- 1. Review the stated completion percentages versus the known status of each part of the work. If the stated completion percentage is not commensurate

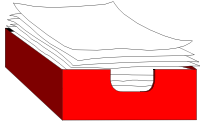
with visible progress, call the consultant and ask for an explanation. Small differences are not normally cause for concern - we are trying to prevent a situation in which the consultant would owe the Department a substantial sum in the event of termination or the consultant's failure to complete the work, and to maintain future revenue as an incentive for the consultant to complete remaining work.

2. Review the amount shown as previously invoiced for agreement with the previous invoice.
3. As a cross-check, compare the "Percent Complete this Invoice" multiplied by the lump sum fee - this amount should agree with the "Amount Due this Invoice".

Additional Procedures for Costs plus Net Fee (Parts of) Agreements:

1. Review the percent complete for each contractual part in accordance with the procedures for lump sum projects. The completion percentage directly determines the amount of net fee to be invoiced, and provides a cross-check on the overall amount. If the overall amount invoiced expressed as a percentage of the maximum fee is substantially greater than the stated completion percentage, call the consultant and request an explanation. If the overall amount invoiced expressed as a percentage of the maximum fee is substantially less than the stated completion percentage, that part of the work is projected to be completed at less than the maximum fee and is not cause for question.
2. Review the "Current Invoice Actual Costs" versus known progress during the invoicing period. Backup documentation, with the exception of a labor summary for the invoice period, is not required to be submitted by the consultant with each invoice, but must be provided upon request during the life of the agreement (and until completion of a final cost audit or a period of three (3) years after submittal of a final invoice). Review the labor summary for excessive billing by principals or other consultant employees whose contributions may be questionable, and unauthorized overtime/premium time billing. Any other costs not commensurate with the stated "Percent Complete this Invoice" or otherwise questionable should be evaluated by calling the consultant or requesting backup documentation.
3. Compare the overhead percentage to the beginning overhead rate. Any such changes must be accompanied by an explanation from the consultant. Such adjustments are encouraged as a means of avoiding large adjustments at the close of an agreement, but should not be applied to previous invoices as an adjustment. Such adjustments or recalculation of indirect costs based on final fiscal year information should be made with the final invoice or with the final cost audit.
4. For actual cost parts, subconsultant invoices are required (only during invoice periods when costs are incurred) and must be in the same format as the prime consultant invoice. Subconsultant invoices shall be reviewed in the same manner as the prime consultant invoice.

N Notes:



CONSULTANT INVOICE

EXHIBIT 7-1

INTER-OFFICE COMMUNICATION

TO:

FROM:

=====

TAX ID #

NAME

ADDRESS

ADDRESS CODE

BILLING PERIOD

ORIGINAL ENCUMBRANCE #

INVOICE TRANSMITTAL #

AMOUNT

Change of Project Team/Staff Commitments by the Consultant

One of the major factors in the selection of a consultant to provide services is the make-up of the consultant's proposed project team. Both the Letter of Interest and Technical Proposal formats require that the consultant Project Manager and key staff members be named. The Department selects consultants based on this promise and must ensure that named staff members actually produce the work. However, please keep in mind that the staff commitment is not a true contractual commitment. Named staff members that are in responsible charge of the work fulfill the obligation even though other individuals may provide a considerable portion of the necessary labor. The Department's true objectives are quality services that meet expectations.

At a minimum level of checking, which should be sufficient on most projects, the Project Manager shall:

1. Monitor consultant attendance at the Project Kickoff Meeting versus the staff members named in the consultant's Lol and Technical Proposal. Staff commitments should be discussed at the meeting.
5. Monitor attendance at review and/or progress meetings. Attendance lists should always be circulated and retained for later reference. During visits to the consultant's office, ask to meet with staff members currently working on the project.
6. Monitor initials (designer or checker) shown on drawings.
7. For actual cost agreements, review the detailed labor summary for the invoice period which is required to be submitted with monthly invoices, thereby providing a definitive record of the staff actually working on the project.
8. At any time that the consultant's performance does not meet expectations, staff commitments shall be reviewed and discussed with the consultant if appropriate.

In the event that the consultant has failed to fulfill the staff commitment, the Project Manager shall investigate the situation and take appropriate actions in the following order of preference:

1. Call the consultant and request an explanation. Satisfactory reasons for a change in the named staff include loss of personnel (people quit), illness, etc., although equivalent substitutions are expected. Attempt to reach an acceptable solution and document the conversation with a letter, copy of a conversation record or E-mail to the consultant. Establish a set time period to follow up and review the situation again.
2. If the consultant does not offer a satisfactory solution, write a letter to the consultant restating the staff commitment and the consultant's failure to honor such. Request a reply in writing and set a limiting date for response.

-
- 3 If the above letter does not produce a satisfactory response from the consultant, refer the matter to the Office of Contracts for referral to the Consultants Committee. Comments entered in the Consultant Evaluation System shall reflect the unacceptable change in staff.

Stop Work Orders (Suspension):

Under certain circumstances it may be in the Department's interest to suspend work on a contract. Reasons for this action may include any change in conditions that would place doubt on the value of the work or portions of the work being performed. Examples include changes in funding that may dictate scope reductions or increases, external factors such as private development of adjacent property that would significantly alter traffic volumes, or any other situation that could significantly alter the Scope of Services. In such situations it is in the Department's interest to stop work, evaluate the necessary scope changes and then take appropriate steps to restart the work or possibly terminate the agreement. Modification of the agreement may be necessary prior to restarting, or in some cases, the original scope may prove appropriate. Lengthy suspensions of work may also be cause for a modification based on delay (salary escalation) even if no scope changes are initiated.

Suspension of work and the Department's authority to do so is addressed in Specifications for Consulting Services in Sections 1.51 and 2.24. Section 2.24 requires that such suspensions be provided in writing. The Contract Manager is responsible for preparing stop work orders if needed. A copy shall be provided to the Office of Contracts. Suspension of only part of the work is acceptable but the written notice should be very specific in these instances. Section 2.24 of the Specifications also includes a provision that permits the consultant to request termination if the suspension is not lifted within 120 days. This provision should not be a consideration in most cases as this option has rarely if ever been exercised by consultants.

Administration of Agreements that Include DBE or EDGE Goals

In order to comply with the requirements of Title 49 Part 26 (DBE) and Ohio Revised Code section 123.152 (EDGE), the Department has implemented a system of goals to ensure that DBE and EDGE firms have equal opportunity to compete for and perform work for the Department, either directly as prime consultants or indirectly as subconsultants. Goals for specific contracts are established prior to posting on the Department's website, and the selected consultant's team must meet the goal in order to be selected. This section addresses the administration of such contracts after selection.

The following requirements of the prime consultant are included in each contract that includes a goal, with each contractual requirement followed by steps (in italics) that the ODOT Project Manager must take in administering the contract:

In order to be assured that the Consultant complies with this contractual requirement during the course of the work, the Consultant shall:

1. Prior to starting work, provide a written plan for DBE/EDGE participation including a breakdown by PDP step if applicable (or similar breakdown by task), description of work to be performed by each DBE subconsultant, and projected percentage of DBE/EDGE participation during each step of the work.

Most required information for the current step of the contract will be included in the consultant's price proposal. The written plan should summarize this information and provide a projection for future steps. This document will serve as a benchmark for monitoring progress towards the goal. Deviations from the initial plan may require adjustments in later steps to ensure that the goal is met.

2. Provide an ongoing summary of DBE/EDGE subconsultant amounts invoiced, for the current invoice and as a running total for the contract.

Monitor each invoice for progress against the consultant's plan for meeting the goal. If the level of participation is falling substantially below the level stated in the plan, request a written explanation as noted under Number 4 below.

3. Provide a quarterly report of the amounts actually paid to DBE/EDGE subconsultants, and certification by the subconsultants of the amounts received.

One month after the close of each fiscal quarter monitor each contract to ensure that DBE and EDGE subconsultants are actually being paid the invoiced amounts noted in Number 2 above. Most subconsultant contracts include "pay when paid" clauses, which means the subconsultants will be paid after ODOT has paid the prime consultant. Subconsultant payments will therefore lag the payments to the prime but this payment affidavit system within the CES system should identify instances in which the subconsultants are not being paid timely.

4. Provide a written explanation if the level of DBE participation falls below the level stated in the DBE implementation plan, including a plan to meet the goal. If the goal cannot be met, the Consultant shall request a waiver as noted below.

If the level of participation is falling substantially below the level stated in the plan, require the consultant to provide a written explanation of the shortfall and a plan to meet the goal. If this explanation states that the goal cannot be met, require the consultant to submit a request for waiver.

Waiver Process

The Consultant must document the progress and efforts being made in meeting the goal for DBE/EDGE participation. In the event the Consultant is unable to meet the goal placed on a project, a request for a waiver of all or part of the goal must be made to the Office of Consultant Services. Complete details of the waiver process are included in the agreement.

Agreement Finalization

Closing Agreements

Timely closing of agreements benefits the Department through:

1. Ensuring that all required services have been completed and all "loose ends tied up" in a timely manner.
2. Permitting timely completion of a final audit if required. Final audits are required for agreements that include actual cost fees in excess of \$100,000. Such audits are completed more effectively if done promptly upon completion of the major portion of

the services and people that worked on the project are available for questions.

3. Reducing the administrative burden associated with an open agreement. An open agreement requires periodic reports by the State and the consultant and encumbrances and other accounting records must be carried forward as long as the agreement is open.
4. Allowing release of excess encumbered funds that can be used for other purposes.

Procedures for Closing Agreements

Closing an agreement requires the following steps:

1. The Contract Manager must determine that all services have been acceptably completed and all deliverables received in accordance with the scope of services. A thorough review of the agreement and Scope of Services shall be conducted along with use of any standard checklists.
2. An invoice marked "final" (the invoice forms provided by the Department include a checkoff for this purpose) must be received from the consultant.
3. The Contract Manager must determine that no additional services (modification) will be required by the Department.
4. The Contract Manager shall prepare a standard memorandum (copy attached) to the Office of Accounting noting that conditions for closing the agreement have been met and request a final cost audit (if required), payment of the final invoice, and release of any remaining encumbered funds.

Termination Procedures

General

Termination of a consultant agreement prior to completion of the services may result from a variety of circumstances that are addressed elsewhere herein. This section addresses the procedural steps necessary to terminate an agreement after a decision to terminate has been reached by the Consultants Committee on behalf of the Director. Only the Director or his/her designees (the Consultants Committee) are empowered to terminate an agreement.

Procedures for terminating an agreement:

1. The Office of Contracts will issue a letter (See appendix 7) advising the consultant of:
 - A. The Department's intent to terminate the agreement.
 - B. The intention to stop work if the Contract Manager has not already done so in accordance with the section addressing stop work orders in this chapter.

Consultant Evaluation System - Duties of the Project Manager

Evaluation of consultant performance is addressed in detail in the Consultant Evaluation System Manual. This Section provides a synopsis of the duties of the Project Manager and Contract Manager in the performing evaluations of consultant performance.

The duties of the Project Manager and Contract Manager in administering the Consultant Evaluation System are summarized as follows:

1. Upon authorization of an agreement, input the project characterization and add subconsultant rating forms by delineating the subconsultant duties (a rating form will be created in the system by authorizing the agreement).
2. During the course of the agreement, maintain records and notes concerning the consultant's performance for later reference.
3. In the event of marginal or unsatisfactory performance during the life of the agreement, advise the consultant of such in writing (sample letters will be included in the CES manual).
4. Upon completion of the agreement;
 - a. Update the project characterization and subconsultant rating forms for any changes during the course of the agreement.
 - b. Assemble all personnel associated with the administration of the agreement (reviewers etc.) and rate the consultant's and subconsultants' performance. Provide comments concerning each rating. The Project Manager and Contract Manager shall jointly resolve any differences and approve the final ratings and comments.
 - c. The Project Manager and Contract Manager shall meet with the consultant within 30 days after completion of the agreement and provide the consultant with the ratings. Discuss the consultant's performance and any areas that should be improved. The meeting shall be documented.
5. Receive feedback from the bidding phase (addenda), right-of-way acquisition and construction and adjust the ratings downward if appropriate. Notify the consultant of any change in rating and the reason for the change.

CHAPTER 8

Specialized Services

In this chapter look for:

- ✓ Bridge Inspection Agreements
 - ✓ Construction Inspection Agreements
 - ✓ Right of Way Acquisition Agreements
-

Bridge Inspection Agreements

The Department hires consultant engineering firms to perform bridge inspections for two reasons:

1. To make an in-depth condition inspection of the structure, report such findings in a formal report and make recommendations for the repair and/or preventative maintenance for any deficiencies they find, in addition to filling out the standard BR 86 (annual bridge inspection) form.
2. Because the Districts lack the manpower to complete an in-depth inspection and report in addition to their normal bridge inspections.
 - ❑ In general, the Department hires consultants to inspect only major structures which have special features or special loading restrictions.
 - ❑ The in-depth reports provided by the consultants are often used as the basis for programming funding for bridge rehabilitation or bridge replacement projects.
 - ❑ This program has been in effect for about fifteen years and a set of general requirements have been established.

Bridge Inspection Requirements

The intent of this contract is for a Professional Engineer (Consultant) to make an in-depth (unless routine is specified) condition inspection of the noted bridges and to report such findings in a formal report.

The Consultant will complete the inspection in accordance with the latest Ohio Department of Transportation Bridge Inspection Manual and the Federal Highway Administration Bridge Inspection Training Manual.

The ODOT Bridge Inspection Report (BR 86) shall be filled out for each bridge inspected and submitted along with at least five copies (more if noted at the Scope of Services Meeting) of a formal report containing narrative description of the findings and original color photographs. The report shall contain:

- ✓ A location map
- ✓ A general plan and elevation of the bridge (depicting the height of the bridge, the number and length of spans and overall length)
- ✓ A deck and superstructure cross-section.
- ✓ Recommendations for repair and/or preventative maintenance for any deficiencies noted.

Note: If a multi-year inspection is being performed, the formal report with color photographs is necessary only for the first year. Subsequent reports and photographs shall only be extensive enough to document changed conditions from the first year.

In addition to these general rules for bridge inspection, each District which obtains contracts for Consultant Bridge Inspection generally has a specific set of requirements. These requirements usually stem from situations which have arisen during previous bridge inspections. They may cover such items as the method of reporting, format of the report, weather conditions (no bridge inspections during December, January or February in the most northern Districts), or Consultant access to the structure being inspected.

At a minimum, the District must maintain records on the Consultant's work location, number of Consultant's personnel present and type of equipment present at the inspection site each day.



Notes:

Construction Inspection Agreements

Initiation of Construction Inspection Agreements

The Department retains consultants to provide construction inspection services to supplement District staffs during peak workloads and to assist the Department in the inspection of complex projects where special expertise is needed. In most cases the Department will retain administrative control of the construction contract with consultant inspectors reporting to Department staff. The preferred methods of contracting for construction inspection services are as follows:

1. A separate agreement with the design consultant.

Utilizing the design consultant to provide construction inspection services has the advantages of bringing the designer's detailed project knowledge to the construction phase and also serves to provide feedback to the consultant concerning design improvements on future projects. The services may range from periodic site visits to furnishing a specified number of full time inspectors.

A separate agreement that incorporates the original design agreement by reference is preferred to allow timely closeout of the design agreement and to ensure that contractual clauses specific to construction inspection services are included.

2. Personal Services Agreements with qualified individuals

District Offices may develop Personal Services agreements with qualified individuals to supplement the District staff. Such agreements must include language from the Department's standard construction inspection Scope of Services and agreement. Questions should be directed to the Office of Contracts.

Administration of Construction Inspection Agreements

Administration of construction inspection agreements follows the same basic principles as other agreements, but in most instances the scope of services will be "services as requested" rather than a defined deliverable. Consultant inspectors generally work under the direction of Department personnel with the level of service measured in terms of reliability, technical competency and knowledge of ODOT Specifications, and level of cooperation with the Department's staff. The Department's standard scope of services includes a more detailed listing of typical duties.

A designated Project Manager and Contracts Manager are required for construction inspection agreements, with the Construction Project Engineer recommended to serve as Project Manager. The Contracts Manager could be the "design" Contracts Manager or the District Construction Engineer may carry out these duties, depending on District preference.

A list of checkpoints for administration of consultant inspection agreements follows:

1. A "Project Kickoff Meeting" must be held. Refer to Chapter 7. Required inspector training should be verified at the meeting, including ACI certification, painting inspector training, nuclear gauge safety training and ODOT asphalt procedures training.
2. Consultant inspectors are required by the agreement to comply with the same health and safety requirements as ODOT personnel and are subject to compliance inspections by ODOT personnel.
3. The agreement requires the consultant to remove any employee that "does not perform the work in the proper manner". Upon identification of such performance the Contracts Manager shall so inform the consultant and request removal of the employee (and replacement at the option of the District).
4. Invoices shall be processed monthly in terms of the agreement. A separate field overhead rate may be required by the Federal Acquisition Regulations - questions should be directed to the Office of Contracts or the Office of Payroll and Project accounting, External Audit Section.

Right of Way Acquisition Agreements:

Procedures for Administration of Real Estate Acquisition Contracts

All real estate acquisition activities involving Federally assisted public improvement projects are subject to the requirements of Public Law 91-646, commonly known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the Act). This law provides most procedural requirements of the Scope of Services for contracts involving real estate acquisition. A real estate acquisition contract can be divided into five work processes, including planning, appraisal, negotiation, relocation and property management. In addition to prequalification of firms for administration of real estate services, all individuals performing any of these services under a real estate acquisition contract must be prequalified by the department. The "Act" and this prequalification requirement are major elements in administration of real estate acquisition contracts, along with normal scope (number of parcels, etc.) and schedule considerations.

Other scope considerations are:

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1. The Department's policy to review and approve all appraisals prior to negotiation by the consultant.
 2. Appropriation cases which must be coordinated with the Attorney General's Office.
 3. "Certification" by the consultant that all necessary acquisition activities have been performed in compliance with the Act. Such certification means that all necessary rights-of-way for the improvement have been cleared or appropriation activities are proceeding, thus allowing the project to be authorized for construction.

In addition to normal administrative oversight such as invoice processing, scope review, schedule oversight, etc. as enumerated in Chapter 7, the Project Manager shall also:

1. At the project kickoff meeting, discuss prequalification requirements and staff commitment (refer additionally to the staff commitment section in Chapter 7).
2. Coordinate the Department's review of all appraisals prepared by the consultant.
3. Coordinate appropriation cases with the Attorney General's Office.
4. Review the "Certification" prepared by the consultant and forward to the Office of Project Coordination.

CHAPTER 9

Modification Procedures

In this chapter look for:

- ✓ Modifications to agreements
 - ✓ Procedures for processing modifications
-

General

This Chapter addresses modifications to consultant agreements. Early identification and processing of modifications is very important in maintaining project schedules. In addition to standard procedures and approval authority, advanced authorization procedures are included that allow the work to proceed almost immediately only when certain conditions are met.

However, under no circumstances should work be authorized either verbally or in writing when a legal contract does not exist. Only the Director is empowered to sign agreements, and Section 127.16 of the Ohio Revised Code provides that any person who authorizes a purchase in violation of the Controlling Board rules shall be personally liable to the State for any funds spent under the contract.

Modifications to Agreements

A modification is a legal adjustment to an agreement made necessary as a result of:

1. A change in scope which may require an adjustment of prime compensation;
or
2. Additionally required services to be performed that may require the adjustment of prime compensation.

In order to justify the need to modify the contract, the Department must determine that the situation meets two criteria:

1. That additional professional services are necessary to complete the work originally contracted for; and
2. That it is in the best interest of the State that the services be performed under the same contract.

Once the need for a modification is established, the Consultant can be asked to prepare a proposal based on an addition, reduction, substitution or a revision in the complexity, character or duration of the services originally contracted for.

Modifications to Agreements may be initiated in two ways:

1. The District may request a proposal for a modification from a consultant specifying that additional services are to be performed. The request must be in writing, signed by the contract manager and must clearly state the scope of the additional services. If additional clarification is required, the contract manager can arrange a scope of services meeting with the consultant and all involved district personnel.
2. A consultant can, when the firm believes that the scope of the agreement has been exceeded, submit a proposal for modification to the contract manager. The contract manager will either process the request or return the proposal to the consultant with an explanation of his denial of the modification. The consultant can request that the contract manager forward the proposal to the Consultants Committee when there is an unresolved dispute regarding the need for or the extent of the proposed additional services.

Procedures for Processing Modifications

District Allocation Projects

- Authority to Approve Modifications for District Allocation Contracts

District Consultants Committees have the authority to approve modifications to consultant agreements for District allocation contracts.

- Procedures for Processing District Allocation Modifications

The Contract Manager is responsible for processing modifications in accordance with the following procedures:

1. Evaluate the proposal for adherence to the Department's requirements for preparation of modification proposals as stated in Chapter 6 of Specifications for Consulting services. Proposals that do not meet these requirements shall be returned to the consultant for correction.
2. Analyze the proposed fee or other proposed change in the agreement relative to the change in scope of services and provide a recommendation to the District Consultants Committee to either accept the proposal or negotiate the fee (or other proposed changes in the agreement). The Office of Contracts will provide assistance as requested by the District.
3. If required, negotiate the fee or other terms of the agreement and document the outcome of the negotiation.

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4. Identify funds within current agreement parts that will not be used for the original intents and are available for other purposes. The reallocation of currently encumbered funds provides the most efficient use of resources and allows earlier authorization by avoiding additional Controlling Board approval and encumbrance of funds.
 5. Allocate the approved fee to existing contractual parts and note any corresponding reductions or elimination of current contractual fees as described above. Fee type (lump sum, cost plus net fee, etc.) shall be noted.
 6. Forward the approved modification to the Office of Contracts for agreement preparation, Controlling Board approval (if required), encumbrance of funds (if required) and authorization.

The information shall be transmitted by using the standard transmittal IOC which is provided herein and available on the network as O:\other\contract\consult\DistrictForms\DistrictMods\Distamod.wpd. A checklist is included with the IOC.

Major New/ Centrally Funded Projects

Modifications to major new funded projects are processed in the same way except that the District Consultants Committee does not have authority to approve the fee. The Office of Contracts will analyze the proposed fee and any associated District comments and then present a recommendation to the Central Office Consultants Committee.

In the case of a modification to a contract for a major new project, the Contract Manager shall notify the funds manager in central office of the intent and amount of the modification as soon as this information is available to allow the funds manager to plan for the expense.

A checklist and transmittal IOC for Major New/Centrally funded projects is provided herein and available on the network as O:\other\contract\consult\DistrictForms\DistrictMods\Mjrnwmod.wpd.

Time Extensions

The Contract Manager has the authority to grant a time extension for a consultant agreement. These extensions can be given in cases where there is a change in scope of services, a delay caused by the department, or any other justifiable condition. Time extensions which concur with a consultant's delayed schedule are not acceptable.

The following procedure must be used in granting a time extension:

1. The approval of the time extension must be given to the consultant in writing. This approval must be signed by the Contract Manager.

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2. A revised Project Schedule in the Project Monitoring format must be prepared. All required submittals with scheduled submittal and approval dates and review times must be adjusted to reflect the revised completion date.
 3. The consultant must agree to the revised schedule by returning a signed copy of the revised schedule.
 4. Copies of relevant documents must be forwarded to the Office of Project Coordination, the Office of Contracts, and the Central Office Program Manager for Major New Projects.

Advanced Authorization to Proceed

Under certain circumstances a consultant may be authorized to proceed with the work of a modification prior to execution of a formal modification. This can be accomplished through management of the scope of services to avoid a situation in which money owed the consultant exceeds the amount of the agreement. In order to add work that cannot be legally compensated, other work that is included in the agreement must be temporarily deleted. This procedure can be best utilized in the early stages of an agreement when significant funds remain unspent and can be used temporarily for other purposes (the modification).

Advanced authorization **should not** be utilized if the need for the work is not clearly established and **shall not** be utilized for substantial changes in scope of services such as:

1. Adding through lanes to the project
2. Substantially increasing the project length
3. Substantially changing the project location

Approval Authority

Advanced authorizations must be approved by whichever Consultants Committee has approval authority for the modification, either Central Office (Major New) or District (District Allocation).

For District allocation projects the Contract Manager may proceed with the advanced authorization after approval by the District Consultants Committee and concurrently with transmittal of the modification to the Office of Contracts. A copy of the advanced authorization letter shall be included with the documents transmitted to the Office of Contracts. For Major New/Centrally funded projects, the Contract Manager shall include the advanced authorization request with the modification transmittal IOC to the Office of Contracts. The Office of Contracts will seek approval of the Central Office Consultants Committee and issue the advanced authorization after approval.

Procedures

1. The scope of the contract modification must be clearly stated in writing, either within

Chapter 9 Appendix

- ✓ Document Listing
Index of the files in the subdirectory
O:\Other\Contract\Consult\DistrictForms\DistrictMods\ as follows and a copy of
each document:

Subdirectory
distamod.wpd

Brief Description
Modification checklist for District Allocation Projects.
Followed by the cover IOC transmitting the
modification proposal to the Office of Contracts,
Consultant Services.

Mjrnwmod.wpd

Modification checklist for Major New Projects.
Followed by the cover IOC transmitting the
modification proposal to the Office of Contracts,
Consultant Services.

CHAPTER 10

Breach of Contract

In this chapter look for:

- ✓ Identification of breach of contract
 - ✓ Administrative remedies for breach of contract
 - ✓ Procedures for dealing with breach of contract
-

Breach and Default of Contract

Purpose

The purpose of this Chapter is to provide, for the use of those charged with administration of agreements, guidelines for identifying breach of contract by consultants, define the administrative remedies available, and provide procedures for dealing with each situation.

Identification of Breach of Contract

Breach of contract by a consultant will nearly always occur during conduct of the agreement. Problems discovered during a subsequent phase of project development will usually be categorized as negligent acts, errors or omissions, which are addressed in Chapter 11. Additionally, **breach of contract results from a consultant's failure to address an identified problem** in the performance of the agreement. The Department must notify the consultant in writing of deficient performance, identify required solutions, and set a deadline for cure. After these steps have been carried out and the consultant has failed to address the deficiency, the consultant may be declared in default (the contract is already in breach at this point) of contract and additional administrative remedies may be pursued by the Department.

Breach of contract will generally fall into three categories:

1. Failure to perform work included in the scope of services

A consultant's interpretation of the scope of services that certain work is not included, when the Department believes otherwise, may lead to a disagreement in which the consultant is declared in breach of contract. The Project Manager must notify the consultant in writing and if the difference is not resolved, the dispute resolution provisions of Section 2.09 of Specifications for Consulting Services may be utilized. Only after these attempts to resolve the matter have failed will the consultant be declared in breach of contract and appropriate actions taken as described below.

2. Failure to perform timely

Nearly all ODOT consultant contracts include a delivery schedule consisting of an overall completion date and intermediate milestone dates for review submittals. The Department relies on adherence to this agreed schedule in delivery of projects and services. Failure by the consultant to meet the schedule, either intermediate or final completion dates, must be addressed in writing by the Project Manager. The letter to the consultant must cite the lack of timely delivery, require a return to the contractual schedule and set a time limit for response by the consultant. The consultant's failure to acceptably return to the contractual schedule will result in default of contract with appropriate actions by the Department as described below.

3. Failure to perform technically

Nearly all ODOT contracts specify services provided in accordance with standard guidance documents, professional standards, and industry standards. Examples include ODOT's Location and Design Manual, Bridge Design Manual and Specifications for Subsurface Investigations, Standard Drawings, and various AASHTO standard documents. A breach of contract based on technical performance is defined herein as unsatisfactory performance as more fully described and defined in the Department's Consultant Evaluation System (CES), as follows:

"The consultant's work was unsatisfactory to the point that extensive involvement by Department personnel was required. Without such extensive involvement by the Department, major errors would go undetected and a usable work product would not be provided."

Consultant performance that falls in the "Improvement Required" category of CES will normally be addressed through the CES and not defined in breach of contract terms or procedures.

As stated above, unsatisfactory technical performance by the consultant must be addressed in writing by the Project Manager. The letter to the consultant must cite the specific areas of unsatisfactory performance, require a return to an acceptable level, and set a time limit for response by the consultant. The consultant's continued failure to provide an acceptable level of performance may result in default of contract with appropriate actions by the Department as described below.

Administrative Remedies for Breach of Contract

As described above, a consultant's **failure to address an identified problem** in his performance is the required condition in declaring a consultant in breach of contract. The following remedies are available to the Department in addressing breach of contract by a consultant:

1. ***Administrative Suspension*** - A temporary loss of pre-qualification that will prevent the consultant from pursuing additional work with the Department during the suspension period. The time period of the suspension may be indefinite (lifting of suspension based on some cure) or may be a defined time period.
2. ***Termination of the consultant's agreement*** in accordance with Section 2.25 of Specifications for Consulting Services.
3. ***Revocation or non-renewal*** of some or all pre-qualification categories (some future opportunity for reinstatement will be afforded) .

Procedures for dealing with Breach of Contract

Upon receipt of a memorandum documenting the breach or default of contract, the Administrator, Office of Contracts will review the report and advise the Consultants Committee of the matter. After consultation with the District and the Consultants Committee, the Administrator, Office of Contracts will take appropriate steps to implement available administrative solutions.

Part IV.
Identification of Consultant Negligence

CHAPTER 11

Consultant Negligence

In this chapter look for:

- T Identification of consultant negligence
 - T Procedures for dealing with negligent acts, errors or omissions
 - T Procedures for corrective actions
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Consultant Negligence - Identification and Procedures

Purpose

The purpose of this Chapter is to provide, for the use of those charged with administration of agreements, guidelines for identifying errors, omissions and negligent acts by consultants, and procedures for dealing with each situation.

Identification of Consultant Negligence

Negligence by a consultant is contractually defined in Section 2.12 (Errors and Omissions) of Specifications for Consulting Services, as follows:

“Services provided by the consultant under this agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.”

This definition obviously does not define every error by a consultant as a negligent act that must be pursued for reparation of damages, but in all cases of consultant error the consultant must:

1. Respond promptly to the Department’s request for clarification/correction.
2. Prepare any plans or data needed to correct the negligent act, error or omission without additional compensation.

The “negligent acts, errors or omissions” will in most cases be identified during a subsequent phase of the work. Detection of errors, even major errors, during the review process would not normally fall within the negligent standard that is the subject of this Chapter. Such errors and other review comments must be corrected by the consultant at no cost and later considered in rating the consultant’s performance.

“Negligent acts, errors or omissions” as discussed herein will generally consist of harm to the State based on the Department’s use of the consultant’s completed work. The most

common occurrence will be design errors discovered during bidding or construction, but the Department relies on the completed work product of nearly all consultant agreements and may be harmed by an error of any type. Some additional examples are: wetlands not identified during an environmental investigation that are discovered during later design or construction; failure to identify dangerous conditions during a bridge inspection; or acceptance of a contractor's work such as bridge painting based on a consultant inspector's report and later the work is proven clearly deficient.

Procedures for Dealing with "Negligent Acts, Errors or Omissions"

Upon discovery of an alleged error by a consultant during the Department's reliance on the consultant's work product (see above), the ODOT Project Manager shall be notified immediately. The Project Manager shall carry out the following procedures:

1. Notify the consultant of the problem either by telephone or in writing, a telephone call will be sufficient in most cases. This is the beginning of a "discovery phase" of investigation that is intended to fully identify the problem (or possibly determine that a problem does not exist).

Do:

- a. Ask for clarification of the discrepancy.
- b. Agree to a deadline for response.
- c. Fully document the call in writing.
- d. Direct the consultant to maintain separate cost accounting specific to their efforts to resolve the problem. We want to ensure that we do not inadvertently pay the consultant to correct an error, or the services could be compensable under certain circumstances. In either case the costs must be tracked.
- e. Begin to segregate and track ODOT labor costs (TMS) directly attributable to the problem.

Do not:

- a. Characterize the discrepancy as an error.
 - b. Negotiate, reach agreement or sign any document relative to the consultant's responsibility for the problem.
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2. Fully investigate the discrepancy to determine the extent, impacts (harm to the Department) and source of the discrepancy. Notify other ODOT personnel as appropriate including the Contract Manager, the District Production Administrator, District Construction Engineer, Administrator of the Office of Environmental Services, or others as appropriate. The consultant's response to the Department's initial contact should be obtained and considered in completing the investigation. The Consultant's scope of services must be considered in reaching any conclusions regarding responsibility for any error or omission.

Relevant facts may include:

- a. A determination that the project was constructed in accordance with plans and specifications and the problem did not result from contractor error.
- b. Reasonable assurance that the project was inspected properly.
- c. Cost analysis of damages including determination of:
 - 1) Work performed to correct the error.
 - 2) Lost work - work performed by the contractor that must be discarded, and original design costs for the work that must be redesigned.
 - 3) Soft costs incurred such as delay and home office overhead.
 - 4) Extra work that needed to be done in any case including "betterments" of deficient designs, and quantity increases etc.
 - 5) Work that would not have been needed "but for" the error
 - 6) Alternate designs that would have solved the problem but are precluded by the current situation.
 - 7) Potential costs mitigated by ODOT actions.
4. Fully document the investigation in writing including conclusions reached concerning responsibility for the error or omission, including a determination that in the opinion of the District the consultant committed negligence. All communications with the Consultant shall be documented.
5. Notify the Administrator, Office of Consultant Services immediately upon any preliminary determination of consultant negligence, and provide a memorandum documenting the investigation and conclusions.

Upon receipt of a memorandum documenting possible consultant negligence, the Administrator, Office of Consultant Services will review the report and, if advisable, involve ODOT's Chief Legal Counsel and the Attorney General's office. After review and discussion, the Administrator will advise the Consultants Committee of the matter, notify the Consultant in writing with a copy to the consultant's professional liability insurance company, and at the direction of the Consultants Committee, pursue remedies as prescribed by Section 2.12 of the Specifications for Consultant Services.

Procedures for Corrective Actions

Upon agreement with the Consultant and/or the consultant's professional liability insurance company that a negligent act was committed and corrective actions are required, the following procedures will be initiated.

1. The Office of Contracts will enter into negotiation with the consultant and/or the Consultant's insurer.
2. Corrective plans (or other documents) will be completed by the consultant or another consultant chosen by the insurer. Any payment to a third party consultant will be made by the insurer. The Department will not enter into agreement with any other consultant for the corrective plans.
3. The Department will review and approve the corrective plans.
4. All plans, once accepted, must be constructed by an ODOT pre-qualified contractor. The cost of corrective construction may be negotiated by the insurer or may be let competitively through the Department's bid letting process. All payment will be made by the consultant or insurer either directly or indirectly (through ODOT).