

This chapter outlines requirements for the Project Manager to follow in managing the contract that is executed between the FDOT and the Consultant for design services. The Consultant is responsible for the execution of the work under the terms of the agreement, and the Project Manager has a responsibility to enable the Consultant.

**Contract Management**

Once contract negotiations are completed, the contract is executed and the Notice to Proceed (NTP) has been issued, work can begin. Florida law requires funds approval prior to executing the written agreement. Both the funds approval and the written agreement must be executed prior to beginning any work. Work performed before the funds are encumbered and the contract is executed cannot be paid for under the contract.

The encumbrance process, as described in *Procedure No. 350-20-200, [Contract Funds Management - Funds Approval](#)*, ensures the budgeted funds are allocated for payment of the specific contract.

**Standard Contract Terms**

The FDOT uses *[Form No. 375-030-12, Standard Professional Agreement Terms](#)*, (“boilerplate”), which normally includes the following:

- **Services and Performance:** Specifies procedures for changes, revisions and supplemental agreements; standards of care; use of computer facilities; and use and ownership of documents produced by the project.
- **Term:** Details information about application of the schedule, extending the duration and delays.

- **Compensation:** Details information concerning accounting, record keeping, invoicing, accuracy of wage rates and other unit costs and the availability of budgeted funds.
- **Indemnity and Insurance:** Specifies indemnification, claims and insurance requirements.
- **Compliance with Laws:** Cites requirements for complying with specific state and federal statutes pertaining to issues such as professional licensing rules and laws, public access to documents, press releases and public statements by the consultant, employment of unauthorized aliens, and discrimination.
- **Termination and Default:** Specifies actions taken by the FDOT concerning termination of the contract and consultant default.
- **Assignment and Subcontractors:** Details responsibilities concerning assignment and subcontracts.
- **Miscellaneous:** Outlines interpretation and legal jurisdiction clauses.
- **Terms for Federal-Aid Contracts:** Cites specific requirements and certifications which apply when the contract is federally funded.

**Elements of the Contract**

A standard format for professional contract document consists of three parts:

**PROFESSIONAL SERVICES AGREEMENT**

This document, signed by both parties, specifies the terms of the agreement, as well as the legal responsibilities and rights of both parties. It includes the contract number, the financial identification number, the date of the agreement,

the Consultant information, the title of the project, the term (duration) of the contract and the schedule of services, insurance requirements, a list of subconsultants, and references to the contract terms, scope of services and method of compensation.

### SCOPE OF SERVICES

The scope of services is the specific work requirements for the consultant. See *PMG 225 Scope of Services* for specific information included in a scope of services.

### METHOD OF COMPENSATION

This section includes the compensation amount and method, invoicing procedures, and final audit and closeout requirements. Methods of compensation normally used are discussed in detail in the [Negotiation Handbook, Professional Services Contracts](#).

The FDOT utilizes the lump sum method of payment for professional services when the scope of services is well defined and the level of effort can be reasonably predicted. Cost Reimbursement is used when the scope of services is sufficiently vague or complex that the level of effort or expenditure cannot be estimated with reasonable accuracy. Cost per Unit of Work is used for repetitive services such as lab tests, soil explorations, traffic counts, or bridge inspections. Specific Rates of Compensation may be used on a design contract for ancillary minor services (e.g., geotechnical, surveying and mapping, landscape architecture).

- **Lump Sum:** Consultant agrees to complete the scope of services for a specific amount. Invoices are for a percent complete by task, deliverables or other milestones. The use of lump sum contracts for CEI work is

prohibited unless the "extent, scope, complexity, character and duration of the work" have been established. Approval by the State Construction Engineer is required to negotiate a lump sum CEI contract.

- **Cost Reimbursement:** This method is also known as "cost plus fixed fee." The actual (or negotiated) wage rates applied to the actual hours expended, plus overhead, Facilities Capital Cost of Money (FCCM) (if applicable), operating margin, and direct expenses are reimbursed. The operating margin and the "fixed fee" are negotiated as a lump sum based on a percentage of the estimated direct salary cost. A "maximum limiting amount" may be established for the overall contract or for individual tasks, projects or cost elements. Invoices for work completed under the limiting amount are only for the time and direct expenses expended, plus the fixed fee. The Consultant must maintain accurate time records and ensure that the rates used are as agreed in the contract.
- **Cost per Unit of Work:** A negotiated unit rate for a repetitive task or deliverable product is established and paid for each unit produced. The unit rate is not subject to adjustment. A maximum limiting amount is normally established based on the estimated number of units required. Invoices are based on the number of units completed.
- **Specific Rates of Compensation:** In this method, a billing rate is negotiated which commonly includes labor, overhead, FCCM, and operating margin. Direct expenses can be included in the billing rate, but sometimes they are paid separately at actual costs. These contracts are invoiced for actual hours expended in the same manner as Cost Reimbursement contracts, the difference being that all individual cost items are included in the negotiated rate. A maximum limiting amount is normally established. FHWA has approved use of specific rates of compensation (i.e., fully loaded billing rates) for all types of maximum limiting amount contracts, except for project specific design contracts.

## Contracts Types

There are two basic types of contracts commonly used by the FDOT:

### **PROJECT-SPECIFIC CONTRACTS**

Project-specific contracts are typically used on single, large projects and are to complete a specific work phase of one or more projects.

Project-specific contracts can contain options for services needed but not funded at the time of the contract. Optional services are frequently not negotiated until the decision is made to exercise the option (requires a letter of authorization to proceed). Commonly used options are design services for Supplemental Survey, Supplemental Soil Borings and other minor design services. If the scope and level of service for tasks are difficult to foresee at the beginning of long-term contracts, it may be appropriate to include those tasks in the Scope of Services to be negotiated later as a Supplemental Amendment.

### **TASK WORK ORDER (TWO) CONTRACTS**

TWO Contracts are typically used for relatively small projects or tasks of a similar nature over an established time period (e.g., Districtwide, General Engineering Consultant Contract, Continuing Service Contract).

Task assignment contracts are designed to select a qualified consultant to perform projects or tasks until a budgeted contract amount is exhausted. The actual tasks to be performed are usually not identified at the time of consultant selection and contract negotiation. The consultant is selected based on qualifications, staff and capability to perform the tasks. Negotiations establish the rates to be applied to individual assignments. Once the contract is

executed, individual TWOs are negotiated as needs arise. Depending on the structure of the base contract, TWOs may be lump sum, cost reimbursement or unit cost. The Project Manager must verify that the fee sheet provided by the Consultant contains rates that exist in the Exhibit B, Method of Compensation.

See *Procedure No. 375-030-010, [Amendments and Task Work Orders For Professional Service Agreements](#)* for specific instructions on the preparation of Task Work Orders.

All individual TWO assignments must be completed prior to the expiration date of the overall contract. No TWO assignment may have an ending date past the expiration date of the contract.

## Contract Management Assistance

The Project Manager should consult the District professional services staff within the Procurement Office or Production Support Office staff in Central Office if any contractual question or issue arises.