

CHAPTER 12 THE AGREEMENT

12.1 PREPARATION OF THE AGREEMENT

Subsequent to negotiations, the PSU will prepare an appropriate agreement consistent with the results of the negotiations. The agreement will generally consist of: the **Standard Professional Services Agreement, Form No. 375-030-12**; Exhibit "A" - Scope of Services; and Exhibit "B" - Method of Compensation, and any other applicable attachments.

12.2 VENDOR ELIGIBILITY CHECK

Public entities may not contract with firms that have been excluded from participating in the public contracting process. Before awarding a contract, PSU shall check if the prime and all subs appear on the Department of Management Services (DMS) Convicted/Suspended/Discriminatory/Federal Excluded Parties/Complaints/Scrutinized Companies Vendor Lists. Additionally, federal law requires a check of the Federal Excluded Parties List (EPL) for businesses that have been debarred, suspended, or otherwise excluded from federally funded contracts. PSU shall complete and sign the **Vendor Eligibility Check Prior to Contract Award, Form No. 375-030-91** for each contract, checking for vendor eligibility to contract with the Department.

12.3 CONTRACT ATTESTATION

The Contract Attestation Checklist Form No. 375-040-34 shall be completed and signed by the Contract Manager/Project Manager for all contracts or purchase orders: a) funded by the state or federal government; b) results in anticipated expenditures of \$1 million or more during the term of the contract; c) procured in accordance with Chapter 287, Florida Statutes. In conjunction with the Contract Attestation Checklist, a signed Contract Attestation Form No. 375-040-45 must also be received by PSU prior executing contracts meeting the aforementioned criteria.

12.4 AGREEMENT EXECUTION

The PSU will coordinate execution of the professional service agreement. Signature routing shall be accomplished using the Department's approved electronic signature application for Procurement. The contract document shall be transmitted to all internal and external signing parties including the Consultant via electronic signature application. The Consultant shall consent to sign the contract using the Department's electronic signature application. The Department will transmit the Consultant's copy of the fully executed contract document via e-mail.

The following lists the signatures and approvals necessary for agreements.

12.4.1 THE GENERAL COUNSEL'S OFFICE

This signature indicates that the agreement has been reviewed by an attorney to determine that the agreement contains all the required statutory provisions; contains all necessary provisions to be legally enforceable; contains all relevant provisions to clearly define the responsibilities and obligations of each party; and to protect the Department's interests.

12.4.2 THE CONSULTANT

This signature indicates that the Consultant agrees to all terms, conditions, and provisions contained in the agreement. If any changes have been made by the Consultant subsequent to Legal's initial review, the General Counsel's Office will review the changes and approve.

(A) CORPORATIONS:

Generally, only a President or Vice-President may sign on behalf of a corporation. If another person is signing, they must have proper authorization from the corporation. If another other than the President or Vice President will sign, the Procurement office shall request the following documentation from the Consultant:

Articles of Incorporation (filed with the Secretary of State, check for amendments)
Corporate Resolution signed by the corporate Secretary identifying by name any other people that are authorized to sign agreements on behalf of the corporation.

(B) LIMITED LIABILITY COMPANIES (LLC):

If the LLC is member managed, any member may sign on behalf of the LLC, unless the Articles of Organization or the Operating Agreement states otherwise. If the LLC is manager managed, any manager may sign on behalf of the LLC, unless the Articles of or the Operating Agreement states otherwise. If another person is signing, they must have an appropriate authorization from the LLC. If a member managed company, all managers will sign the designation.

Documentation to request and review:

- i. Articles of Organization for managers or managing members (filed with Secretary of State, check for amendments).
- ii. Certificate or affidavit executed by all members or all managers identifying (by name) other people that are authorized to sign agreements with the Department on behalf of the LLC.

12.4.3 OFFICE OF COMPTROLLER

Before executing an agreement, funds approval must be obtained through the OOC Contract Funds Management System (CFM). This system checks for 1) available budget (Work Program versus operating); 2) that projects are programmed for the

appropriate amount and year in the Adopted Work Program; and 3) any needed federal authorizations are being obtained. These assurances are required for the Comptroller to state that funds are available in accordance with Section 339.135(6)(a), F.S. An electronic copy of the funds approval e-mail must be placed in the contract file folder. If there are any questions regarding the CFM System or budgetary approval, please contact the CFM Section. If there are any changes to the financial provisions in the **Standard Professional Services Agreement Terms, Form No. 375-030-12**, the changes must be approved by OOC.

12.4.4 THE PROCUREMENT OFFICE OR DISTRICT PSU, AS APPROPRIATE

While not required by law, this review signature has the greatest procedural responsibility. This signature indicates that the signer has either verified or certifies that:

- (A) The Consultant was competitively selected in accordance with the Department's approved selection process, and that all Federal contracting requirements have been met in order to ensure federal eligibility.
- (B) The terms and conditions of the agreement meet the specifications of the Project Manager, are reasonable to the Department and the Consultant, and were written in a form approved by legal counsel.
- (C) The agreement, when negotiated, was done so in good faith and in accordance with all applicable laws, rules, and procedures. Also, that the negotiated price is fair, competitive, and reasonable considering the scope and complexity of the project.
- (D) The method of compensation is appropriate and the amount is reasonable.
- (E) The project is included in the Department's adopted Work Program, and that the project has a proper phase, fund code, and financial management number(s).
- (F) Any change to previously approved form or content has been reviewed and resolved with the appropriate office.
- (G) The individual signing has signature authority.
- (H) OOC and FHWA, if applicable, have authorized funding.
- (I) The prime Consultant has secured and presented proof of professional liability insurance in accordance with the agreement.
- (J) For all contracts, PSU shall confirm eligibility of all prime and subconsultants prior to final execution of the contract, using the Vendor Eligibility Check Prior to

Contract Award Form No. 375-030-91. A contract award (reference 2 CFR 180) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM).

- (K) For contracts in excess of \$5 million, PSU will identify the specific appropriation of state funds from which the state of Florida will make payment under the contract during the first year. The Appropriation Bill Number and Line Number will be entered on page one of the ***Standard Professional Services Agreement***. Please use the Crosswalk to Budget Entities spreadsheets provided by the Budget Office to properly identify the appropriation information.

12.4.5 THE AGENCY HEAD (OR THEIR DESIGNEE)

This signature obligates the Department to the terms, conditions, and provisions of the agreement. This signature completes execution of the agreement.

Signature authority is delegated to Senior Management Level Directors and above and Procurement Services Managers. Directors, Assistant Secretaries, or District Secretaries may delegate signature authority to other office heads in writing.

12.5 CONTRACT DISTRIBUTION

The PSU distributes the executed agreements in the manner set forth below.

- (A) Electronic copy to the Department's Comptroller or District Financial Services Office, as applicable.
- (B) Electronic copy to the Consultant.
- (C) Electronic copy to Professional Service Unit.
- (D) Electronic copy to the Project Manager.
- (E) Electronic copy to FHWA of federally funded contracts or task work orders, as identified in the Projects of Division Interest (PoDI) list provided to FDOT, or as specifically requested by FHWA. Contracts for projects delegated to the State are only provided upon request.

12.6 LOADING CONTRACTS INTO CITS AND CFM

The AFP containing all agreed upon negotiations information shall be uploaded by PSU into the CITS application using the Ipswitch WS_FTP file transfer software. Instructions for use of the AFP are found on the Procurement website. Concurrent with loading the AFP contract information into CITS, the contract average wage rate data from the AFP is also uploaded into the Procurement application database via Ipswitch WS_FTP. The average wage rate data is used by the Department and Consultants for purposes of

comparison of the proposed salary or billing rates with prevailing rates for the class of personnel, as part of contract negotiations.

PSU shall be responsible for uploading professional services contract images into CFM. Contract images must be updated in CFM within 30 days of a new contract being executed.

All contracts for professional services shall be invoiced using CITS, unless approval is obtained from Central Office Procurement and OOC to exclude the contract from CITS. Contracts not entered in CITS will require a **Summary of Contractual Services Agreement/Purchase Order Receiving Report and Invoice Transmittal – Contracts, Form No. 350-060-02**. It is the responsibility of the Project Manager to ensure that Consultant costs billed are allowable in accordance with the contract terms and conditions, and consistent with Federal cost principles for federal-aid contracts. The form may only be completed through FDOT CFM System.