

Chapter Contents

Chapter Eight—Supplemental Agreement Process

8.1	REASONS FOR NEED	8-1
8.2	JUSTIFICATION OF NEED.....	8-2
8.3	SPONSORING AGENCY APPROVAL.....	8-2
8.4	DBE EVALUATION.....	8-2
8.5	DIRECTOR'S APPROVAL OF REQUESTS.....	8-3
8.6	APPROVAL PROCESS	8-3

List of Figures

No.	Title	Page
8-1	Supplemental Agreement Process.....	8-5

Chapter Eight

Supplemental Agreement Process

By Delaware Code, one of the key binding legal provisions included in all DelDOT professional service agreements is that, at the Department's sole discretion, it may enter into a supplemental agreement to complete any work or services within the scope of the current agreement(s). The Department must determine that the professional services are necessary for completion of the work being contracted. The Department further has to determine that it is in the best interest of the State that such additional or supplemental services be performed by the firm currently under contract.

8.1 REASONS FOR NEED

Supplemental agreements involve modifications to the terms of an existing agreement. Supplemental agreements are necessary when there are any changes in:

- the costs of the work—above those established in the current agreement(s),
- the character of the work,
- the scope of the work,
- the complexity of the work,
- the duration of the work, or
- the conditions under which the work is required to be performed.

The most frequent reason for entering into a supplemental agreement is for an “extra work”

request for work obviously beyond the original scope of services as described in the fee proposal and any current agreements. This work must be determined to be within and necessary to complete the original Scope of Work as defined in the Request for Consulting Services.

A proposed change where there is mutual agreement presents little problem to the Project Manager. The most difficult to handle are those changes in scope that are not well defined or well documented and additional work or costs already incurred.

No costs or work outside the scope of the current contract agreement(s) should be performed until the supplemental agreement is approved. Recognizing that this is not always possible without having a detrimental affect on the project, the minimum, is written authorization from the Department. Firms should be aware that unauthorized costs incurred might not be reimbursed.

Although not practical in all cases, before additional costs are incurred or extra work is initiated, a defined scope of work, a fee proposal and an executed supplemental agreement should be in place. The need for many supplemental agreements is unplanned and can arise at inopportune or critical times in the project and, therefore, must be handled expeditiously, refer to Section 8.5.

To reinforce the concern that extra work or costs be authorized prior to being incurred, one of the legal requirements in all of the Department's professional service contracts is a provision that all

additional work not authorized in writing and/or by a supplemental agreement prior to performing the work may not be eligible for reimbursement. It is essential that each party ensure that documented authorization of some type be in effect prior to beginning any extra work. The Department's Finance Section cannot process any payments that exceed the current contract limits.

In addition to the defined scope of work, the original contract agreement includes key provisions and defined limiting parameters such as the cost for various tasks or phases, completion time restrictions, and person-hours. Any changes to these provisions must be addressed in the supplemental agreement if they have an adverse impact on the project. Completing projects faster than scheduled and under budget are not reasons to enter into a supplemental agreement.

One of the most critical concerns is with increases in costs. All agreements are processed through the financial system, which fixes the allowable costs eligible for payment. Any payments presented that exceed the limits set in the agreement(s) will not be processed. This becomes a very definite problem to the Consultant. It behooves both parties to manage projects financially as well as technically to prevent this from occurring.

8.2 JUSTIFICATION OF NEED

In those cases where the Department initiates changes in scope, work tasks, completion times, phasing, or the like, the request is made in writing outlining the details of the request. The Consultant responds with a formal proposal prepared in the same format as the original negotiated contract including person-hours, salaries, related costs and a schedule. These supplementals are fairly straightforward and follow the normal review, approval and agreement process.

Questionable changes, unauthorized work, oral requests, work and costs already incurred beyond that described in the parent agreement and/or previous supplemental agreements are very difficult to resolve and may result in partial or non-payment to the Consultant. In these situations, the Consultant normally makes the request detailing the basis for the request, the scope of the changes,

the associated costs, and back up information.

The Project Manager, as the liaison person and responsible for prosecution of the contract, must analyze the validity of the request and make recommendations. If the Department determines that the work was done and costs incurred, but it was due to poor scheduling of time or resources, unacceptable quality of workmanship, or unauthorized, the request may be completely rejected, partially paid or payment made for all costs but no profit allowed.

Each supplemental agreement request has its own set of unique circumstances and must be evaluated on its own merits. The burden of proof rests with the Consultant, who has the most current payroll records and documentation. The best way to prevent this situation from arising is to develop a well-defined scope of work during the negotiating phase.

Supplemental agreement proposals are prepared in the same format and manner as the original fee proposal. The analysis of scope of work and costs are reviewed in a similar manner.

8.3 SPONSORING AGENCY APPROVAL

When projects are jointly sponsored with another agency, the participating agency must be kept informed and involved in the process. The Project Manager should seek agency concurrence in the request very early in the process, before any costs have been incurred. Failure to obtain such concurrence may lead to rejection of agency participation in costs, particularly if not well documented. Even if the Department determines the request is not valid, the agency will be informed of the request and its disposition.

The participating agency is also included in the negotiating and supplemental agreement approval process for additional work or changes that are approved. [For FHWA funded projects, only the final executed supplemental agreement needs to be sent to FHWA—through the Office of Financial Management and Budget.](#)

8.4 DBE EVALUATION

Fee proposals for “extra work” on federally

assisted contracts will be discussed with the DBE Office for conformance with the established DBE goals.

8.5 DIRECTOR'S APPROVAL OF REQUESTS

A Director has the responsibility to ensure that assigned projects are performed in a manner that meets the Department's goals and objectives. To accomplish this, a Director may authorize a Consultant to proceed with "extra work" before a final scope of work is completed, a final fee is negotiated or a formal agreement is signed. However, as a minimum the Project Manager should review and recommend the change for approval.

For other agency-assisted projects, the Project Manager will also obtain agency approval, either orally or in writing.

The most important action by the Project Manager is to ensure that all approvals are documented so that payment to the Consultant may be made and reimbursement from the participating agency may be obtained.

8.6 APPROVAL PROCESS

The approval process on most supplemental agreements follows a path similar to negotiating the original fee proposal and execution of the parent agreement. This can involve a significant amount of time and effort depending upon the magnitude of the changes involved.

To reduce the time and effort, it is necessary that during the normal prosecution of work tasks, the Project Managers monitor progress, product quality and financial commitments. Supplemental agreements arising during this phase should not be a surprise to either party. They should be easily processed for approval and not jeopardize the project.

Most of the problems occur during the last stages of a project, when time is most critical. On design projects, this is frequently the period of time between the final plan review and advertisement for construction. Approval of extra work, cost

overruns, time extensions, and the like that would normally be routinely processed become very cumbersome and can result in the delay of project completion at this stage.

The procedure for processing supplemental agreements is similar to that for the parent agreement. The detailed steps are listed in Figure 8-1. The basic elements are:

- Review and approve the validity of the request.
- Discuss the request with the DBE Office for participation and goal evaluation.
- Notify the Office of Financial Management and Budget with a copy of the cost estimate.
- Request pre-award audit, if over \$100,000.
- Negotiate an acceptable fixed fee (profit).
- Negotiate an acceptable compensation package.
- Obtain participating agency concurrence with a draft agreement approval.
- Send a draft agreement to the Consultant for approval.

Note: Four copies of the final agreement are required for State projects. Five are required for jointly funded projects.

- Send the draft agreements to the Deputy Attorney General for Approval As-To-Form.
- Send approved As-To-Form agreements to the Consultant Control Coordinator for Approval As-To-Process.
- Send final agreement to the Consultant for signature.
- Obtain approval of the agreement by the initiating Director.
- Send signed agreements to the Director of Administration for execution on behalf of the

Department.

- Issue the Notice to Proceed, see Section 8.5.
- Request final funding approval from the Office of Financial Management and Budget.
- Distribute the executed agreements.
- Monitor the work added by the supplemental agreement in coordination with the rest of the project.
- Contract closeout

For more details on each of these steps, refer to Chapter Four and other related chapters. The procedure is essentially the same process as for parent agreements.

The entire procedure for processing supplemental agreements can be time-consuming, and conscientious project management by both parties is required to minimize the concern for project completion on time when supplemental agreements are needed.

Figure 8-1
Supplemental Agreement Process

SUPPLEMENTAL AGREEMENT PROCESS	
I. Determination of need	Responsibility—Project Manager through Section Head.
II. Description and scope of change, justification and cost proposal	Responsibility—Department & Consultant.
III. Submit to appropriate agency for review and approval	Responsibility—Project Manager through Section Head. (At least oral contact must be made and documented.)
IV. Review of and initial approval or rejection of Consultant's submission including fee negotiation	Responsibility—Project Manager through Section Head.
V. Proposal discussed with DBE Office for DBE participation evaluation	Responsibility—Project Manager through Section Head. (Applies only to federally assisted projects.)
VI. Request sponsoring agency approval with copy of draft agreement—not required for FHWA sponsored projects	Responsibility—Project Manager through Section Head.
VII. Notify Office of Financial Management and Budget of pending increase or decrease and verify funding availability	Responsibility—Project Manager through Section Head.
NOTE: If, in the opinion of a Director, time is critical to the project schedule, a “Notice to Proceed” may be issued at this time.	
VIII. Request audit, if over \$100,000	Responsibility—Project Manager through Section Head to Audit.
IX. Preliminary draft supplemental agreement to Consultant	Responsibility—Project Manager.
X. Form Submit preliminary draft agreement to Deputy Attorney General for approval As-to-Form	Responsibility—Project Manager through Section Head.

Figure 8-1 (Continued)
Supplemental Agreement Process

XI. Draft approved As-to-Form agreement to Consultant Control Coordinator for approval As-to-Process

Responsibility—Project Manager through Section Head.

XII. Final draft agreement to Consultant for signature

Responsibility—Project Manager through Section Head.

XIII. Submit signed agreements with agreement transfer form to initiating Director for signature and forwarding to the Director of Administration for official execution on behalf of the Department

Responsibility—Project Manager through Section Head

XIV. Notice to Proceed

Responsibility—Project Manager through Section Head. (With one original executed agreement.)

XV. Request funding approval by submitting completely executed agreements with completed consultant information form to the Office of Financial Management and Budget

Responsibility—Project Manager through Section Head.

XVI. FUNDING APPROVAL

Responsibility—Office of Financial Management to initiating section.

XVII. Distribute copies of executed agreements

Responsibility—Project Manager. (The originals are distributed to the Finance Section, the Office of Financial Management and Budget(step XV), the originating Section, and the Consultant. One original is sent to the sponsoring federal agency, if applicable, by OFM&B. Copies are sent to the Consultant Control Coordinator, the Project Manager, and the Audit and Regulatory Section.)

XVIII. Monitor the work for the supplemental agreement in coordination with rest of work on the project

Responsibility—Project Manager.

XIX. Contract Closeout

Responsibility—Project Manager.