

Oklahoma Department of Transportation

Administration of Construction Management Contracts
Construction Control Directive No. **20100720**

July 20, 2010

Scope: To establish the procedures for the Department's monitoring and oversight of Construction Management Contracts to ensure the Department that the Provider complies with the contract and task order requirements.

Contract monitoring is essential to ensure the Provider (Consultant Engineering Firm or Circuit Engineering District) utilizes and manages all resources in a manner that provides the Department compliance in terms of quality, timeliness and cost.

The Department uses in-house staff (Field and/or Central Office Divisions) to monitor performance and to oversee, supervise and manage the Provider's participation in the Department's mission. Effective communication between the Provider, the Department and other affected parties is crucial to the success of a project.

For the purposes of this Directive, the term "Initiating Division" is considered the ODOT Division that begins the process to secure the services of a Provider due to the need to outsource tasks due to the workload of the ODOT personnel. This is typically an ODOT Field Division that needs resources to perform the administration of a construction contract. And the term "Provider" is considered to be any Consultant Engineering Firm or Circuit Engineering District that is contracted with ODOT to provide construction management services.

This Directive describes the procedures to be followed for the monitoring and oversight of Construction Management contracts. It is the responsibility of the Department to ensure that the Provider complies with all aspects of the contract and task orders.

I. Task Order Issuance

The purpose of a Task Order is to supplement the basic contract and to provide a vehicle to communicate, define, approve and authorize services, assigned project personnel, schedules and fees, and provide funding and

other parameters related to services to be provided. All work and services which are the Provider's responsibility and for which the Provider expects to be compensated must be defined in an approved Task Order. Services provided which have not been included in an approved or modified Task Order will be considered gratuitous and the Department will not be obligated to compensate the Provider for such work or services. The process required to execute a Task Order includes the following actions:

- Request for Services – prepared by the Department's Initiating Division
- Request for Task Order Approval – prepared by the Provider selected
- Task Order – prepared by the Department's Initiating Division
- Notice to Proceed & Authorization of Funds – prepared by ODOT Project Management Division

a. Request for Services

When an ODOT Division determines there is a need for the services of a Provider, a Request for Services (see attached) is prepared to initiate the issuance of a Task Order against an active Construction Management Contract. The Initiating Division will consider the following, when multiple Providers are available for the required services:

- ability and level of experience of the Provider's team to perform the type of work contemplated,
- qualified lab and certified material samplers and testers proposed by the Provider to perform the construction materials acceptance testing,
- capacity of the Provider's team to accomplish the work in accordance with the anticipated schedule considering current workloads, and
- current and past performance of the Provider; including the reviews of completed Consultant Performance Evaluations, Standard ODOT Operating Procedural Verifications and Independent Assurance Verifications.

Upon selection of the desired Provider, a Request for Services is prepared by the Initiating Division and forwarded to Project Management Division for tracking. Project Management Division

forwards the Request for Services to the Provider for their action. The Request for Services will designate the Initiating Division's Point Person who will have the authority to negotiate and, ultimately, administer the Task Order. The ODOT Point Person is the individual in the Department (typically the Field Division Construction Engineer for Level I services or the Resident Engineer for Level II and III services) responsible for the supervision and performance of the Provider.

b. Request for Task Order Approval

Upon receipt of a written Request for Services, the Provider and the Initiating Division will discuss the work or services to be provided under the proposed Task Order and each party must agree the deliverables are clearly stated and understood. Following this verbal concurrence, a Consultant Request for Task Order Approval (see attached) is initiated by the Provider within ten (10) working days. The purpose of the Request for Task Order Approval is to establish specifically and in a detailed format the services to be provided, technical standards, schedule, compensation, and other parameters under which the services are to be completed.

The following process will be followed in reviewing and approving Request for Task Order Approval applications:

- The Provider will submit the Request for Task Order Approval to the Initiating Division for review. The Initiating Division will review the Request for Task Order Approval to determine if it accurately and definitively describes the services and deliverables to be provided; compensation and method of payment; and, if applicable, the project limits.
- Should it be determined that one or more elements of the Request for Task Order Approval are not approved by the Initiating Division, such elements will be brought to the attention of the Provider. Efforts will be made to negotiate an approval of the elements in question.

- After negotiations, if it is determined that resolution cannot be achieved; the Initiating Division may elect to complete the work using its own forces or the services of a different Provider.
- Within ten (10) working days after a Request for Task Order Approval is received, the Initiating Division will either notify the Provider in writing that the Task Order has been approved; identify the elements which do not meet with the approval of the Department and are to be considered for negotiation; or notify the Provider the Task Order is not approved.

c. Task Order Execution

The Initiating Division approves/executes the Task Order document by signing the Request for Task Order Approval, thereby signifying acceptance of the specific terms and provisions therein. The Initiating Division will forward the executed Task Order to the Project Management Division to request authorization of funds for Construction Management Task Orders and issuance of a Notice to Proceed. For federally funded projects, Project Management Division will submit the Task Orders to FHWA for approval prior to the issuance of a Notice to Proceed.

d. Notice to Proceed

Once the executed Task Order has been received from the Initiating Division, Project Management will proceed with the Authorization of Funds and the issuance of the Notice to Proceed to the Provider. Any revisions or extensions to an approved Task Order, including:

- changes in personnel assigned to a Task Order,
- extending the time allotted, or
- changing the amount of compensation

must be made in writing and agreed to by the Provider and the Initiating Division through a Task Order modification. No changes will be effective until the modification has been approved in writing by both parties. For federally funded projects, Project Management Division will submit the Task Order modification to FHWA for approval.

II. Construction Inspection Oversight

This section describes the various methods which will be used by the Department to monitor the performance of each Provider throughout their administration of the construction contracts which they have been issued Task Orders. The Department's quality control of the performance of the Provider will be accomplished, primarily by Initiating Division's personnel, through the actions listed in Part (a) below. The quality assurance of the performance will be accomplished by a team of ODOT and FHWA representatives through the actions listed in Part (b). The results of the monitoring will be documented on the Consultant Performance Evaluation Form (see attached).

a. Standard ODOT Operating Procedural Verification

There are many activities which the Provider's work will be verified in the same manner and held to the same standard as that being performed by an ODOT Residency Office. Those activities include but are not limited to the following:

- Pre-construction Conference. A Field Division representative will attend these meetings until such time that they feel comfortable in the Provider's successful completion of the meeting.
- Change Orders. All change orders will go through the same levels of approval, whether initiated by an ODOT Residency or a Provider. Once approved by the Provider, it will be subject to the Field Division, Construction Division and Director of Operations review and approval; and FHWA approval on oversight projects. When considering a change order that would be considered a "major change" in accordance with Construction Control Directive No. 19961121, the Provider must advise the Initiating Division prior to initiating the change.
- Division Audit. All projects are subject to audit by the appropriate Field Division Auditor, once the Residency Audit has been completed; whether it is administered by an ODOT Residency or a Provider.
- Payments to Contractors. All payments initiated by a Provider are subject to the same levels of approval; whether it is administered by an ODOT Residency or a Provider. Progressive

payments are approved by Construction Division and Final Estimates are approved by Field Division, Construction Division and Director of Operations.

- Construction site visits to evaluate the quality of construction, level of inspections being performed, overall contract administration and project file record keeping and documentation. Site visits will be performed by the Division Construction Engineer, or appointed representative, at least three times during the course of the project; more visits may be necessary for a problem project or if deficiencies in the Provider's services are discovered.
- DWR Reviews. A DWR Summary Report has been developed in SiteManager which allows a report to be generated for a specified period of time for any project in SiteManager. The report is used to evaluate the level of detail that has been input into SiteManager by the Project Manager. The Division Auditor and/or Division Construction Engineer will periodically spot-check periods of time on their projects to evaluate the level of detail being provided and alert Residencies/Providers of any deficiencies that are identified.

b. Independent Assurance Verifications

A small task force will convene quarterly to perform reviews on Provider's contracts being administered. The task force will include representatives from Construction Division, Materials Division, Field Division and FHWA. The randomly selected contracts reviewed may include on-going projects as well as recently completed projects. It is the intent to conduct an Independent Assurance Verification on each Provider at least annually. The various performance activities reviewed will include, but are not limited to the following:

- Proper and timely authorization of Material Sample Records in SiteManager
- Use of Certified Technicians and Qualified Labs for acceptance testing of materials
- Proper issuance of the Project's Material Certification Letter
- DBE and EEO records
- Level of detail provided in the Project Manager's DWR's

- Timely generation of progressive contractor payments from the end of pay periods
- Accuracy of progressive contractor payments through evaluation of the Estimate Discrepancy Report in SiteManager
- Construction site visits to evaluate the quality of construction
- Review the documentation and effectiveness of Standard ODOT Operating Procedural Verification component performed by the Initiating Division's Point Person

The results of the reviews will be documented and forwarded to the Provider and the appropriate Field Division for their use when completing the Consultant Performance Evaluation Form. Also, the results of these reviews will be compiled and submitted to FHWA as they are conducted. The results of the reviews will be used by ODOT and FHWA to assess the ability of the Providers to administer construction contracts and identify any need for additional training or guidance. A series of Checklists will be used by the task force for documentation purposes (see attached).

c. Deficiencies Identified by Verification Processes

Any deficiencies identified during the Standard ODOT Operating Procedural Verification or Independent Assurance Verifications will be forwarded to the Initiating Division, the appropriate ODOT Central Office Divisions, and the Provider. The Provider will be required to take corrective actions within a specified timeframe. These deficiencies will be compiled for inclusion when completing the Consultant Performance Evaluation Form.

For critical deficiencies, until such time that the Provider has adequately addressed all required corrective actions, the Department may:

- require additional training,
- freeze progressive payments,
- suspend the issuance of future Task Orders to the Provider,
- terminate the services provided on the current Task Order,
- recover costs incurred by the Department due to the deficiency.

III. Invoice Procedures

This section describes the procedures to be followed for processing invoices for payment. All invoices are to be submitted and processed in the same manner, regardless of the compensation method used for the Task Order. The acceptable methods of compensation (i.e., lump sum, cost plus fixed fee, etc.) are listed and described in the Provider's contract.

The Provider will submit each completed invoice to Project Management Division for processing. Project Management Division logs the invoice and forwards it to the Initiating Division for authorization. The Provider's completed invoice shall provide at a minimum the name, identification numbers, work classification, and to and from hours for each date for all the individuals on the project. The Initiating Division will be able to reject or disallow any portion of the amount claimed without rejecting the entire payment. However, if a payment is deemed acceptable, the individual who approves the payment must sign the invoice and return it to the Project Management Division for processing. If any portion of the claim is rejected by the Initiating Division, they must give a written explanation to the Provider. Disputes or appeals will be handled in accordance with the Dispute Resolution Process specified in the contract.

Payment is sent to the prime Provider, who in turn, is responsible for promptly paying its Sub-Consultants.

IV. Construction Contract Finalization and Task Order Closeout

After the completion of the Field Division audit and after the contract's Final Estimate is submitted to Construction Division for finalization, the Department's expectation is that the Provider has completed all the tasks identified in the Task Order. Consultant Performance Evaluations are completed at the conclusion of every Task Order to document and measure performance. Evaluations are a valuable management tool for rating Provider work and services, as well as for use in the selection process for future work and services. The following steps must be completed for the closeout of all Task Orders that are issued:

a. Final Payment to Provider

Once the Final Estimate is approved by the Director of Operations and submitted to the Comptroller Division, the Provider must submit their Final Invoice to Project Management Division clearly marked as final. Project Management Division logs the invoice and forwards it to the Initiating Division for authorization. The Final Invoice will be processed for payment by the Initiating Division in the same customary fashion as the interim payments. Project Management will request a task order audit be performed by the Operational Review and Evaluation Division during this payment process. The task order audit findings will be tracked and forwarded to the Provider by Project Management Division. If necessary, adjustments to the payments made will be processed by Project Management Division with an additional invoice attached to the task order audit findings submitted to the Provider. Additional supporting information and justifications can be submitted by the Provider to Project Management Division for any disallowed amounts from the Final Invoice. If the matter cannot be resolved at this level, any disputes or appeals will be handled in accordance with the Dispute Resolution Process specified in the contract.

The Task Order will be closed when Construction Division forwards the construction contract's Final Estimate to the Comptroller Division for closeout. The Initiating Division can request an extension from the Director of Operations, in the event that services included in the Task Order are not completed or the final invoice is not submitted as requested prior to the completion of the division audit. Project Management Division will coordinate with the Director of Operations to maintain a list of Task Orders requiring final audit and closeout.

b. Consultant Performance Evaluations

The obligations accepted by the Provider are stated in the Contract and Task Orders and satisfactory fulfillment of those obligations is implicit. When completing the Consultant Performance Evaluation Form (see attached), the Initiating Division will also consider the

conduct of the team during the negotiations phase. A Consultant Performance Evaluation Form must be completed by the Initiating Division at the completion of every Task Order to document and measure performance. Evaluations are a valuable management tool for rating Provider work and services, as well as for use in the selection process for future work and services. Completed Consultant Performance Evaluations Forms will be submitted to the Provider and Project Management Division and kept as part of the Provider's file. The Provider's file will be reviewed by the Department's Consultant Selection Committee during the next cycle of contracting and reviewed by Initiating Divisions during the task order process as described in Section I, Part a. of this Directive.

Interim Performance Evaluations may be processed at contract milestones or at any time during the life of the construction contract. However, a Final Performance Evaluation must be processed for each contributing Provider at the completion of any Task Order and is maintained in the Provider's contract file. The Department will facilitate the completion of the evaluation form and submit it to the Provider for review and comment. Providers may only view the Evaluations for their firm.

A handwritten signature in blue ink, appearing to read "G. Raymond".

George Raymond, P.E.
Construction Engineer