

ACEC of Ohio
Use of Lump Sum Agreements for Professional Services

I. Purpose

The purpose of this document is to evaluate the rules and procedures that govern the Ohio Department of Transportation's (ODOT) use of lump sum contracts for professional services, ODOT's risk environment relative to the use of lump sum contracts, and potential reductions in both direct and indirect costs that would accrue to the Department.

II. Mission

ACEC Ohio will work with ODOT on establishing a reasonable reduction in project management fee on lump sum contracts that reflects the reduced effort for preparing and processing invoices vs. the effort on a cost-plus contract.

III. Goal

Our goal is for Central Office to require each district to implement lump sum contracts when a project meets defined criteria.

IV. Rules Governing ODOT's Use of Contracts for Professional Services

1. 23 CFR Part 172 – Procurement, Management, and Administration of Engineering and Design Related Services

ODOT must comply with this FHWA document if Federal funds are used in a consultant contract. In practice the Department's consultant contracting documents and procedures are written to comply with 23 CFR 172 regardless of the funding source. The Department must require that subrecipients of Federal funds (primarily local governments) comply with these rules.

2. Ohio Revised Code Chapter 5526 - Contracts for Professional Services

This Chapter of the Revised Code governs ODOT's qualifications-based selection of consultants and associated rules for contracts and administration. The Department's consultant contracting documents and procedures are written to comply with Chapter 5526.

3. Manual for Administration of Contracts for Professional Services, Volume 1 - Consultant Contract Administration

Volume 1 is the first in a series of documents that set out rules and procedures for managing ODOT's consultant program, including consultant selection, negotiation, contracts, audit rules, and other aspects of consultant contracts and administration.

Additional Volumes address invoicing, scope and fee development, fee estimation guidance, and consultant performance evaluation.

V. ODOT's Consultant Contract Payment Methods

ODOT uses a variety of contract payment methods as listed in Consultant Contract Administration, as follows:

- Actual Cost Plus a Fixed Fee
- Lump Sum
- Rate of Pay
- Unit of Work
- Actual Cost Plus Fixed Fee per Hour

ODOT selects payment methods for contracts and "parts" of contracts based on guidance included in Consultant Contract Administration

The Cost Plus a Percentage of Cost and Percentage of Construction Cost methods of payment are prohibited by ODOT based on FHWA's prohibition of these payment methods as inefficient - profits under these contracts increase as the consultant's costs rise.

VI. ODOT's Current Use of Lump Sum Contracts

1. ODOT provides the following guidance concerning the use of lump sum contracts:

"The lump sum payment method shall only be used when the contracting agency has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation."

ORC 5526.05 includes this same requirement.

2. ODOT currently uses lump sum contracts to a limited extent. ACEC believes that ODOT can utilize lump sum contracts more extensively, to the benefit of both ODOT and consultants, for the reasons listed in Section VII.

VII. Reasons for Increasing the Use of Lump Sum Contracts

1. ODOT's nationally recognized consultant policies and procedures provide a low-risk environment for consultant contracts in general, and particularly lump sum

contracts when the project “extent, scope, complexity, character, and duration of the work” meet these requirements.

FHWA provides a list of consultant program risk assessment factors in 23 CFR 172.11(c) that include consultant prequalification, selection, control of both consultant direct and indirect costs, contract provisions that hold consultants accountable, written procedures for administration of contracts, and other factors.

ODOT’s documented procedures address these risk factors through the extensive guidance provided by the several volumes of ODOT’s Manual for Administration of Contracts for Professional Services, including:

- Consultant Fee Estimation Guidance (along with SAFe) - provides fee estimation standards accepted by both ODOT and ACEC. This guidance seems particularly suited for use on the straightforward projects that are eligible for the use of lump sum contracts.
- Consultant Contract Administration - provides extensive guidance to ODOT staff concerning administration of consultant contracts.
- Specifications for Consulting Services – provides the terms and conditions for consultant contracts.
- ODOT’s A/E Consultant Financial Prequalification – ensures that consultants’ cost accounting systems meet Federal standards and approves indirect cost rates.

In summary, ODOT has sound systems and procedures in place that allow negotiation of fair and reasonable fees for lump sum contracts, along with well documented contract management procedures.

2. Reduced Project Management/Administrative Costs – Direct and Indirect

Cost savings relative to costs plus fixed fee contracts will accrue to ODOT based on reductions in both consultant fees and ODOT’s costs to administer contracts, primarily based on the reduction in efforts required to prepare and process invoices, including consultant efforts to set up the more elaborate tracking and controls in cost accounting systems. Included below is a side-by-side comparison of ODOT’s written procedures for review of invoices for both Lump Sum and Costs Plus Fixed Fee contracts.

Section 4.4.E.3 – Consultant Contract Administration Invoicing Procedures	
Lump Sum Contracts	Costs Plus Fixed Fee Contracts
<p>Additional Procedures for Lump Sum Agreements:</p> <p>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 a 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.</p>	<p>Additional Procedures for Costs Plus Fixed Fee (Parts of) Agreements:</p> <p>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 Fixed 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. The Fixed Fee should be calculated as the overall percent complete of the contractual part or task. The Fixed Fee is payable in its entirety upon completion of the work. The overall percent complete represents the status of the physical completion of the work, not the percentage of the total fee invoiced.</p>

2. 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. For actual cost based agreements, review the “Current Invoice Actual Costs” versus known activities during the invoicing period. Consultants are required to provide copies of receipts for all non-salary direct costs, with the exception of fixed costs such as per diem costs.

4. The ODOT Office of External Audits (OEA) approves consultant overhead and cost of money rates annually, as required by Federal law. On each invoice, the consultant shall apply its current rates, as approved by the OEA, and the consultant shall compute total billable costs accordingly, subject to any limitations (e.g., “not to exceed” amounts) established in the project agreement. (For more details regarding financial system requirements and indirect cost rates, see Chapter 5—Allowable Costs and Oversight.)

5. For actual cost parts, subconsultant invoices are required (only during invoice periods when costs are incurred) and must be submitted in the same format as the prime consultant invoice. Subconsultant invoices shall be reviewed in the same manner as the prime consultant invoice.

The comparison is clear in showing that Lump Sum contracts will substantially reduce both consultant administrative costs and ODOT costs of project management and related administrative efforts.

In order to ensure these cost reductions are reflected in the negotiated fee, ACEC Ohio will work with ODOT on establishing a reasonable reduction in project management fee on Lump Sum contracts that reflects the reduced effort for preparing and processing invoices.

3. Lump Sum contracts provide incentives for firms to be efficient and innovative at no extra cost to ODOT, consistent with the FHWA policy of recommending payment methods that are efficient and effective in controlling costs.
4. Any risk of cost overruns or inflation is placed entirely on the firm.
5. By reducing the administrative burden on both consultants and ODOT, both sides can focus on delivering the project in accordance with the scope of services and ODOT's objectives for the project.