



Contract Types and Standard Contract Provisions

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- Standard Contract Provisions



**Indefinite
Deliverable**

**Specific
Deliverable**

**Multi-Phase
Specific
Deliverable**

Indefinite Deliverable Contracts



Contract No. _____

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

CONTRACT FOR ENGINEERING SERVICES Indefinite Deliverable with Work Authorizations

THIS CONTRACT FOR ENGINEERING SERVICES is made by and between the State of Texas acting by and through the Texas Department of Transportation, 125 E. 11th St., Austin, Texas 78701, hereinafter called "State," and _____, having its principal business address at _____, hereinafter called "Engineer," for the purpose of contracting for engineering services.

WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act," provides for the procurement of engineering services; and

WHEREAS, 43 Texas Administrative Code §9.30 et seq. establishes the Texas Department of Transportation's policies and procedures for contracting for engineering services; and

WHEREAS, the State desires to contract for engineering services generally described as follows:

WHEREAS, the State has selected the Engineer to provide the needed services and to provide the services subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the State and the Engineer, in consideration of the mutual covenants herein contained, do hereby mutually agree as follows.

AGREEMENT

ARTICLE 1. SCOPE OF SERVICES. The State and the Engineer will furnish items and services for fulfillment of the contract as identified in Attachment B, Services to be Provided by the Engineer. All services provided by the Engineer will be in accordance with engineering practices and applicable rules and regulations of the Texas Engineering Board of Professional Engineers and Land Surveyors.

ARTICLE 2. CONTRACT PERIOD

A. Contract Effective Date. This agreement becomes effective when signed by the last party to sign and the agreement fully executed.

B. Contract Termination Date. This contract terminates upon the earliest occurrence of:

1. _____, 20____ at 11:59 PM in Austin, Texas,
2. Completion of all work authorized in the first four years of the contract, or
3. Termination in accordance with Article 15, Termination, of Attachment A, General Provisions, or any other applicable contract provision,
4. Fifth anniversary of execution at 11:59 PM in Austin, Texas in accordance with 43 Texas Administrative Code §9.32(b)(1)(C) *(delete this item if the non-federal selection process is used)*

C. Amendment of Contract Period. The parties may modify the contract termination date by supplemental agreement prior to the date of termination as set forth in Article 6, Supplemental Provisions, Attachment A, General Provisions.

D. Work Performed Outside Contract Period. Engineer shall not invoice State and State will not reimburse Engineer for any work performed or cost incurred before or after the contract period.

ARTICLE 3. COMPENSATION

A. Maximum Amount Payable. The maximum amount payable under this contract without modification is _____.

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WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act," provides for the procurement of engineering services; and

WHEREAS, 43 Texas Administrative Code §9.30 et seq. establishes the Texas Department of Transportation's policies and procedures for contracting for engineering services; and

Indefinite Deliverable Contracts



Specific discipline of work

4-year limit for issuing new work authorizations

Potential for several contracts per selection

Contract value capped by Administration:

Multi-discipline contracts capped at \$5 million

Single discipline contracts capped at \$2 million

Higher value requires approval from PEPS Division Director

5-year contract term

Maximum for federal contracts

May be longer for non-federal contracts, with approval of PEPS DD

Easier contract execution



Project Defined in **Work Authorization**

Highway/Facility to be improved

Project Limits

Types of Work

Tasks & Deliverables

Detailed Budget

Detailed Schedule

Other Information Defining the Project



Contract Scope:

- *Defines expected types of work
- *Addresses standards & requirements that apply to all work

WA Scope:

- **Defines project assignment, tasks, controls, & deliverables
- **Identifies additional requirements not addressed in contract
- **Task outline should clearly correspond to negotiated budget
- **Stands alone as an engineering project -or-
- **Directly supports engineering work being done in another work authorization within the same contract

Specific Deliverable Contracts



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THIS CONTRACT FOR ENGINEERING SERVICES is made by and between the State of Texas acting by and through the Texas Department of Transportation, 125 E. 11th St., Austin, Texas 78701, hereinafter called "State," and _____, having its principal business address at _____, hereinafter called "Engineer," for the purpose of contracting for engineering services.

WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act," provides for the procurement of engineering services; and

WHEREAS, 43 Texas Administrative Code §9.30 et seq. establishes the Texas Department of Transportation's policies and procedures for contracting for engineering services; and

WHEREAS, the State desires to contract for engineering services generally described as _____

WHEREAS, the State has selected the Engineer to provide the needed services and the Engineer agrees to provide the services subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the State and the Engineer, in consideration of the mutual covenants and conditions herein contained, do hereby mutually agree as follows.

AGREEMENT

ARTICLE 1. SCOPE OF SERVICES. The State and the Engineer will furnish items and perform services for fulfillment of the contract as identified in Attachment B, Services to be Provided by the State, and Attachment C, Services to be Provided by the Engineer. All services provided by the Engineer will conform to the applicable engineering practices and regulations of the Texas Engineering Practices Act, Chapter 2254, Subchapter A, of the Texas Board of Professional Engineers and Land Surveyors.

ARTICLE 2. CONTRACT PERIOD. This contract becomes effective when fully executed by all parties and shall terminate at the close of business on _____ unless the contract period is: (1) modified by supplemental agreement prior to the date of termination as set forth in Attachment A, General Provisions, Paragraph 8, Supplemental Agreements; (2) extended due to a work suspension as provided for in Attachment A, General Provisions, Paragraph 9, Work Suspension; or (3) otherwise terminated in accordance with Attachment A, General Provisions, Paragraph 10, Termination. Any work performed or cost incurred before or after the contract period shall be the responsibility of the party incurring the cost.

ARTICLE 3. COMPENSATION.

A. Maximum Amount Payable. The maximum amount payable under this contract without modification is shown in Attachment E, Fee Schedule. Payment under this contract beyond the end of the current biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall terminate immediately with no liability to either party.

B. Basis of Payment. The basis of payment is identified in Attachment E, Fee Schedule. Reimbursement of costs incurred under a work authorization shall be in accordance with Attachment E, Fee Schedule.

C. Reimbursement of Eligible Costs. To be eligible for reimbursement, the Engineer's costs must (1) be incurred in accordance with the terms of a valid work authorization; (2) be in accordance with Attachment E, Fee Schedule; and (3) comply with cost principles set forth at 48 CFR Part 31, Federal Acquisition Regulation (FAR) 31. Satisfactory progress of work shall be maintained as a condition of payment.

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Specific project commitment required



“Project-oriented”



Flexibility in time and budget

No time limit restrictions
No dollar-value restrictions

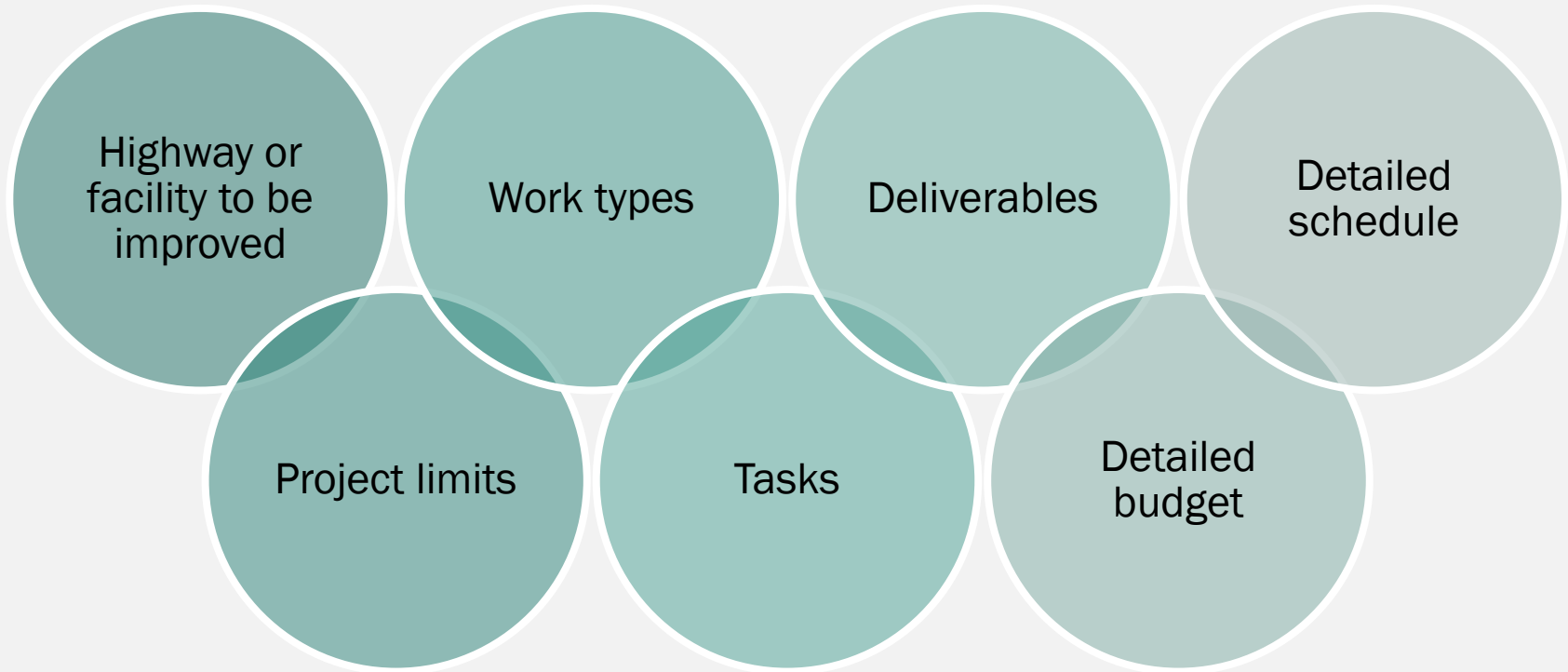


Contract development requires time

Detailed negotiated scope
Detailed negotiated budget to establish maximum



Project is defined in the contract





Contract Scope:

- *Specifically defines project assignment, tasks, & deliverables
- *Addresses standards & requirements Task outline should clearly correspond to negotiated budget

Work Authorization Scopes:

- *Reflect contract scope, with modifications, as needed;
- *Provides control of phased work

Multi-phase Specific Deliverable Contracts



Specific project commitment required



“Project-oriented”



Flexibility in time and budget

No time limit restrictions

No dollar-value restrictions



Scope is structured into phases

First phase - well-defined scope & detailed budget

Additional phases – general & estimated budget

Differences Between ID & SD Contracts

		<u>ID Contract</u>	<u>ID WA</u>	<u>SD Contract</u>	<u>SD WA</u>
Scope		General	Detailed	Detailed	Reflects contract
Work Schedule		No	Yes	Yes	Yes
Fee Schedule	Rate Schedule	Yes	Yes (may not include all the subs)	Yes	Yes (may not include all the subs)
	Detailed Budget	No	Yes (may not include all the subs)	Yes	Yes (may not include all the subs)
	Maximum Not to Exceed	Yes	Yes	Yes	Yes

Standard Contract Provisions

J. Dan Maupin, J.D., P.E.





No work performed or costs incurred:

- prior to WA execution or after WA termination
- that exceed WA maximum amount payable

Work must be authorized by a WA

WA cannot:

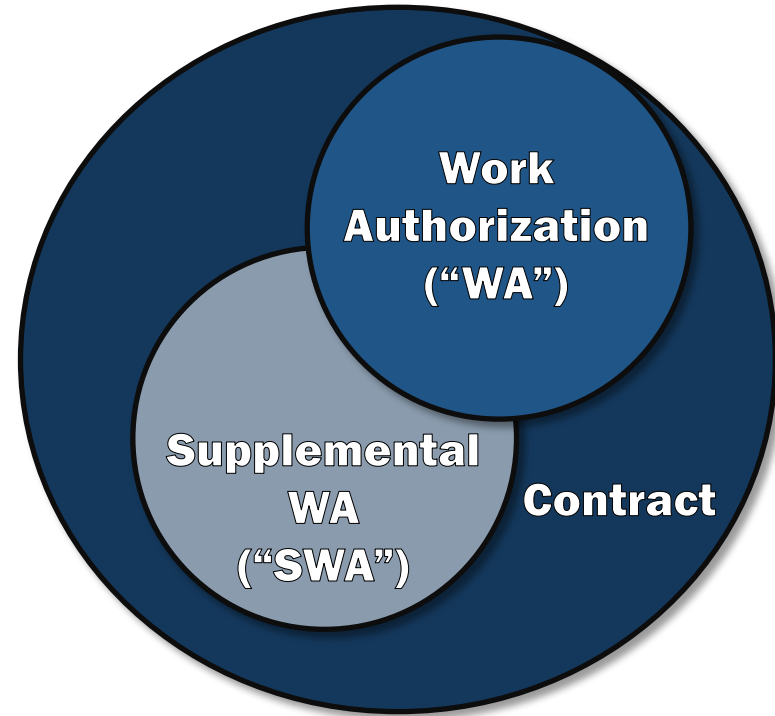
- authorize work not in contract or exceed contract budget
- add or change contract payment methods, work categories, or rates
- add or change contract provisions or scope

**Work
Authorization
("WA")**

Contract



- Amendment to WA
- No additional work performed or additional costs incurred prior to SWA execution
- SWA (like a WA) cannot:
 - authorize work not in the contract or exceed contract budget
 - add or change contract payment methods, work categories, or rates
 - add or change contract provisions or scope





Engineer must promptly notify TxDOT

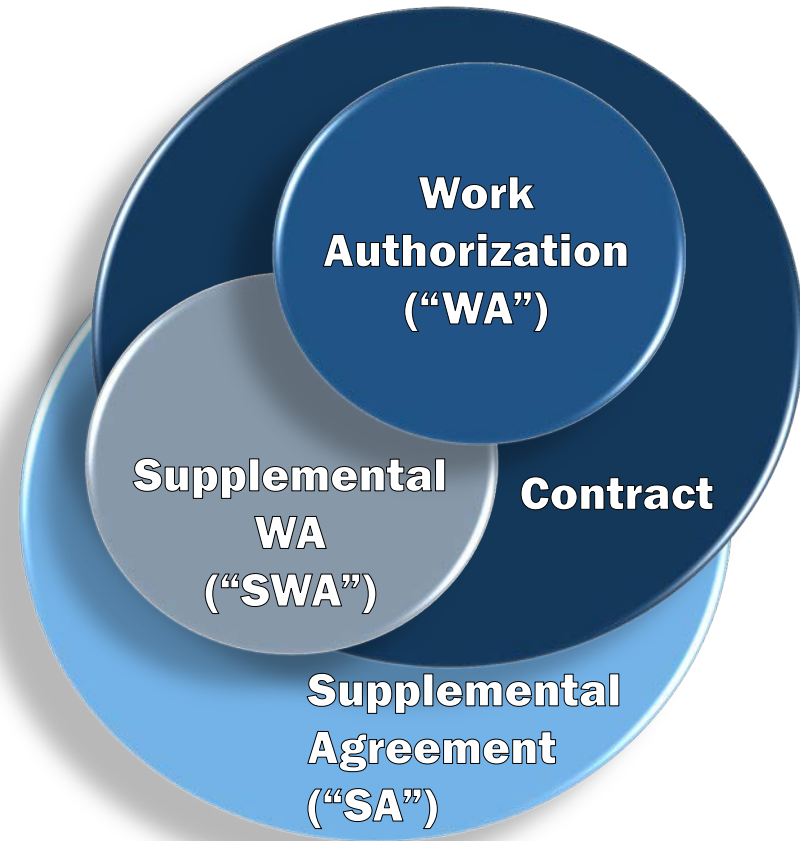
- of any event that might affect completion of WA
- if Engineer anticipates it will not complete work before due date

TxDOT may suspend WA

- 30 days notice (verbal followed by writing) to suspend
- 60 days notice (in writing) to restart
- underlying contract period is not suspended

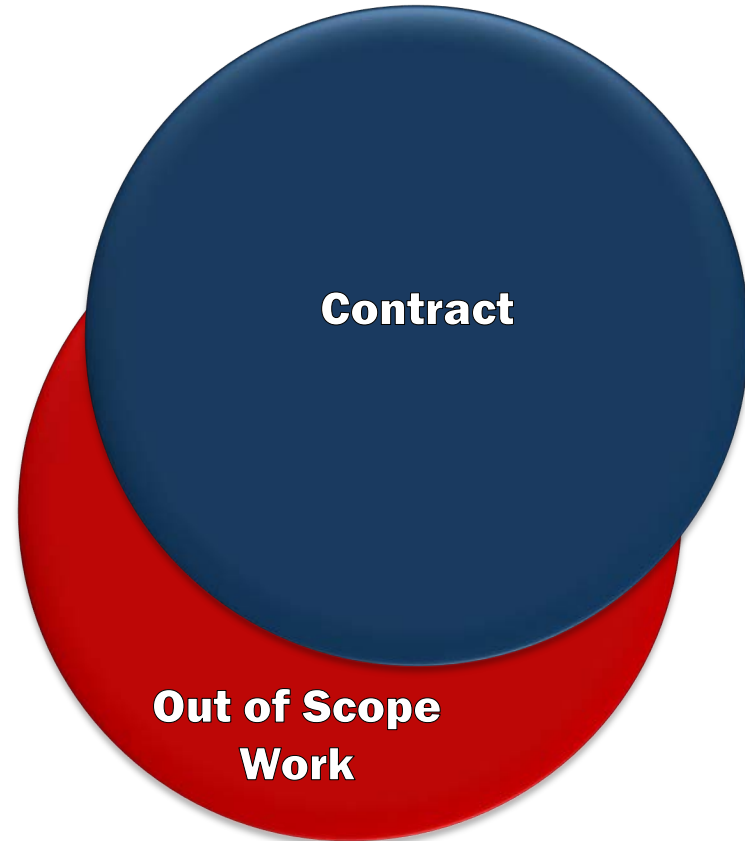


- Amendment to contract
- Often necessary to issue a SWA
- Can only be executed during the contract period
- Must be executed if there is
 - any increase in cost or a decrease greater than 20% in cost
 - any change in the duration, scope, complexity, or character of services
- The Texas Constitution prohibits TxDOT from paying more for something the Engineer already is legally obligated to perform





- If the Engineer believes any assigned work is out of scope, it must promptly notify TxDOT in writing indicating what work it considers out of scope
- If TxDOT agrees, a supplemental agreement must be executed before performing the additional work





- If submitted work complies with the contract and TxDOT request a change, TxDOT will pay for additional work, but SA might be required
- Engineer must correct submitted work that does not comply with the contract, but TxDOT will not pay additional compensation for correction
- Engineer must correct errors and omissions, but TxDOT will not pay additional compensation for correction

$$\frac{dy}{dx}$$



- Anything produced under the contract is owned by TxDOT as a work for hire
- Must comply with Attachment I, Information Resources and Security Requirements, based on assigned data type and security baseline



Engineer Personnel



- Employees must have knowledge and experience enabling the performance of their assigned duties
- TxDOT may require removal of an employee if
 - work of employee does not comply with the contract
 - conduct of employee detrimental
- Must notify TxDOT in writing within 3 business days of removal of PM or other key personnel from the contract
- Must replace removed PM or other key personnel within 45 days
- Replacement PM or other key personnel must be acceptable to TxDOT





All existing remedies available

Violation of terms, breach, or default can result in termination with Engineer responsible for any increased costs



Mutual agreement

Failure to perform services in a satisfactory manner

Breach of contract

Convenience of TxDOT

Violation of

- gratuities provision (offering benefits, gifts or favors to TxDOT employees)
- DBE/HUB requirements
- Subchapter J of the Public Information Act (Tex. Gov't Code §§ 552.371-.376)



- Comply with applicable laws (and provide proof of compliance upon request)
- Indemnify TxDOT and its personnel against damage to the extent damage is from negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier
- Promptly make necessary corrections resulting from errors, omissions, or negligent acts without compensation
- Perform the services
 - with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license
 - as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.



- Must have current TxDOT Form 1560-CS, Certificate of Insurance, on file with TxDOT Contract Services for the duration of K
- TxDOT Form 1560-CS is the only proof of insurance is acceptable (e.g., TxDOT cannot accept Accord Forms)
- Engineer must stop work if insurance lapses



Must comply with the HUB/DBE attachments

Must maintain records during contract and

- for 7 years after final payment
- all audits are complete
- All pending litigation has been resolved



Must disclose to TxDOT
Contract Services any
nepotism within:

3 degrees by consanguinity

2 degrees by affinity

No conflict of interest that:

“would in any way interfere with its or
its employees’ performance of
services for [TxDOT] or which in any
way conflicts with the interests of
[TxDOT].”

Violate Tex. Gov’t Code § 2261.252



Non-collusion

Civil Rights
Compliance

Non-
discrimination
Authorities

Patent Rights

Child Support

Disputes

Successors
and Assigns

Severability



Prior Contracts
Superseded

OMB
Requirements

- Single Audit Act
- 2 C.F.R. Part 200

Debarment

E-Verify

Boycott Israel

Successors and
Assigns

Firearm
Entities/Trade
Associations
Discrimination

Energy Company
Boycott





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