

person qualified at a higher classification (i.e. TCIS in lieu of the requested TCI), PennDOT reserves the right to pay the firm for the classification originally requested.

Under the terms and conditions of the agreement, the consultant is held accountable to provide that quality level employee as indicated in the SOI, or substitute, if the requested start dates are within ten working days of the date stated in the advertisement. If the start work timing is outside the ten working day parameter, the consultant is permitted to provide less qualified individuals than in the SOI. However, the consultant must attain a waiver prior to the initiation of work for less qualified personnel from the BOPD, Contract Management Division Chief, or designee. Requests should be submitted to [RA-pdconsult\\_waiver@state.pa.us](mailto:RA-pdconsult_waiver@state.pa.us).

#### **4.3.2 – Wage Rate Approvals**

Consultants are to submit wage rate requests upon notification of selection based on their Technical Proposal. The wage rate requests are to be generated in Roster Maintenance in ECMS. It is the District's responsibility to review/approve wage rate requests within five working days through ECMS. Absolutely no work is to occur without ECMS wage rate approval.

No one within PennDOT has the authority to direct a consultant to perform work without ECMS wage rate approval. In cases where a PennDOT representative directs the consultant to perform work without ECMS wage rate approval, the responsible individual will be subjected to disciplinary action.

Likewise, consultant employee substitutions require resume and wage rate approvals prior to any work being completed by that person.

As consultant resources are needed or not needed, PennDOT will provide all assignment requests in writing. Emails are the preferred method; however, facsimiles are acceptable. The consultant is responsible for maintaining copies of all requests. PennDOT can request for the following classifications (Transportation Construction Inspector (TCI), Transportation Construction Inspector Supervisor (TCIS), Transportation Construction Manager (TCM), or Technical Assistant (TA)), and specific experience required (asphalt paving, bridge inspection, etc.). Individuals assigned to these classifications will be determined by the consultant.

**The IO may not request specific persons by name or pay level (TCI2). The prime consultant is solely responsible for adding or removing subconsultants to meet contractual obligations, including DBE requirements.**

All construction inspection firms are required to enter an "Effective End Date" in ECMS for all inspection wage rate requests. The Effective End Date is the expiration date of the earliest expiring certification that would affect classification requirements as documented on the individual's resume. After a wage rate request expires in ECMS, the inspector will not appear on the firm's employee roster for that classification when creating and processing invoices.

If an individual is qualified for a position strictly on years of experience, the firm enters 12/31/2099 as the Effective End Date. This way, the firm meets the requirement and the individual will not appear on the Employee Expiring Rates link until 2099.

If an Effective End Date is entered, the firm can monitor when individual's rates will expire in ECMS by checking the Employee Expiring Rates link on the Consultant Information Portal. This link provides a list of rates expiring within the next thirty days so there is adequate time to submit an updated resume to retain the classification.

Example:

A Transportation Construction Inspector 2 (TCI-2) is qualified based on One (1) year minimum PennDOT experience as a Transportation Construction Inspector 1 (TCI-1) and One (1) of the following Three (3)

certifications: PennDOT Concrete Technician, NECEPT Field Technician, or NICET Level II Certification or higher in Highway Construction.

If the PennDOT Concrete Technician certificate expires 12/31/13, the NECEPT Field Technician certificate expires 1/16/14, and the NICET Level II certificate expires 3/5/14, then the firm enters 3/5/14 as the Effective End Date because the individual only needs one of the three certifications and this is the latest that keeps the individual qualified for the classification.

#### **4.3.3 – Process Control**

Refer to Appendix 4A - Process Control for Construction Inspection Contract Issues for the procedure for dealing with contractual violations and administrative deficiencies. All violations for any of those parameters are to be forwarded in writing to the Director of Bureau of Project Delivery, Attn. Projects, Schedules, Specifications and Constructability Contract Management (PSSC) Section. The PSSCCMS Chief will maintain a log of violations and issue sanctions as appropriate.

Likewise, PennDOT personnel are to strictly adhere to PennDOT policies or be subjected to disciplinary action.

#### **4.3.4 – Consultant Inspection Compliance Process**

Each and every consultant inspector must have their resume reviewed by the designated IO representative to confirm the appropriate classification with the contract requirements.

The IO must have a Consultant Inspection Compliance Process that consists of resume reviews and wage rates as follows:

- a. Identifies the proposed inspector's classification and the minimum experience and training required for that position.
- b. Ensures the education information is completed and meets the classification and the minimum experience and training required for that position.
- c. Confirms that ~~the~~ certification data includes certification number(s) and the expiration date(s). Check that the certifications listed are sufficient to meet the classification requirements. Validating the certification with the issuing agency (NECEPT, NICET, etc) is not necessary.
- d. Reviews the experience data provided in the resume to verify it meets the classification requirements. Note that utilization of equivalent combination of training and experience is only for extraordinary cases and only with concurrence of the BOPD, Contract Management Division Chief and CMS Chief, PSSC Section Chief.

The District Consultant Inspection Compliance Process is to be utilized annually to assure that certifications and qualifications remain current. Resume verifications are to be completed in writing.

Each District is to implement a Quality Assurance process to validate that the resume and wage rate approval process is properly performed. A minimum frequency of 10% quality assurance reviews is required. Use the BOPD spreadsheet to document the initial reviews and the quality assurance reviews. The spreadsheet should be emailed quarterly to the BOPD, PSSC, Construction Services UnitSection Chief. The BOPD will also ~~be performing~~ independent reviews.

#### **4.3.5 – Invoicing**

The District Construction Project Manager must validate that the hours invoiced accurately reflect the hours worked prior to authorizing payment.

## **4.4 – Supplementing Consultant Agreements**

A Supplemental Agreement allows PennDOT to change any terms and conditions of an existing Consultant Agreement where warranted.

When a Legal Supplement is being generated in ECMS all current attachment hyperlinks are incorporated into the document. By this means any updated documents will be incorporated in the Agreement upon full execution of the Legal Supplement.

Because PennDOT specifies a total dollar amount as well as a time limitation for Non Project Specific Open Ends, supplementing them is generally only done for adding a subconsultant. Changes in time of completion for Non Project Specific Open End Agreements are only done when justified by the IO and with the approval of the Office of Chief Counsel. Changes in funding amount for Non Project Specific Open End Agreements are only done when justified by the IO and with the approval of the Office of Chief Counsel and the office of the Comptroller.

If changes are needed in Consultant Management Project Manager Agreements, FHWA approval will also be needed.

A Supplement is necessary to accomplish the transfer of funds between Categories of Compensation. For Cost Plus Fixed Fee Parts, no additional Fixed Fee is allowed in these instances.

For each of the different types of Supplements listed below is a flow chart which references the Section of Publication 93 that deals with that particular action. The Estimate, Scope of Work, Technical and Price Proposals, reviews, approvals, and NTPs will need to follow the procedures outlined in that section.

For each Part, ECMS reads the Completion Date from the Supplement's Technical Proposal and inserts a new Part Expiration Date. Also, the cost figures are read from the Supplement Price Proposal and the Part's budgeted cost figures in the invoicing module are updated electronically.

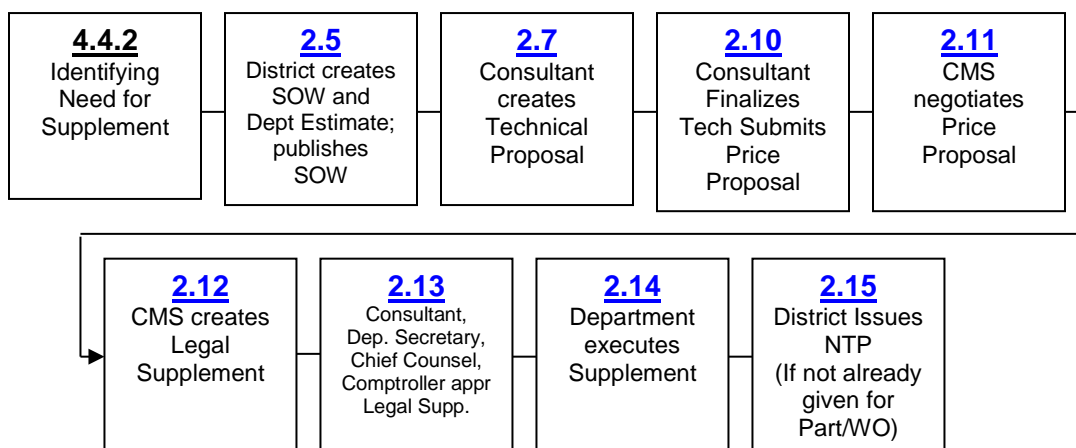
### **4.4.1 – Types of Supplements**

There are five types of Supplements in ECMS:

1. Normal Supplement
2. Open End Time Extension Supplement
3. Administrative (No Cost) Supplement
4. No-Fee Supplement
5. Express Supplement (No-Fee)

Chart 4.1 – SUPPLEMENT USAGE					
Supplement Type	Create Legal Supplement	Comptroller Review	Legal Review	Agreement Type	Comments
Normal	<ul style="list-style-type: none"> <li>• CMS</li> </ul>	Yes	Yes	<ul style="list-style-type: none"> <li>• Project Specific</li> <li>• Open End</li> </ul>	
OE Time Extension	<ul style="list-style-type: none"> <li>• CMS</li> </ul>	No	No	<ul style="list-style-type: none"> <li>• Open End</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot Change Agreement Cost</li> <li>• Can change DBE %</li> <li>• Need Legal Approval before Supplement can be processed</li> </ul>
Administrative	<ul style="list-style-type: none"> <li>• District</li> <li>• CMS</li> </ul>	No	No	<ul style="list-style-type: none"> <li>• Project Specific</li> </ul>	<ul style="list-style-type: none"> <li>• DBE % Change</li> <li>• Change part expiration date</li> <li>• Fund Transfer – →Price Proposal must have net dollar change of \$0 →Can transfer money between consultants on each part (Each part must have a net change of \$0)</li> </ul>
	<ul style="list-style-type: none"> <li>• District</li> <li>• CMS</li> </ul>	No	No	<ul style="list-style-type: none"> <li>• Open End</li> </ul>	<ul style="list-style-type: none"> <li>• Can add subconsultant using a generic task</li> <li>• DBE % Change</li> <li>• Fund Transfer - Price Proposal must have net dollar change of \$0</li> </ul>
No Fee	<ul style="list-style-type: none"> <li>• District</li> <li>• CMS</li> </ul>	Yes	No	<ul style="list-style-type: none"> <li>• Project Specific</li> </ul>	<ul style="list-style-type: none"> <li>• Profit Factor Must =0</li> <li>• Price Proposal does not have to have a net dollar change of \$0</li> <li>• Can change part costs</li> <li>• Cannot add tasks</li> <li>• Cannot add subconsultants</li> </ul>
Express Supplement	<ul style="list-style-type: none"> <li>• District</li> <li>• CMS</li> </ul>	Yes	No	<ul style="list-style-type: none"> <li>• Project Specific</li> </ul>	<ul style="list-style-type: none"> <li>• Agreements executed prior to May 1, 2009 must have a term modification allowing an Express Supplement</li> </ul>

**4.4.2 – Normal Supplement**



## Identifying Need for Supplement

Normal supplements to a Project Specific Engineering Agreement are utilized for these basic reasons:

1. Changes in the Scope of Work
2. Cost Overruns
3. Consultant Agreement Close-Outs
4. Addition of Subconsultant

**Changes in the Scope of Work** - A change in the SOW requires the execution of a Supplemental Agreement to revise the Consultant Agreement. This must be done prior to performance of the work and services required. As indicated in [Section 5.6](#), a consultant cannot work outside an executed agreement.

Additional Work Tasks can only be added to the Consultant Agreement if they are within the context of the original advertisement.

**Cost Overruns** - When additional funds are needed to complete the work and services described in the Consultant Agreement (i.e., when costs will overrun the originally proposed amount), a supplement may be justified. The IO needs to consider, whether the overrun was caused by a low initial Price Proposal estimate, excessive re-work caused by PennDOT, re-work caused by the consultant's poor performance, etc. when deciding whether to recommend the processing of a supplement.

When a Cost Plus Fixed Fee Consultant Agreement Part is being Supplemented, the IO Project Manager needs to determine whether the change constitutes a change in the SOW, or if more work-hours are needed to accomplish the existing SOW. The Technical Proposal can be relied upon to make this determination.

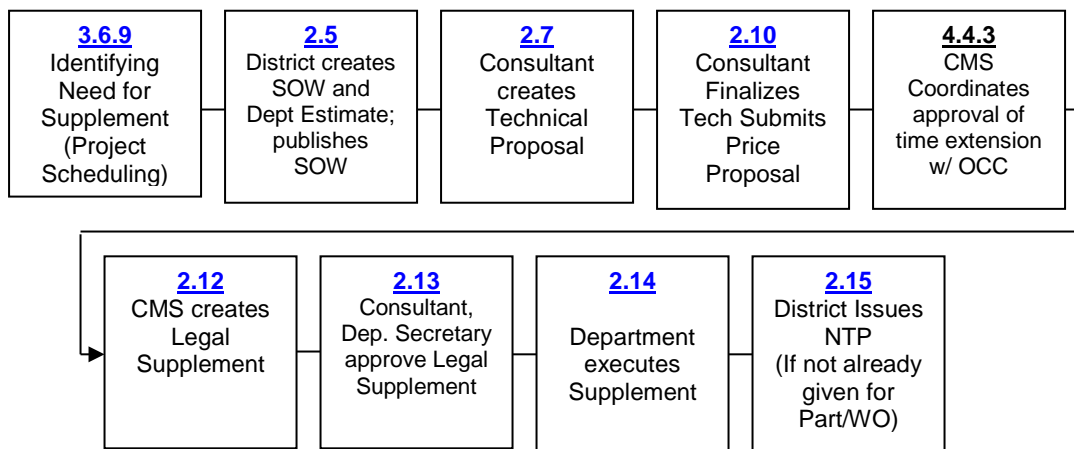
- If the existing description would not change when compared to the contemplated work and services, additional Fixed Fee cannot be allowed.
- If the Supplemental Technical Proposal task Department Details and Approach are appreciably different from the current Technical Proposal discussion for the task(s), the change constitutes a change in the SOW and additional Fixed Fee would be appropriate.
- In ECMS, the Profit is assigned to a Part under the original agreement. However, ECMS will allow the Fixed Fee to be assigned on a task basis rather than on a part basis. For this reason, some tasks, which may consist of additional work-hours, as well as, a change in the SOW, may have a weighted average of profit from 0% to 100% to depict the portion in which profit actually applies.

Examples of circumstances in which Fee should be included and circumstances in which no-fee should be included can be found in [Appendix 4B - Guidelines to Determine When Fee Should be Included in a Supplemental Agreement \(Cost Plus Fixed Fee Agreement\)](#).

**Consultant Agreement Close-Outs** - A close-out supplement is required when the remaining funding encumbrance needs to be unencumbered under a Part of a Consultant Agreement where the Consultant Agreement has not yet been finalized. In lieu of a close-out supplement, the final invoice will need to include less than 100% complete for those tasks that were not completed under Cost Plus Fixed Fee and Lump Sum Parts.

**Addition of Subconsultant** - On occasion, it may be necessary to add a subconsultant to assist in completion of the work and services. In these instances, the IO must concur with the subconsultant selected by the prime. The IO cannot request that a specific subconsultant firm be added.

**4.4.3 – Open End Time Extension Supplement**



**Identifying Need for Supplement**

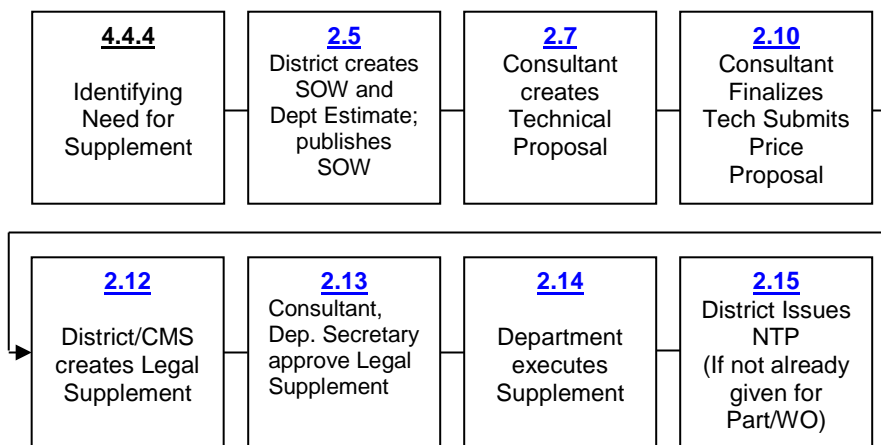
**Time Extension** - On a limited basis the expiration date for an Open End Agreement may be extended for the purpose of completing work and services under an existing Work Order.

Although the Open End Time Extension Supplement will not be reviewed by the Office of Chief Counsel, their prior approval is required before creating the supplement. The CMS is responsible for obtaining the approval from the Office of Chief Counsel, and scanning the approval letter and attaching to the Technical Proposal in ECMS.

ECMS defaults to the current completion date. The date the consultant enters on the Technical Proposal will become the new completion date for the agreement or Part. The consultant is responsible to inform the IO Project Manager when this date is revised. The IO Project Manager should ensure that the completion date on the Technical Proposal is acceptable.

See Section 3.6.9 Project Scheduling for additional information.

**4.4.4 – Administrative (No Cost) Supplement**



**Identifying Need for Supplement**

Milestones for Department Technical Review Received, Central Office Evaluation, and Fiscal Papers Prepared, if applicable, should be completed prior to the creation of the Legal Supplement and must be completed prior to execution.

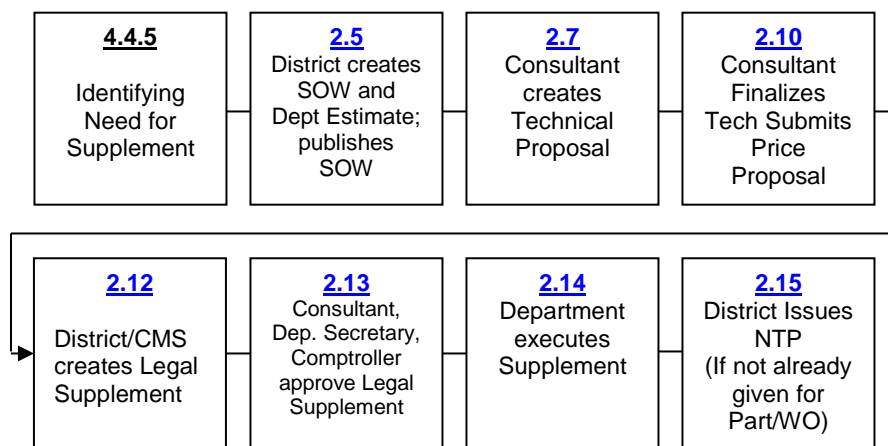
**Transfer of funds** - A Supplement is necessary to accomplish the transfer of funds between Categories of Compensation in ECMS. For Cost Plus Fixed Fee Parts, no additional Fixed Fee is allowed in these instances.

**Addition of Subconsultant** - On occasion, it may be necessary to add a subconsultant to assist in completion of the work and services. In these instances, the IO must concur with the subconsultant selected by the prime. The IO cannot request that a specific subconsultant firm be added.

**Time Extension** - A time extension can be incorporated in an Administrative Supplement for Project Specific Agreements.

ECMS defaults to the current completion date. The date the consultant enters on the Technical Proposal will become the new completion date for the agreement or Part. The consultant is responsible to inform the IO Project Manager when this date is revised. The IO Project Manager should ensure that the completion date on the Technical Proposal is acceptable.

**4.4.5 – No-Fee Supplement**



Milestones for Department Technical Review Received, Central Office Evaluation, and Fiscal Papers Prepared, if applicable, should be completed prior to the creation of the Legal Supplement and must be completed prior to execution.

For District-created supplements when a Legal Supplement is created, the District shall submit a Contractor Responsibility Request (CRR), for the Contractor Responsibility Provision (CRP), for approval. This procedure can be expedited when Districts use the electronic NPM process outlined in Section 3.6.1. The CRP must be processed prior to Comptroller’s approval.

**Identifying Need for Supplement**

**Cost Overruns** - A No-fee Supplement can be used on agreements that have established unit costs and scopes of work, but the level of effort has slightly increased beyond what was originally estimated. A No-Fee Supplement may be used in a circumstance where both the IO and consultant Project Managers have determined that the supplemental effort under consideration does not constitute a change in the SOW (Extra Work), but does require more person hours to complete than originally anticipated (Additional



Effort). Examples of circumstances in which Fee should be included and circumstances in which no-fee should be included can be found in Appendix 4B - Guidelines to Determine When Fee Should be Included in a Supplemental Agreement (Cost Plus Fixed Fee Agreement).

In the Department Estimate, the profit factor indicator for this agreement must be “no” for all parts. The District will not be able to add tasks or subconsultants under this type of supplement. Money can be transferred between consultants within the same part.

#### **4.4.6 – Express Supplement (No-Fee)**

The procedure for creating a Express Supplement using the Express Supplement Form is shown in detail in Appendix 4C Express Supplement (No-Fee) Process Flow.

Milestones for Department Technical Review Received, Central Office Evaluation, and Fiscal Papers Prepared, if applicable, should be completed prior to the creation of the Legal Supplement and must be completed prior to execution.

For District-created supplements when a Legal Supplement is created, the District shall submit a Contractor Responsibility Request (CRR), for the Contractor Responsibility Provision (CRP), for approval. This procedure can be expedited when Districts use the electronic NPM process outlined in Section 3.6.1. The CRP must be processed prior to Comptroller’s approval.

#### **Identifying Need for Supplement**

**Cost Overruns** - When a No-Fee Supplement needs to be made in an expedited manner, a signed paper Express Supplement (No-Fee) will allow the consultant to continue to work on a project before an “Express Supplement (No-Fee)” can be completed in ECMS.

After IO and consultant Project Managers have determined that the Express Supplement (No-Fee) Process is applicable, an “Express Supplement (No-Fee) – (Authorization for Consultant Contract Work)” form, see Appendix 4D, must be completed. Upon signature of this form and the establishment of funding in SAP, the consultant may continue work. **A prompt Express Supplement (No-Fee) in ECMS must occur within 30 calendar days for the consultant to have the ability to invoice for work covered by the paper Express Supplement (No-Fee)**, as indicated in Appendix 4C - Express Supplement (No-Fee) Process Flow Chart.

For state paper agreements, the actual “Express Supplement (No-Fee)” will be the actual Supplement and will be assigned the next available supplemental letter.

The District Executive is responsible to ensure the quality of the District’s Express Supplements (No-Fee). A Quality Control Plan outlining the procedures that the District will implement must be created and approved prior to creating any Express Supplements (No-Fee). Appendix 4E Example Quality Control Certification for Express Supplement (No-Fee) shows a sample Quality Control Certification.

### **4.5 – Work Order**

#### **4.5.1 – Engineering District Work Order Quality Control Reviewer**

Each Engineering District will authorize a minimum of two people to be Quality Control Reviewers for Work Orders generated in the Engineering District.

Each Engineering District will submit the authorized reviewers names and signatures to the Office of the Comptroller, with a copy to the CMS. CMS will coordinate with ECMS support to maintain appropriate names in ECMS. ECMS will provide a drop-down list of approved Signatories and QC Reviewers.



The Office of the Comptroller must be notified a minimum of ten business days prior to the Engineering District making changes to the Quality Control Reviewers approved list.

If a Work Order is submitted without the signature of an authorized reviewer, the Work Order will be returned immediately.

The CMS will provide Quality Control Review for Work Orders generated by Central Office staff.

#### **4.5.2 – Initiate the Work Order**

The IO will prepare a SOW in ECMS using the WBS as its basis. The IO will coordinate with consultant to discuss/clarify details. The consultant will indicate their approach to the scope in ECMS and submit it with a breakdown of the estimated cost to PennDOT. The consultant may not invoice PennDOT for the cost of attending scoping meetings or for preparing proposals.

The IO will compile the following information for the file:

- Negotiation Position Memorandum (NPM) - Appendix 3B Negotiation Position Memorandum (NPM)
- Review of Technical Proposal - Appendix 2G

These documents are necessary so that the IO QC Reviewer can verify that the Price Proposal meets PennDOT's standards for a fair and reasonable cost, and that the IO Project Manager has either circulated the Technical Proposal to all units that have expertise in the various tasks contemplated in the WO or has obtained approval of the adequacy of the Technical Proposal by the Assistant District Executive of Design or the District Portfolio Manager.

If an IO has two Open End agreements with the same consultant, and has a Work Order on one for Preliminary Engineering, and another Work Order on the other Open End agreement for Final Design, the Preliminary Engineering Phase or the environmental clearance must be completed prior to execution of the WO for Final Design. These two Work Orders may be open at the same time providing that assurance can be given that there is not duplication of effort between the two Work Orders.

#### **4.5.3 – Cost Plus Fixed Fee Method of Payment Functioning like a Specific Rate of Compensation**

If under a WO a Cost Plus Fixed Fee method of payment is being used to accomplish work and services normally associated with a Specific Rate of Compensation method of payment, a statement needs to be included in the WO that makes it function like a Specific Rate of Compensation Work Order. This language needs to be included as an "Additional Legal Document Condition" in the WO. An example of this language is:

*"The Engineer will receive a fixed fee of \$8.26 per hour of service up to a maximum of \$1,553.72."*

These figures are developed by dividing the total Fixed Fee (\$1,553.72 in this case) by the total work-hours (188 in this case) in the WO.

#### **4.5.4 – Funding**

The IO Project Manager should begin the process of providing the SAP-8 form to the Office of the Comptroller after approval of the Legal Work Order by the QC Reviewer.

Each WO should have a unique State Project Number(s) (SPN). For example, when additional SOW is being added to a WO for the preliminary phase, that WO should be amended to add the work and services since the SPN would remain the same. If generating the SOW for final design a new WO would be created.

#### **4.5.5 – CMS Quality Assurance (QA) Review**

The CMS will conduct annual QA reviews of selected District processed WOs and discuss the results of the QA review with the IO Portfolio Managers. The IO's authority to process and create WOs may be reduced or rescinded based on the results of the QA reviews.

#### **4.5.6 – Start Work**

As indicated in Section 5.6, no work and services will be provided under an Open End Agreement until a WO is executed. No WO will be executed where the work and services is expected to last beyond the termination date of the Open End Agreement.

#### **4.5.7 – Statewide Open End Agreements**

For use of statewide Open End Agreements, submit a transmittal letter to the Open End Agreement Owner requesting the use of the Open End Agreement, attaching a proposed SOW and Department Estimate. The SOW will need to be developed using the WBS format by cutting-and-pasting from ECMS. If the Agreement Owner concurs with the Work Order assignment the Agreement Owner will forward the SOW to the consultant with instructions to contact the IO Project Manager for the submission of Technical and Price Proposals. The same procedure will be used for any Work Order amendments (except close-out amendments), regardless of the amount. **Note that the consultant will not be contacted until the Agreement Owner asks the consultant to contact the IO Project Manager.**

#### **4.5.8 – Processing a Work Order Close-Out Amendment**

If the IO desires to reduce the WO encumbrance in SAP prior to the expiration of the Open End Agreement, or if the agreement capacity still reserved for that WO is needed for additional WO or Amendments, a Close-out Amendment is required.

If a WO using a *Cost Plus Fixed Fee* or *Lump Sum* method of payment is terminated prior to the consultant providing all of the work and services covered by the WO, the IO and the consultant must agree on the percent complete to determine the amount of Fixed Fee or Lump Sum earned. Since the percent complete is dependent on the amount of Scope completed, the final invoice will need to include less than 100% complete for those tasks that were not completed.

The SOW for a close-out amendment should be brief.

The Department Estimate should not include more than one Labor Task or Direct Cost. When developing the Labor Task, be sure to choose the classification entitled "Close-out Adjustment". This will allow negative amounts to be included. The Direct Cost should also consist of only one negative amount.

Once acceptable Technical and Price Proposals have been received, the amendment can be processed similarly to other amendments with the exception that the NPM and the Review of the Technical Proposal is not necessary.

#### **4.5.9 – Scope of Work for Design Review Work Orders**

Consultants need to understand how to perform this work acceptably without crossing the fine line into managing another consultant - PennDOT needs to retain management responsibility even though in these cases we are not generating the design review comments. This can be accomplished by including the following in the Agreement Details:

*"The design consultant will transmit products to be reviewed to the review consultant with a copy of the transmittal letter to the District Project Manager; the review consultant will provide comments to the Project Manager; the Project Manger will concur or not concur with the comments and forward the accepted ones to the design consultant; revised*

*products will be sent by the design consultant to the Project Manager and the review consultant to ensure that their comments (which had been accepted by the Project Manager) were adequately addressed. The review consultant will then submit a letter to the Project Manager stating whether or not their comments were adequately addressed. This process may be repeated as necessary, depending on the quality and complexity of the submission. After all reviews are completed for a particular submission, the review consultant will then submit a letter to the Project Manager stating whether or not they recommend that the Engineering District concur with/approve the submission. The Project Manager will then notify the design consultant of approval."*

#### **4.5.10 – Work Orders for Assignments on Various Small Projects**

Guidelines to provide a flexible means of completing small tasks on a variety of projects under a single Work Order can be found on the shared drive at:

<\\pdfpfap2k01\data\penndot shared\Bureau of Design\Design Services Division\Consultant Agreement Section\Publications>

Typical Applications for using these Work Orders are:

- Work Orders should be established for the specific task(s)
- Proposed scope of work must be in accordance with the advertisement for the agreement
- Work Orders must function as Specific Rate
- Assignments to be completed under the general WO should not exceed \$100,000. Assignments over \$100,000 should be completed by a standalone WO.

### **4.6 – Funding**

#### **4.6.1 – Program Management Committee (PMC) Approval**

The IO will monitor costs to ensure that the PMC's approved cost is sufficient to cover the cost of the Consultant Agreement, the Department's costs, and all other Consultant Agreements providing work and services on the project. If the total estimated cost of the Consultant Agreement plus the state expenditures estimated in accordance with the appropriate percentage indicated below plus all other project contractual obligations exceeds the PMC-approved amount, the IO must request and obtain approval through the Center for Program Development and Management for the increase in the approved cost before the encumbrance document is completed.

If the Consultant Agreement amount is:

Under 100,000	add 20% for State Expenditures
\$100,000 to \$1,000,000	add 15% for State Expenditures
Over \$1,000,000	add 10% for State Expenditures

The IO will check to see that sufficient unencumbered funds are available (in County or Engineering District appropriations) for the appropriate program and major object.

The estimated cost of the construction inspection Consultant Agreement plus the add-on for state expenditures as specified above should be within the following guidelines:

If the estimated construction cost is:      the maximum percentage for construction inspection is:

LESS THAN \$1,000,000	UP TO 15%
\$1,000,000 TO \$ 5,000,000	UP TO 12%
OVER \$5,000,000	UP TO 10%

#### **4.6.2 – SAP Encumbrance**

For both types of Open End Agreements, an encumbrance in Systems Application Products (SAP) for the entire Consultant Agreement amount will be initially established using a blanket code SPN (dummy number). As PennDOT seeks to execute individual Work Orders the encumbrance will be adjusted to remove the amount of the Work Order from the blanket code and add the amount of the Work Order to the appropriate SPN. By use of this blanket code accounting PennDOT assures that the maximum amount of the Open End Agreement will not be exceeded.

Currently, all Open End Agreements can only identify one method of payment. This designated method will need to be used for each Work Order under the Consultant Agreement.

#### **4.6.3 – Invoice**

This section describes the procedures to be followed for processing consultant invoices for payment. Invoices for all Consultant Agreements are to be submitted and processed in the same manner, regardless of the type of Consultant Agreement.

The consultant shall not be entitled to demand or receive payment for any work as "additional work" or "extra work" which was not provided by the terms of the Agreement.

#### **Partial Payments**

A consultant may, at intervals of time of one month or longer, submit an invoice to PennDOT for reimbursement.

Each subconsultant invoice must be approved by the supervising consultant (which may be either another subconsultant or the prime). All subconsultant invoices for the same Consultant Agreement/Part number that are in "Supervisor Firm Approved" status are linked with the prime invoice into a "payment".

**Lump Sum Payment** – As the work progresses, PennDOT, at its discretion, may require the consultant, at intervals of time of one month or longer, to develop and submit an interim Progress Report as provided in these Specifications. The IO Project Manager will verify the Progress Report and upon acceptance will process the consultant's invoice as provided above.

**Cost Per Unit of Work Payment** - The consultant shall follow the same provisions as for the Lump Sum payment above for each Unit of Work to establish the interim progress percentage. The maximum cost to PennDOT as set forth in the Special Requirements, shall not be exceeded without the prior approval of PennDOT and, where applicable, the FHWA, in the form of a Supplemental Agreement hereto.

**Cost Plus a Fixed Fee Payment** - The consultant may at intervals of not less than once a calendar month submit an invoice for its accrued direct and indirect costs for the invoice period, including certified invoices paid to subconsultants, subcontractors and suppliers. The Lump Sum for Fixed Fee will be processed as same as that for Lump Sum Method, above, with the exception that any amount earned based on the interim Progress Report regardless of the amount will be invoiced as a part of a monthly invoice for direct and indirect costs as set forth above.

The computation of the consultant's monthly partial payment will be computed initially using the provisional Overhead Rate as provided in the Special Requirements attached to the Agreement.

The consultant shall have a FAR Audit performed by a Certified Public Accountant to determine the consultant's actual Overhead for the consultant's fiscal year in accordance with Section 3.6.4.

Upon notification by PennDOT of the acceptance of the Overhead Rate for the consultant's fiscal year, the consultant shall, by an appropriate adjustment of the prior partial payment invoices, in which the

provisional Overhead Rate was used, submit an invoice to PennDOT for the amount due the consultant or make an appropriate refund to PennDOT for Overpayments.

The accepted audited fiscal year Overhead shall be used as the provisional Overhead Rate for the ensuing fiscal year and at its end, the consultant and PennDOT will establish the accepted audited Overhead Rate and the foregoing adjustments will again be made. The verification of the consultant's Overhead Rate together with the appropriate adjustment of the consultant's billing will be accomplished for each of the consultant's fiscal years for the term of the Agreement.

**Specific Rate of Compensation** - The consultant may at intervals of not less than one month submit an invoice covering such earnings to PennDOT.

### **Monitoring of Costs**

A provision in the legal agreement requires that when the costs of a part of the agreement reaches 75% of the total amount approved for that part, that the consultant shall evaluate the status of the part. If the consultant can complete the work within budget, a note to this effect should be included on the submitted invoice. If the consultant cannot complete the task within budget, the consultant must cease work and notify PennDOT.

### **Final Invoice**

After all work to be performed by the consultant under the Agreement has been completed and deemed satisfactory in all respects by the IO Project Manager and accepted by PennDOT and, where applicable, by the FHWA, PennDOT will authorize payment of the consultant's final invoice.

The payment of the final invoice to the consultant for work and services under the terms of the Agreement does not waive the right of PennDOT to establish overpayments or adjustments disclosed by subsequent audits by PennDOT of the consultant's project records and cost accounts. PennDOT will notify the consultant of such amounts due and request a refund for the amount of the overpayment.

**Lump Sum Method of Payment** – The consultant shall be paid the Lump Sum amount as provided in the Agreement for the project as a whole or such parts thereof on which a Lump Sum is provided. The amount of the final invoice shall be the remaining amount due the Engineer after all prior partial and/or interim payments by PennDOT have been deducted from the Lump Sum amount as set forth in the Agreement.

**Cost Per Unit of Work Method** – The consultant will be paid a total fee in the amount of the number of PennDOT accepted Units of Work times the Unit Price or Prices set forth in the Agreement. The final invoice shall be the amount of total accepted fee less the aggregate amount of the prior partial payments made to the consultant by PennDOT.

**Cost Plus a Fixed Fee Amount Method** – The consultant will be paid the amount of the fee computed in accordance with the procedure set forth for partial payments in these Specifications above, subject to a final audit of the Agreement and the determination of the consultant's total amount due. The final settlement will be the submission by the consultant of a Final Invoice in the amount of the audited amount due less the aggregate sum of the prior partial payments by PennDOT to the consultant. Where the total aggregate sum of the prior partial payments exceeds the amount of the final audited amount of fee, the consultant shall refund the overpayment amount to PennDOT.

**Specific Rate of Compensation** – The consultant shall be paid the accumulated earnings of the consultant's employees authorized by PennDOT to perform work less the amount of the aggregate total of partial payments by PennDOT to the consultant.

### **Invoice Submittal**

A series of edit checks are performed by ECMS, including a check on the integrity of the data submitted. These edit checks may result in warning messages being attached to the invoice. If for any reason an invoice is rejected, that invoice cannot be resubmitted. The consultant will need to create a new invoice. Both successfully submitted and rejected invoices are displayed in the Invoice Inquiry.

The prime consultant can 'Reject/Revise' a subconsultant's invoice if minor changes are needed.

The consultant's invoice for progress payment will be reviewed and verified by the IO Project Manager and when found acceptable, will be approved by the IO Project Manager and presented to the Comptroller for payment. These progress invoices are merely partial payments and are subject to correction and adjustment as provided under the Agreement at the interim or final audit of the Consultant Agreement accounts and records. The current payments shall not bind PennDOT to the acceptance of any materials furnished or work done.

The IO Project Manager will be able to review invoice entry values, to-date reports, and user-entered comments online for any invoice. The IO Project Manager assigned to the Part/WO can choose one of the following options:

- Approve, or recommend for approval, the payment (including all underlying invoices)
- Reject an individual subconsultant invoice but approve, or recommend for approval, the payment
- Reject/Revise the invoice if minor revisions are needed
- Reject the prime invoice

If more than seven days elapses between the date the prime invoice is received and the date the IO Project Manager approves or rejects the payment, the invoice shows up in the work queue in ECMS for both the IO Project Manager and the IO Portfolio Manager.

### **Approved Payment**

If a payment is deemed acceptable, the individual who approves the payment must have a signature authority card to approve a vendor's invoice for payment on file in the Office of the Comptroller.

If the IO Project Manager does not have payment signature authority, a qualified individual in the IO verifies that the payment is technically accurate and recommends that the payment be processed.

After the project manager approves the invoice, the payment is created and transmitted to SAP for payment. SAP verifies that there are enough funds remaining in the WBS element/SPN. If there is not enough funds or there is other information that does not match SAP, an error will come back from SAP and the invoice payment status will display awaiting correction. Contact the IO fiscal officer to verify SAP and ECMS information. After the necessary corrections have been made, the IO fiscal officer can resend the payment in ECMS. Once SAP accepts the payment, the status is changed to "Comptroller Review". After the comptroller approves the payment, the information is sent to Treasury for approval and payment. After treasury has cut the check or deposited the funds, the payment status goes to paid and the payment information is recorded.

### **Prompt Payment of Subconsultant/Subcontractor Invoices**

In compliance with the Contractor and Subcontractor Payment Act (CMSPA) and the Prompt Payment Act (PPA) of the Pennsylvania Procurement Code, when a subconsultant/subcontractor has performed in accordance with the provisions of the contract, the prime consultant is obligated to make prompt payment on the invoices. All monies received by the consultant for work and services furnished by a subconsultant/subcontractor must be paid in full to that subcontractor within fourteen calendar days of the date the prime consultant received payment from PennDOT. **It is the consultant's responsibility to ensure prompt payments to any and all subconsultants/subcontractors** in accordance with the



contractor and subcontractor Payment Act (CASPA), the Prompt Payment Act (PPA), and the project agreement terms and conditions.

### **Reject Prime Approved Payment**

The IO Project Manager will be able to reject individual subconsultant invoices without rejecting the entire payment, or to reject or approve the payment as a whole.

If the prime invoice is rejected, the underlying subconsultant invoices comprising the payment are 'unlinked' and remain in Awaiting Supervising BP Submission status. When the prime submits their replacement invoice, the payment is recreated.

### **4.6.4 – Overhead Adjustment Invoice**

For a consultant that has had a new overhead rate accepted, the consultant can generate a General and Administrative Overhead Adjustment report in ECMS. This report captures all invoices having invoice periods within the fiscal year in question for all Cost Plus Fixed Fee Parts, including invoices that have spanned the beginning and ending dates of the fiscal year.

When a consultant receives an audit report from PennDOT they may accept or contest the results. The consultant should contact the CMS to contest the provided audit report.

Once the CMS and the consultant have agreed to the Overhead Dollars Adjustment, the report will be finalized and the consultant issued a Tracking Number for further processing through an Overhead Adjustment invoice. The consultant must submit an Audit Adjustment invoice using the Audit Tracking number and Direct Payroll Dollars.

When payment of either an Overhead Adjustment or Audit Adjustment invoice would require more funds than are currently available for the targeted category of compensation, a Supplemental Agreement or Work Order Amendment will need to be processed prior to submission of the invoice for active agreements. This may be completed by selecting a labor task and using the overhead adjustment within the labor task to add the dollar amount necessary.

If the processing of an Overhead Adjustment or Audit Adjustment invoice would require more funds than are available in the Direct and Indirect Payroll category of compensation or WBS Element the IO will need to post money in SAP prior to processing of the invoice for expired agreements. For projects in final status, the IO will have to breakdown the agreement prior to posting money for invoicing.

### **4.6.5 – Agreement Close-Out**

Consultant Agreements are terminated if any of the following occur:

- All of the work and services to be performed under the terms of the Consultant Agreement have been completed in a satisfactory manner,
- The time of completion stipulated in the Consultant Agreement for all Parts/WOs has expired. (Each IO should have written monitoring procedures which will preclude terminating a Consultant Agreement due to time expiring through no fault of the consultant.),
- A close-out Amendment or Supplemental Agreement is executed, or
- PennDOT cancels the Consultant Agreement in accordance with the terms of the Consultant Agreement.

Upon termination of the Consultant Agreement or any Part or WO thereof, the IO will process a final invoice (if required). This final invoice will be the IO Project Manager's notice to process other required documents as discussed below.

Agreement close-outs must be processed in a timely fashion.



## **Final Invoice**

After the work to be performed by the Consultant under the Agreement has been completed and deemed satisfactory in all respects by PennDOT's Project Manager and accepted by PennDOT and where applicable by the FHWA, PennDOT will notify the Consultant in writing of its acceptance of the work as fulfilling the Agreement, or part of the Agreement. The prime consultant and subconsultants need to provide an invoice flagged "Final" for each Part or Work Order for which a NTP has been issued within fourteen (14) calendar days of receipt of PennDOT's acceptance of work. The final invoice may be submitted by the Consultant within one month of the previous invoice. If the last invoice did not include the required flag, the consultant must submit a no-cost invoice template flagged "Final". This final invoice will trigger the IO Project Manager to:

- a) complete and submit to the CMS an appropriate Certificate of Completion for federally funded agreements,
- b) complete final Consultant Evaluations for the prime and any subconsultants,
- c) arrange for the preparation of an SAP-8 encumbrance document which releases any remaining funds from their encumbrance in SAP; and
- d) verify that the Project Characteristics are complete.

A flow chart outlining the procedures for close out can be found in [Appendix 4F – Procedures for Closing Out Electronic Parts/Work Orders](#).

If no work was done on a Part/Work Order, consultants will still need to submit a "final" invoice in order to close-out the agreement if NTP was given for the Part/Work Order.

### **4.6.6 – Certificate of Completion (Federally Funded Parts/Work Orders only)**

In ECMS, the IO Project Manager completes all information on the Certificate of Completion including the information at the bottom of the form, otherwise the form will be returned for completion. The IO Project Manager then submits this Certificate to the District Executive for review and approval. The Certificate is then forwarded to the CMS Chief for approval. The completed Certificate resides in ECMS under the agreement Part/Work Order.

PennDOT's goal is to have the Certification of Completion finished within six months from final invoice.

### **4.6.7 – Consultant Evaluations**

Consultant Evaluations are performed at the Part or Work Order level for the prime and every subconsultant for that Part or Work Order. These evaluations are a valuable management tool for the evaluation of the current consultant work and services, as well as selection for future work and services. The consultant(s) available for evaluation for a particular Part or Work Order are dependent on the respective Consultant Hierarchy in the Technical Proposal.

An Interim Consultant Evaluation can be processed at anytime during the life of the Part or Work Order. However, an Interim Consultant Evaluation must be completed if, at any time, a consultant's performance fails to meet expectations for the part or work order. A Final Consultant Evaluation must be processed for each prime consultant at the completion of any Part or Work Order. The "Final" or "Interim" radio buttons indicate the type of evaluation being performed.

Upon creation of the evaluation by the IO Project Manager, weights must be assigned for each evaluation criteria. Weights are established on a one to ten basis based on importance for this project, with ten being the most important. If criteria does not apply for the project, use the ECMS defaulted "N/A" weight.

After the weights are established, the consultant project manager must acknowledge the evaluation weights prior to the NTP of parts or the creation of a legal work order.

Insert the corresponding scores upon receipt of a final invoice. Descriptions regarding appropriate values for the scores are shown on the rating description sections of the evaluation form.

When completing the Consultant Evaluation the conduct of the consultant team in regards to meeting schedules, completing work on time, and new ideas brought to the project should be considered.

A general evaluation for each subconsultant must be completed on the prime consultant's final evaluation.

The IO Project Manager completes the evaluation form and submits it to the Portfolio Manager or the ADE for Department Review. If the evaluation is considered acceptable, it is then submitted to the consultant for their review and comments. For "Professional Fees", only designate the range that includes the final invoiced amount for the consultant being evaluated for the Part being evaluated. The completed evaluation must be submitted to each consultant within thirty days of the receipt of an acceptable final invoice. Notification of the completed evaluation will appear in the consultant's work queue. The consultant logs onto the system and submits comments, if necessary, and acknowledges the evaluation. The process is then complete. If the consultant does not respond within fifteen days, the system automatically finalizes the evaluation without comments by updating the status to "Complete".

Complete evaluations remain available for viewing. Authorized PennDOT staff can view all consultant Evaluations. Consultants can only view the Evaluations for their firm.

## **Contractual Violations**

**Major Violations** – this includes the following example:

1. Fraud (intentional modification of data / information without supportive justification intended to deceive the recipient).

Sanction: Any violation calls for immediate debarment procedures.

**Intermediate Violations** – this includes the following as examples:

1. Inspector working without a PennDOT executed wage rate approval letter.
2. Inspector working in a classification for which he does not qualify. Inspector's resume has to support the check box in the Construction Inspection Qualification report – by month/year and specific work activity. Consultant firm needs to be prepared to stand behind the Inspector's qualifications statement.
- 2-3. Inspector working with a missing or expired Effective End Date, as defined in Section 4.3.2.

Sanctions: (Prime Consultant)

First violation within a running two-year period is a written notification of violation and required submission of a corrective action plan by consultant within 30 days.

Second violation (the consultant can only get one violation at a time. Subsequent violations can only be issued on submissions after 30 days from previous violation) within a running two-year period is written notification of second violation and a warning that next occurrence is three-month preclusion from submitting a Statement of Interest as a prime or subconsultant on any PennDOT construction inspection project.

Third violation within a running two-year period is three-month preclusion from submitting a Statement of Interest as a prime or subconsultant on any PennDOT construction inspection project.

Fourth and subsequent violations within a running two-year period are twelve month preclusion from submitting a Statement of Interest as a prime or subconsultant on any PennDOT Construction Inspection Project.

**Minor Violations** – this includes the following as examples:

1. *Substitution made with less qualified personnel.* Substitutions needs to be equal to or better than the resume(s) submitted in the Statement of Interest. Consultant firm needs to be prepared to stand behind the skill set of the substitute.
2. *Working in classification not qualified for.* Inspector must maintain registration/certification for the pay classification for the duration of the project. In the event a certification lapses, the consultant firm must submit a revised, reduced wage rate approval letter for that reduced classification,

noting the future effective date of the rate change. This revised wage rate approval must be executed by the Department prior to the lapse in certification or it is an intermediate violation.

Sanctions:

First violation within a running one-year period is a written notification of violation.

Second violation (a minimum of 30 days after receipt of notification of the first violation) within a running one-year period is written notification of second violation and required submission of a corrective action plan within 30 days.

Third violation within a running one-year period is written notification of third violation and a warning that next occurrence is three-month preclusion from submitting a Statement of Interest on any PennDOT construction inspection project.

Fourth and subsequent violation within a running one-year period is three-month preclusion from submitting a Statement of Interest on any PennDOT construction inspection project.

**Subconsultants**

The prime consultant has the responsibility to manage the subconsultant and conduct a cursory review of the subconsultant employee's resume on its face. (As presented without additional investigation.)

In the event of an Intermediate or Minor Violation, where the violation constitutes an error on its face or subconsultant's inspector is working without a PennDOT executed wage rate approval letter, both the prime and subconsultant are subject to the full sanction. However, if an Intermediate or Minor Violation occurs with a subconsultant that is not evident through a cursory review, including expiration of certifications, the sanctions listed above will be levied in full force to the subconsultant and at a 25 percent rate to the prime consultant (4 violations occur before the sanctions are implemented for the prime consultant).

**Administrative Deficiencies**

Districts are responsible for sending administrative deficiency letters. CO should be cc'd on all correspondence.

Administrative Deficiencies include the following as examples:

- **Justification for substitutions not provided.** The consultant should provide substitutes that are equal to or exceed the qualifications of the staff proposed in the Statement of Interest, as approved by the Department. The consultant must clearly describe the reason for the substitution request and must demonstrate that the substitute is equivalent or better based on one or more of the following:
  - Equal or Higher Pay Grade
  - Or*
  - Total Experience
  - Or*
  - Experience on that Type of Project

On all Open End Agreements, or other agreements when the request for personnel occurs more than two weeks after the anticipated published NTP date, the consultant is entitled, if necessary, to request relief regarding proposed substitutions without prejudice by the Department. The consultant should contact Chief of Contract Management Division, BOPD and request relief in writing.

- **Incomplete/Invalid resume submittal.** Inspector resumes must clearly delineate, by month and year, and specific work activity, the skill set of the Inspector.
- **Incorrect Wage Rates.** Wage rates proposed outside the approved range for the classification.
- **Failure to properly sign and date all required submissions;**

Sanctions:

First violation within a running one-year period is a written notification of violation.

Second violation (a minimum of 30 days after receipt of notification of the first violation) within a running one-year period is written notification of second violation and the required submission of a corrective action plan within 30 days.

Third and subsequent violations – the number and severity of administrative deficiencies will be considered when the Department completes the “Consultant Performance Report.”

## **Appeal Process**

Upon notification of an Intermediate, Minor, or Administrative Violation by the Department, the consultant firm may request an Administrative Review of the particular circumstances of the violation. The consultant has a period of up to 21 working days to request an Administrative Review. This Review will be chaired by the Bureau Director for Project Delivery and be attended by consultant firm, PennDOT Central Office Staff, and ACEC/PA's Executive Vice President. The intent of this Review, while it is not a legal hearing, is to determine the validity of the violation by a third party. If the violation is found to have merit and stand, the consultant firm will be required to accept the designated sanction. If the violation is found to be without merit, the violation will be expunged from the consultant firm's record with the Department. In the event that the consultant is not satisfied with the outcome of the Administrative Review, they may at their option, request a formal hearing.

This Administrative Review process is available to the consultant firm at any point during the sanction process, in order to ensure that the terms of the Contract at issue are clearly understood by both parties.

### Stay in Timeframe

In the event of an Intermediate or Minor Violation, or Administrative Deficiency, and the consultant requests an Administrative Review or formal hearing, there will be a stay in the timeline until the Review process is completed.

