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## CHAPTER 9

### Modification Procedures

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#### In this chapter look for:

- T Modifications to agreements
  - T Procedures for processing modifications
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#### General

This Chapter addresses modifications to consultant agreements. Early identification and processing of modifications is very important in maintaining project schedules. In addition to standard procedures and approval authority, advanced authorization procedures are included that allow the work to proceed almost immediately only when certain conditions are met.

However, under no circumstances should work be authorized either verbally or in writing when a legal contract does not exist. Only the Director is empowered to sign agreements, and Section 127.16 of the Ohio Revised Code provides that any person who authorizes a purchase in violation of the Controlling Board rules shall be personally liable to the State for any funds spent under the contract.

#### Modifications to Agreements

A modification is a legal adjustment to an agreement made necessary as a result of:

1. A change in scope which may require an adjustment of prime compensation;  
or
2. Additionally required services to be performed that may require the adjustment of prime compensation.

In order to justify the need to modify the contract, the Department must determine that the situation meets two criteria:

1. That additional professional services are necessary to complete the work originally contracted for; and
2. That it is in the best interest of the State that the services be performed under the same contract.

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Once the need for a modification is established, the Consultant can be asked to prepare a proposal based on an addition, reduction, substitution or a revision in the complexity, character or duration of the services originally contracted for.

Modifications to Agreements may be initiated in two ways:

1. The District may request a proposal for a modification from a consultant specifying that additional services are to be performed. The request must be in writing, signed by the contract manager and must clearly state the scope of the additional services. If additional clarification is required, the contract manager can arrange a scope of services meeting with the consultant and all involved district personnel.
2. A consultant can, when the firm believes that the scope of the agreement has been exceeded, submit a proposal for modification to the contract manager. The contract manager will either process the request or return the proposal to the consultant with an explanation of his denial of the modification. The consultant can request that the contract manager forward the proposal to the Consultants Committee when there is an unresolved dispute regarding the need for or the extent of the proposed additional services.

### **Procedures for Processing Modifications**

#### **District Allocation Projects**

##### **' Authority to Approve Modifications for District Allocation Contracts**

District Consultants Committees have the authority to approve modifications to consultant agreements for District allocation contracts.

##### **' Procedures for Processing District Allocation Modifications**

The Contract Manager is responsible for processing modifications in accordance with the following procedures:

1. Evaluate the proposal for adherence to the Department's requirements for preparation of modification proposals as stated in Chapter 6 of Specifications for Consulting services. Proposals that do not meet these requirements shall be returned to the consultant for correction.
2. Analyze the proposed fee or other proposed change in the agreement relative to the change in scope of services and provide a recommendation to the District Consultants Committee to either accept the proposal or negotiate the fee (or other proposed changes in the agreement). The Office of Contracts will provide assistance as requested by the District.
3. If required, negotiate the fee or other terms of the agreement and document the outcome of the negotiation.

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4. Identify funds within current agreement parts that will not be used for the original intents and are available for other purposes. The reallocation of currently encumbered funds provides the most efficient use of resources and allows earlier authorization by avoiding additional Controlling Board approval and encumbrance of funds.
  5. Allocate the approved fee to existing contractual parts and note any corresponding reductions or elimination of current contractual fees as described above. Fee type (lump sum, cost plus net fee, etc.) shall be noted.
  6. Forward the approved modification to the Office of Contracts for agreement preparation, Controlling Board approval (if required), encumbrance of funds (if required) and authorization.

The information shall be transmitted by using the standard transmittal IOC which is provided herein and available on the network as O:\other\contract\consult\DistrictForms\DistrictMods\Distamod.wpd. A checklist is included with the IOC.

### **Major New/ Centrally Funded Projects**

Modifications to major new funded projects are processed in the same way except that the District Consultants Committee does not have authority to approve the fee. The Office of Contracts will analyze the proposed fee and any associated District comments and then present a recommendation to the Central Office Consultants Committee.

In the case of a modification to a contract for a major new project, the Contract Manager shall notify the funds manager in central office of the intent and amount of the modification as soon as this information is available to allow the funds manager to plan for the expense.

A checklist and transmittal IOC for Major New/Centrally funded projects is provided herein and available on the network as O:\other\contract\consult\DistrictForms\DistrictMods\Mjrnwmod.wpd.

### **Time Extensions**

The Contract Manager has the authority to grant a time extension for a consultant agreement. These extensions can be given in cases where there is a change in scope of services, a delay caused by the department, or any other justifiable condition. Time extensions which concur with a consultant's delayed schedule are not acceptable.

The following procedure must be used in granting a time extension:

1. The approval of the time extension must be given to the consultant in writing. This approval must be signed by the Contract Manager.

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2. A revised Project Schedule in the Project Monitoring format must be prepared. All required submittals with scheduled submittal and approval dates and review times must be adjusted to reflect the revised completion date.
  3. The consultant must agree to the revised schedule by returning a signed copy of the revised schedule.
  4. Copies of relevant documents must be forwarded to the Office of Project Coordination, the Office of Contracts, and the Central Office Program Manager for Major New Projects.

### **Advanced Authorization to Proceed**

Under certain circumstances a consultant may be authorized to proceed with the work of a modification prior to execution of a formal modification. This can be accomplished through management of the scope of services to avoid a situation in which money owed the consultant exceeds the amount of the agreement. In order to add work that cannot be legally compensated, other work that is included in the agreement must be temporarily deleted. This procedure can be best utilized in the early stages of an agreement when significant funds remain unspent and can be used temporarily for other purposes (the modification).

Advanced authorization **should not** be utilized if the need for the work is not clearly established and **shall not** be utilized for substantial changes in scope of services such as:

1. Adding through lanes to the project
2. Substantially increasing the project length
3. Substantially changing the project location

### **Approval Authority**

Advanced authorizations must be approved by whichever Consultants Committee has approval authority for the modification, either Central Office (Major New) or District (District Allocation).

For District allocation projects the Contract Manager may proceed with the advanced authorization after approval by the District Consultants Committee and concurrently with transmittal of the modification to the Office of Contracts. A copy of the advanced authorization letter shall be included with the documents transmitted to the Office of Contracts. For Major New/Centrally funded projects, the Contract Manager shall include the advanced authorization request with the modification transmittal IOC to the Office of Contracts. The Office of Contracts will seek approval of the Central Office Consultants Committee and issue the advanced authorization after approval.

### **Procedures**

1. The scope of the contract modification must be clearly stated in writing, either within



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## Chapter 9 Appendix

- T Document Listing  
Index of the files in the subdirectory  
O:\Other\Contract\Consult\DistrictForms\DistrictMods\ as follows and a copy of  
each document:

Subdirectory  
distamod.wpd

Brief Description  
Modification checklist for District Allocation Projects.  
Followed by the cover IOC transmitting the  
modification proposal to the Office of Contracts,  
Consultant Services.

Mjrnwmod.wpd

Modification checklist for Major New Projects.  
Followed by the cover IOC transmitting the  
modification proposal to the Office of Contracts,  
Consultant Services.

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