



# Supplemental Agreements: How to Prepare for Contract Changes 2022 PEPS Conference

Gloria Hearn, CTCM

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

December 1, 2022



1

- Contract Structure

2

- Defining the Action

3

- Requesting the Supplemental Agreement

4

- Rules for Supplemental Agreements

5

- Reminders & Best Practices

# Contract Structure



## Specific Deliverable (SD) Contract

- A specific deliverable or project specific contract contains an explicitly identified scope of work defining the provider's responsibilities under the contract, including deliverables, locations, timing, and cost basis.

## Indefinite Deliverable (ID) Contract

- An indefinite deliverable contract contains a general scope of services describing the type of work that will be performed. In an indefinite deliverable contract, actual work assignments are made through work authorizations.

## Summary

- For SD contracts, the Attachments only apply to the project specified.
- For ID contracts, the Attachments contain the base for unspecified projects.

## SD Contract Supplemental Agreements (SA)

- The scope of work, fee schedule, and work schedule are all interrelated. When preparing a SA, the TxDOT PM and the PEPS Contract Administrator (CA) must consider all areas that require an amendment and must accurately and clearly reflect any changes made in each corresponding part of the contract.

# Comparison of Attachments



Attachments	Title
A	General Provisions
B	Services to Be Provided by the State
C	Services to Be Provided by the Engineer
D	Not Applicable
E	Fee Schedule
F	Not Applicable
G	Computer Graphics Files for Document and Information Exchange, if applicable
H	Subcontracting
I	Information Resources and Security Requirements

Attachments	Title
A	General Provisions
B	Services to Be Provided by the State
C	Services to Be Provided by the Engineer
D	Not Applicable
E	Fee Schedule
F	Work Schedule
G	Computer Graphics Files for Document and Information Exchange, if applicable
H	Subcontracting
I	Information Resources and Security Requirements

 **Level of Effort is included in Attachment E**



Deviations from what is outlined in an ID contract only requires the Supplemental Agreement (SA) to include the Attachment reflecting the change if something defined in the ID contract is being added or revised. For example:

### Scope change

- Revised Attachment C, Services to be Provided by the Engineer

### Extension of termination date

- None, as Attachment F, Work Schedule is not included

### Team composition, name changes, or rate escalation

- Revised Attachment E, Fee Schedule
- Revised Attachment H-1 (or HSP)

# Defining the Action



Amend by add: to modify by adding additional information



Delete and replace: to modify, declaring (something written) to be no longer valid





TIME



FUNDS



MISC.



Consultant should monitor the time to termination closely, and communicate the need for an extension to the TxDOT PM early



Consultant will create a revised Work Schedule to show the new timeline for the project.



For SD contracts, the Work Schedule for Work Authorizations should provide more detail than the Work Schedule in the contract



### Time

- Time added should not be less than 6 months

### Justification

- Should explain why more time is needed

### Non-fed

- Extensions of ID contracts apply to Non-Federal contracts only



Maximum amount payable may be increased or decreased, but there are only two reasons that provide adequate justification to **increase** the contract's funds:

- An **increase in the scope of work** only insofar as it falls within the intent of the original scope (of the solicitation for SAs or the contract, for SWAs).  
Tasks must be tied to dollars.
- Resuming work under a contract that has been suspended.  
A contract cannot be amended to add funds unless there is a **corresponding change to the work** being performed.

Consultant must monitor the budget and work schedule to identify early if an SA will be needed.



State's in-house experts attest that the changes are necessary to facilitate successful completion of the project



Subject matter falls within the scope of work that was previously communicated to the consultant in the solicitation it received from TxDOT



A supplemental agreement cannot be used to add services that were not advertised in the solicitation

# Requesting the Supplemental Agreement



Request &  
Negotiate

Submit

Process &  
Execute

# Submittal should include



## Identification of Contract Need (ICN)

## Business Case Memo (BCM)

- A Business Case Memo must be submitted for any agreement valued at \$1 million or more. For agreements less than \$1 million, a District memo must be submitted.

## Risk Analysis Form (RA)

- The TxDOT PM is responsible for evaluating the risks to the contract associated with the changes made to the contract through the SA and for identifying these risks on the Contract Risk Analysis form

## Applicable Attachments





“**Milestones for the project have not been met.** The requested time would allow for weather or unexpected construction delays as well as additional time needed to close out the project.”



“The additional time is necessitated by the **revised project letting schedule** resulting from the new statewide increase of transportation infrastructure funding.”



“Additional time is needed to **redesign the facility** to meet TxDOT design criteria for the proposed design speeds, eliminating the need for design exceptions. Upon further review of the previously approved schematic, **additional services are required to further refine...**”



“These funds are for the work **included in the prolonged construction inspection timeline** for East Roundbunch Road Bridge. A number of work items have yet to be completed due to delays in swing bridge fabrication and inclement weather.”



“This supplemental agreement is necessitated by the needed **plan change and modifications** that were underestimated during the design phase of the project. These various changes are normal for a project of this magnitude, but are difficult to estimate, due to unforeseen changing terrain and adjacent property conditions during the timespan between design and construction.”



“This supplemental agreement will add funds to the contract for needed construction phase services as outlined in work authorization (WA04). The extra funds are needed to **modify traffic control, review shop drawings, facilitate access modifications due to new adjacent businesses, and to answer requests for information from the contractor.**”



“This Supplemental Agreement will delete and replace Attachment C. The current scope for Plans, Specifications, and Estimates (PS&E) does not include the support services required for Subsurface Utility Engineering (SUE) investigation, which was advertised in the contract solicitation.”



“This contract was crafted with the flexibility to meet the District’s changing needs in mind. The ability to alter the composition of the list of projects as circumstances dictate is central to this flexibility. The project replacements are cost-neutral.”



“Function code (FC) 160(163) is needed in order to compensate the consultant for their work prior to letting of the project. The reviews of the original contract and WA01 overlooked the function code incompatibility due to the SD contract primarily being for CEI services after letting.”

# Rules for Supplemental Agreements



5 Years from Execution

Rule of 3

Timing Submittals - Termination  
Extension



OFFICE of the SECRETARY of STATE

## Texas Administrative Code

<a href="#">TITLE 43</a>	TRANSPORTATION
<a href="#">PART 1</a>	TEXAS DEPARTMENT OF TRANSPORTATION
<a href="#">CHAPTER 9</a>	CONTRACT AND GRANT MANAGEMENT
<a href="#">SUBCHAPTER C</a>	CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

### Rules

<a href="#">§9.30</a>	Purpose
<a href="#">§9.31</a>	Definitions
<a href="#">§9.32</a>	Selection Processes, Contract Types, Selection Types, and Projected Contracts
<a href="#">§9.33</a>	Precertification
<a href="#">§9.34</a>	Non-federal Process
<a href="#">§9.35</a>	Federal Process
<a href="#">§9.38</a>	Emergency Contract Process
<a href="#">§9.39</a>	Urgent and Critical Process
<a href="#">§9.40</a>	Negotiations
<a href="#">§9.41</a>	Contract Administration
<a href="#">§9.42</a>	Contract Under a Pilot Program

“Supplemental agreements may be issued to extend the contract period, but only as necessary to complete work on an existing work authorization. The contract period for contracts procured using the process provided by §9.35 of this subchapter (relating to Federal Process) may not extend more than five years beyond the execution date.”



### Procedure for Time Extension for Non-Federal ID Contracts

- PEPS Division Director approval is required
- Justification must be included in the Business Case Memo submitted with the Supplemental Agreement (SA) to the signature authority

### Summary

- Used for contracts procured using the Non-Federal Process (State contracts as indicated in the contract and in PS-CAMS)



## The 3<sup>rd</sup> revision to any attachment

- Attachment must be deleted in its entirety and replaced with new attachment
- Avoids confusion and eliminates ambiguity

## This also applies to Work Authorizations

- Exhibits modified for the 3<sup>rd</sup> time

## Common Issues Avoided

- Invoice rejection
- Extended review time





## Policy

- Supplemental Agreements (SA) and Supplemental Work Authorizations (SWA) will be declined by the PEPS Division Director if submitted within 10 business days of the expiration date of the contract or work authorization
- The Division Director may make an exception if the contract action requires only his signature

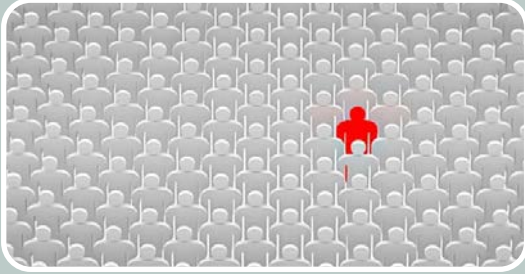
## Sufficient time to Process

- Any SA or SWA submitted without sufficient time for all signature authorities to adequately review the documents may be declined

## Best Practice

- The District or Division must submit the SA or SWA at least 60 business days (8 weeks) prior to the termination date of the contract or work authorization

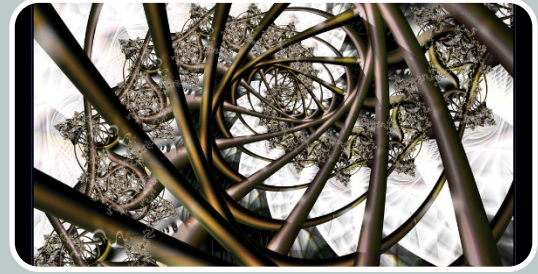
# Reminders & Best Practices



Decisions must  
be tailored to  
unique  
circumstances



Discuss unique  
issues with CSD  
early to  
determine a  
defensible path  
forward



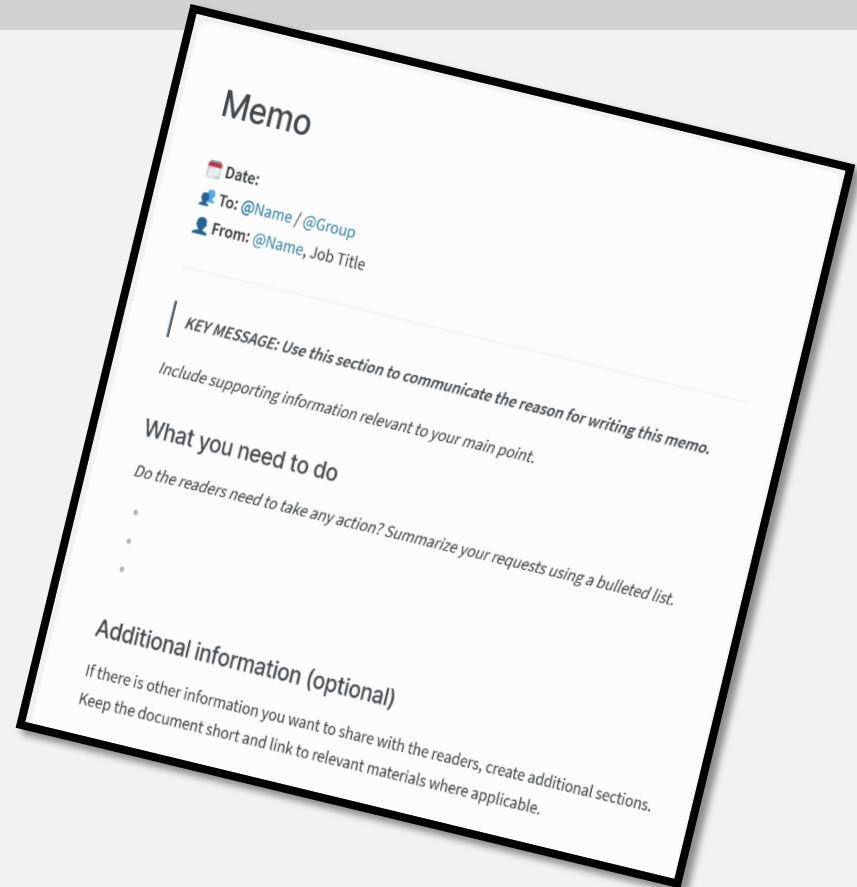
Specific  
Deliverable SAs  
can be the most  
difficult due to  
their complexity



Project managers should provide the purpose, justification, and impacts of non-approval

Justification and purpose are not the same thing

Use resources available





Supplementals cannot substantially change the original contract

Increasing maximum amount payable must benefit TxDOT (see Tex. Const. art. 3, § 44)

Not acceptable to add money or time to the contract to add a new WA

No chaining

Issuing or amending WA might require an SA to update the schedule in an SD contract

# Questions and Discussion






## **Gloria Hearn, CTCM**

TxDOT PEPS Urban Service Center


 [Gloria.Hearn@txdot.gov](mailto:Gloria.Hearn@txdot.gov)

 210-478-6406

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

TxDOT Contract Services Division

 [Dan.Maupin@txdot.gov](mailto:Dan.Maupin@txdot.gov)

 512-416-4665