

# Appendix

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## Appendix A. Public Records

The following are some frequently asked questions about Florida's public records laws, and answers to them:

### **What are public records, and where do I find applicable law?**

Florida's Public Records Law can be found in Chapter 119, Florida Statutes (F.S.). Florida Statutes can be accessed online at [www.flsenate.gov](http://www.flsenate.gov). The State of Florida places high priority on the public's' right to access governmental records. This and related statutes governing access are among the most open in the nation. The Florida Department of Transportation (FDOT), as a state agency, must carefully and conscientiously implement all public records access laws and adhere to the state's open access policy.

The statutory definition of a public record is: "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency" (Section 119.011, F.S.).

FDOT employees and anyone working under contract to FDOT can reasonably assume that most documents that are created, produced, or received (whether in physical or electronic format) in the course of transacting FDOT business are public records.

### **Are any records exempt from public records requests?**

Yes, but the only documents not public records are those covered by a statutory exemption. While exemptions are somewhat scattered throughout Florida Statutes, most statutory exemptions can be found in Subsection 119.07(3), F.S. The following records are exempt from this procedure:

- Financial statements from contractors received in response to invitations to bid or requests for proposals
- Social Security Numbers
- Personal information of Motor Carrier Compliance law enforcement officers
- Information about family members of specified officials

Information concerning ongoing legal proceedings may be exempt. The district counsel should be consulted before fulfilling such requests.

**Procedure No. 050-020-026, [Distribution of Exempt Public Documents Concerning Department Structures and Security Systems Plans](#)**, also exempts records related to structural plans of Florida's infrastructure from requests for public records. The procedure recognizes that many non-FDOT employees such as consultants, local governments and utilities need access to these records. Records custodians must use discretion in these cases and maintain a record of all individuals who received copies of such information.

## **Who can request public records and how are requests made?**

All non-exempt public records are subject to public inspection and/or copying or reproducing by any person, corporation or other legal entity. Section 4 of ***Procedure No. 050-020-026, Distribution of Exempt Public Documents Concerning Department Structures and Security Systems Plans***, explains how such requests are to be handled. To facilitate procedures for accessing public records, the FDOT Central Office, districts and the turnpike enterprise assign a staff member as the “custodian of records.” That person is usually the Office Manager or his/her designee. Inspecting and duplicating of records procedures will necessarily vary by office to accommodate number, type and frequency of records requests and the media format required for reproduction. “Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so at any reasonable time under reasonable conditions and under supervision by the custodian or designee.” (See Section 119.07, F.S., and Rule Chapter 14-0081, Florida Administrative Code (F.A.C.). The custodian of records or her/his designee is responsible for safeguarding and retaining records. All offices have general counsel staff personnel available for advice and direction when legal (or procedural) questions arise concerning records access.

Requests for public records may be oral or in writing, and a custodian of records or designee must provide the response. FDOT employees or persons working under contract for FDOT may, in the course of doing business, ask or be asked for access to records. Such requests can be processed through administrative channels so that they reach the appropriate custodian of records. If an oral request for records is made, the following information should be noted (in writing) by the person receiving the request: date, time, and the specific document/s or information requested. Written requests are preferred because they may be more easily tracked and documented. All records requests must be kept on file for one year. Public records requests must be responded to in a “reasonable time.” A “reasonable time” is not specifically defined and may depend on the size of the request and other factors.

The following examples illustrate a reasonable vs. unreasonable request. A request for e-mails to and from a particular person between January and June 2004 might be a reasonable request; a request for all e-mails of all Department employees for a period of three years might be unreasonable. If the requestor wants these e-mails within an hour, that could be an unreasonable request. Or if he/she wants to take the records elsewhere for copying, that too would be an unreasonable request. The custodian of records does not decide such issues; the appropriate general counsel does.

### **Is there a charge for public records?**

The person (custodian) who responds to a public records request for hard-copy text records will furnish a copy or certified copy of the record/s upon payment of the fee prescribed by law. When no fee is prescribed, charges are 15 cents per one-sided page, size up to 8 1/2 x 14 inches and 20 cents per page for 2-sided copies. The per-page charge for certification is \$1. When the volume or the nature of the request will require more than one hour to complete, time spent after the first hour will be charged at the hourly rate of the person doing the work. Payment is required in advance of producing copies. Subsection 119.07(1) (a), F.S., and Rule 14-1.0081, F.A.C. establish these charges. Additional charges may be determined and charged for oversized documents, for requests that require use of technological resources, or for those requiring extensive clerical and supervisory assistance. The requestor need not copy documents; they may be reviewed at the responsible office. If any documents are selected for copying, the above charges apply.

### **What steps should a Custodian of Records take in responding to a public records request?**

Because public records request will vary from office to office, the records custodian or designee responsible for responding to these requests must be thoroughly familiar with the office and the records management procedures where he/she is working. For example, one district requires that all public records requests be handled by and processed through the district general counsel's office. This is not, however, the procedure in every district. The person responding to a public records request must know the proper internal procedures for the handling of public records requests in his/her district and follow them exactly.

Although the custodian of records or designee may not be required by district procedures to do so, it may be both necessary and prudent to consult with the district general counsel's office to confirm the proper handling of a public records request and to discuss whether or not any statutory exemptions apply to the documents or items requested. All public records must be thoroughly reviewed to ensure that all documents and information that is exempt or confidential is not produced. It is also recommended that the state General Counsel's Office in Tallahassee be contacted to determine if there is ongoing litigation involving or related to the requestor. It is particularly important to know of contractor litigation. It is often a tactic of trial attorneys to obtain documents through a public records request without advising opposing counsel. If, in response to a public records request, documents related to a matter in litigation have been sent as requested, the Department's attorneys will be disadvantaged if they do not also receive copies of these documents.

E-mails are public records, and particular care should be taken when fulfilling public records requests for them. As with other public records, e-mails may contain documents and information that is exempt or confidential. Frequently Department attorneys communicate with employees through e-mail, and care should be taken to ensure that exempt or confidential information is not produced. Any such questionable emails (and other documents) should be discussed with the appropriate general counsel's office.

### **Does the public records law apply to contractors?**

**YES.** Companies and individuals under contract to do work for the Department must comply with public records requests in the same manner outlined above.

**What happens if there is no response to a public records request?**

The Department and the person receiving the public records request are subject to sanctions for failing to comply with Florida's public records law. Misdemeanor fines are imposed upon persons who violate the public records law; a felony can be charged against persons who willfully and knowingly violate the public records law; and the Department is subject to paying attorney's fees and costs incurred in efforts to obtain public records. When in doubt, always check with the appropriate district or other general counsel's office.

## **Appendix B - Acronyms**

AADT	Average Annual Daily Traffic
AASHTO	American Association of State Highway and Transportation Officials
ACM	Asbestos Containing Materials
ACOE	Army Corps of Engineers
ADA	Americans with Disabilities Act
ADE	Area Design Engineer
AICP	American Institute of Certified Planners
AN	Advance Notification
ASCE	American Society of Civil Engineers
ASDB	Adjusted Score Design-Build Bid
ASTM	American Society of Testing and Materials
BATNA	Best Alternative to a Negotiated Agreement
BDR	Bridge Development Report
BHR	Bridge Hydraulics Report
CAC	Citizens Advisory Committee
CADD	Computer Aided Design and Drafting
CAP	Community Awareness Plan
CAP	Consultant Acquisition Plan
CCNA	Consultants' Competitive Negotiations Act
CDR	Conformity Determination Report
CE	Categorical Exclusion
CEI	Construction Engineering and Inspection
CEQ	Council on Environmental Quality
CES	Contracts Estimates System
CFR	Code of Federal Regulations
CIA	Community Impact Assessment
CIPG	County Incentive Grant Program
CITS	Consultant Invoice Transmittal System
CMS	Congestion Management System
CO	Central Office

## **PROJECT MANAGEMENT HANDBOOK**

CPA	Certified Public Accountant
CPAM	Construction Project Administration Manual
CPFF	Cost Plus Fixed Fee
CPM	Critical Path Method
CPM	Construction Project Manager
CQC	Contractor Quality Control
CSM	Congestion Management System
CSD	Context Sensitive Design
CSS	Context Sensitive Solutions
CTQP	Construction Training/Qualification Program
CTST	Community Traffic Safety Team
CUTR	Center for Urban Transportation Research
D-B	Design-Build
DBE	Disadvantaged Business Enterprise
DCA	Department of Community Affairs
DEIS	Draft Environmental Impact Statement
DCA	Department of Community Affairs
DEMO	District Environmental Management Office
DEP	Department of Environmental Protection
DHV	Design Hourly Volume
DOT	Department of Transportation
DRI	Developments of Regional Impact
DS	Design Standards
D/W	District Wide
EA	Environmental Assessment
ED	Environmental Class of Action Determination
EIS	Environmental Impact Statement
EMO	Environmental Management Office
EOR	Engineer of Record
EPA	Environmental Protection Agency
ERC	Electronic Review Comments
ERP	Environmental Resource Permit

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ESAL	Equivalent Single Axle Loads
ESOP	Employee Stock Ownership Plan
ETAT	Environmental Technical Advisory Team
ETDM	Efficient Transportation Decision-Making
FA	Federal Aid
FAA	Federal Aviation Administration
FAC (F.A.C)	Florida Administrative Code
FAR	Federal Authorization Request
FAR	Federal Authorization Request
FASP	Florida Aviation System Plan
FCCM	Facilities Capital Cost of Money
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FES	Florida Engineering Society
FDOT	Florida Department of Transportation
FHWA	Federal Highway Administration
FICE	Florida Institute of Consulting Engineers
FIHS	Florida Intrastate Highway System
FNL	Finish No Later Than
FONSI	Finding of No Significant Impact
FQD	Florida Quality Developments
FRA	Federal Railroad Administration
FS (F.S.)	Florida Statute
FSTED	Florida Seaport Transportation and Economic Development Council
FSUTMS	Florida Standard Urban Transportation Model Structure
FTA	Federal Transit Administration
FTP	Florida Transportation Plan
GC	General Consultant
GEC	General Engineer Consultant
GIS	Geographic Information System
GPS	Global Positioning System

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HOV	High Occupancy Vehicle
IJR	Interchange Justification Report
IMR	Interchange Modification Report
IOAR	Interchange Operational Analysis Report
ISTEA	Intermodal Surface Transportation Act
ITB	Invitation to Bid
ITN	Invitation to Negotiate
ITS	Intelligent Transportation System
LA	Limited Access
LAP	Local Agency Program
LBDB	Low Bid Design-Build Bid
LBR	Legislative Budget Request
LDCA	Location and Design Concept Acceptance
LGCP	Local Government Comprehensive Plan
LOI	Letter of Interest
LOR	Letter of Response
LOS	Level of Service
LRE	Long Range Estimate
LRT	Light Rail Transit
L RTP	Long Range Transportation Plan
LS	Lump Sum
MBE	Minority Business Enterprise
MMS	Maintenance Management System
MOA	Memorandum of Agreement
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MRP	Maintenance Rating Program
MUTCD	Manual of Uniform Traffic Control Devices
NCHRP	National Cooperative Highway Research Program

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NEPA National Environmental Policy Act  
NHS National Highway System  
NIMBY Not in My Back Yard  
NMSA Non-Major State Action  
NPDES National Pollutant Discharge Elimination System  
NTP Notice to Proceed

O&M Operations and Maintenance  
OPP Office of Policy Planning  
OT Order of Taking

PCR Project Concept Report  
PD&E Project Development and Environmental  
PE Preliminary Engineering  
P. E. Professional Engineer  
PER Preliminary Engineering Report  
PIO Public Information Office  
PM Project Manager  
PPM Plans Preparation Manual  
PS&E Plans, Specifications and Estimate  
PSMS Project Scheduling & Management System  
PSU Professional Services Unit  
PTO Public Transportation Office

QA Quality Assurance  
QAP Quality Assurance Plan  
QC Quality Control

RCI Roadway Characteristics Inventory  
RFI Request for Information  
RFP Request for Proposal  
ROD Record of Decision  
RPC Regional Planning Council  
RR Railroad

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RRR	Resurfacing, Restoration and Rehabilitation
RSP	Rail System Plan
R/W	Right of Way
RWMS	Right of Way Management System
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SCOP	Small County Outreach Program
SCRAP	Small County Road Assistance Program
SEIR	State Environmental Impact Report
SEIS	Supplemental Environmental Impact Statement
SHE	State Highway Engineer
SHS	State Highway System
SIS	Strategic Intermodal System
SNE	Start No Earlier Than
SOS	Scope of Services
SOV	Single Occupancy Vehicle
STIP	State Transportation Improvement Plan
SUE	Subsurface Utility Engineering
TAC	Technical Advisory Committee
TCI	Traffic Characteristics Inventory
TCP	Traffic Control Plan
TCSP	Transportation and Community System Preservation Program
TDLC	Transportation Design for Livable Communities
TEA-21	Transportation Equity Act for the 21st Century
TIP	Transportation Improvement Program
TMA	Transportation Management Area
TOP	Transportation Outreach Program
TRC	Technical Review Committee
TRIP	Transportation Regional Incentive Program
TRNS*PORT	Transportation Software Management Solution (ASSHTO's)
TSM	Transportation System Management
TSP	Technical Special Provision
TSP	Transit Strategic Plan

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UAM	Utility Accommodation Manual
UAO	Utility Agency/ Owner
UPWP	Unified Planning Work Program
USC	United States Code
USCG	United States Coast Guard
VE	Value Engineering
VECP	Value Engineering Change Proposal
WIM	Weight in Motion
MD	Water Management District
WP	Work Program
WPI	Work Program Instructions
WZTC	Work Zone Traffic Control

## Appendix C - Agreements

### SECTION 1 - INTRODUCTION

Historically, the Florida Department of Transportation (FDOT) has administered all State Highway System work with its own forces and its own money. Local governments have likewise administered and funded local road work within their jurisdictions. Over time, however, both the Department and local governments have recognized the need to work together and to pool resources. In recent years the Legislature has authorized such cooperation.

Various contractual arrangements are used to accomplish joint projects. They include: Agreements, Special Project Agreements, Utility Agreements and Public Transportation Agreements (for transit, intermodal, rail, aviation and seaport projects). In addition, the Department enters into Joint Use Agreements with private property owners. Such agreements might involve surplus and exchange of real property. It could also be a Drainage Agreement.

### SECTION 2 - AGREEMENTS

Authorized by Section 339.12, Florida Statutes (F.S.), Procedures for the Agreements are contained in **Procedure No. 725-000-005**, [Public Transportation Joint Participation Agreement](#) and **Procedure 350-020-301**, [Financial Provisions for Joint Participation Agreements Non-PTO](#). Contact person would be the District Utility Coordinator.

The Department of Transportation may enter into an Agreement when the Department decides to use state funds to participate with a local government to define a project that is not revenue producing to be done on the State Highway System and to determine the Department's participation. The Agreement will define the scope of work, type of funds to be used and the legal provisions.

Types of Agreements include:

**Landscaping/Beautification.** The Department will provide funding to local governments for plant materials. Of such funds, 50 percent must be for large plant materials and 50 percent for other plant materials. The plants must be purchased from Florida-based nursery stocks except as prohibited by federal law and to the extent practical. Purchase must be a uniform competitive bid. The underlying statutory authority for landscaping is Subsection 334.04(26), F.S.

The local government must agree to maintain the landscaping installed by the project in accordance with the Landscape Maintenance Plan(s). This maintenance will be in accordance with Rule 14-40.003, Florida Administrative Code (F.A.C.). It is important for the District Maintenance Engineer or designee to be consulted on all landscaping Agreements.

**Intersection Improvements.** The Department often provides state funds to local governments to construct intersection improvements on behalf of the Department if the local government's cost is less than that of the Department's and if it would be practical, expeditious and economical for the Department to provide the funds. This situation arises when both the Department and the local government have projects that are under way concurrently at an intersection.

**Design; Construction; Resurfacing, Reconstructing, and Rehabilitation (RRR).** The Department will provide state funds to local governments if the Department feels that the scope of work that the local government will be performing will save the Department time and will help the Department avoid cost increases on the project. Such a situation arises when the Department has included an RRR job on a section of a state road where the local government plans utility or other work that would significantly affect the surface of a state road.

**Drainage Improvements.** The Department will provide state funds to local governments to improve drainage structures within the right of way limits of state roads when the local government undertakes to improve its own drainage system outside the limits of the state road. The Department can realize cost savings because the local government may already have a contractor mobilized or because economies of scale associated with the larger project may result. State funds are used to reimburse the local government for work done to the Department's drainage system located within the right of way and at the point of connection to the local government's drainage system.

**Metropolitan Planning Organization Grants.** The Department will provide state funds to a metropolitan planning organization to provide Departmental assistance to develop Long Range Transportation Plans in accordance with 23 Code of Federal Regulations, Section 450.322, and to assist in transportation studies.

### **SECTION 3 - LOCALLY FUNDED AGREEMENTS**

Authorized by s. 339.12, F.S, Procedures Financial Provisions for the Locally Funded Agreements are contained in FDOT *Procedure No. 350-020-300*. Contact person would be the District Agreement Coordinator.

The Department of Transportation routinely enters into an agreement which requires the deposit of local funds with the Department to use for funding a specific project. The Department may enter into a Locally Funded Agreement when the local government provides/contributes funding to participate on a project that the Department of Transportation will complete. The Locally Funded Agreement will define the scope of work, type of funds to be used and the legal provisions.

Examples of Locally Funded Agreements include:

- **LF Funds.** FDOT lets the contract or does the work and the local government contributes; or the local government lets the contract for doing the work.
- **LFF Funds.** Local funds are used to match federal funds on projects off the State Highway System.
- **LFR.** The local government agrees to perform a highway project or project phase in the Department's adopted work program earlier than programmed in the Work Program System. Or the governmental entity agrees to advance funds to the Department to accomplish a project early, and the local government will be reimbursed in the year that the project was originally programmed in the Work Program System.
- **LFRF.** The Department enters into an agreement with a local governmental to advance a project phase not included in the Adopted Work Program. These are only for right of way, construction, construction inspection and related support phases (PE & design are excluded).

### **SECTION 4 - LOCAL AGENCY PROGRAM AGREEMENTS**

Authorized by s. 339.12, F.S., Procedures for the Local Agency Program (LAP) Agreements are contained in the ***Procedure No. 525-010-300***, [\*Local Agency Program Manual\*](#). Contact person would be the District Special Project Supervisor.

The Department contracts with local governmental agencies to plan, develop, design, acquire right of way, and construct transportation facilities and to reimburse local governments for services provided to the traveling public. When the Department contracts with a local government for reimbursement using federal funds administered by the Federal Highway Administration, the Department will be held accountable to ensure the certified local government complies with all applicable federal statutes, rules and regulations. Local governmental agencies must be LAP certified before entering into a LAP Agreement. For additional information on LAP, see Part II, Chapter 8 of this handbook.

## **SECTION 5 - PUBLIC TRANSPORTATION AGREEMENTS**

Authorized by s. 339.12, F.S., Procedures for the Agreements are contained in ***Procedure No. 725-000-005***. Contact person varies by type of agreement.

Public Transportation includes: rail, aviation, seaport, intermodal, and transit projects. The Department will provide state funds for providing assistance for transportation services. List of contacts are cited below in descriptions.

**Rail Agreements.** Any project that includes new construction, reconstruction, widening and/or resurfacing of a road at or near the right of way of a highway railroad grade crossing or the reconstruction or new construction of a Grade Separation over railroad tracks requires that a contract be negotiated with the railroad. Section 337.11, F.S., requires all Railroad Agreements to be negotiated and signed before a highway construction project is advertised for bid. Rail procedures are also contained in ***Procedure No. 725-080-002***, [\*Rail Manual\*](#). Contact person would be the District Rail Administrator.

**Aviation Agreements.** These agreements ordinarily are not used on roadway projects because they deal primarily with direct aviation-related improvements to air facilities. However, the potential exists for a road project to be impacted by FAA or aviation restrictions. Involvement of the Aviation Manager is critical in this case. The Department will provide state funds to provide financial and technical assistance to Florida's airports in the areas of development, improvement, land acquisition, airport access and economic enhancement. Contact person would be the District Aviation Supervisor.

**Seaport Agreements.** These agreements are similar to Aviation Agreements in that they do not deal with roadway projects. The Department will provide state funds to provide financial and technical assistance to the seaports in Florida. Involvement of the Public Transportation Manager is critical when these agreements are negotiated. Contact person would be the District Seaport Supervisor.

**Intermodal Agreements.** These agreements relate primarily to public transit issues like aviation and seaport agreements. The District Public Transportation Manager needs to be consulted early in the negotiating process. Contact person would be the District Intermodal Supervisor.

**Transit Agreements.** These agreements take the form of a grant of state or federal funds to a local government or provider of public transit services. The District Public Transportation Manager needs to be consulted in the negotiation process should an issue arise. Contact person would be the District Transit Supervisor.

## **SECTION 6. SPECIAL PROJECT AGREEMENTS**

There is no FDOT procedure for these types of agreements. References for each type of agreement can be found in Part III of the [\*Work Program Instruction Manual\*](#). The contact person would be the District Special Project Supervisor. Special Project Agreements include a variety of agreements that are authorized on the basis of individual statutes. These agreements allow the Department to provide funding to local governments.

**County Incentive Grant Program (CIGP).** This program allows the Department to provide grant funding to local governments to improve a transportation facility that is located on the state highway system or that relieves traffic congestion on the state highway system. It is authorized by Section 339.2817, F.S.

**Transportation Outreach Program (TOP).** This program allows the Department to provide funding for transportation projects of a high priority based on the prevailing principles of preserving existing transportation infrastructure, enhancing Florida's economic growth and competitiveness, and improving travel choices to ensure mobility. It is authorized by Section 339.137, F.S.

**Small County Road Assistance Program (SCRAP).** This program allows the Department to provide funding to assist small counties with resurfacing and reconstruction of county roads. It is authorized by Section 339.2816, F.S.

**Small County Outreach Program (SCOP).** This program allows the Department to provide funding to assist small counties in resurfacing and reconstruction of county roads or in constructing capacity or safety improvements to county roads. It is authorized by Section 339.2818, F.S.

**Transportation and Community and System Preservation Program (TCSP).** This program is a 100-percent federally funded grant program for direct congressional funding appropriations. Activities that are funded include planning, implementation and research of transportation, community and system preservation practices. The grant may be administered by the Florida Department of Transportation or by the Division of the Federal Highway Administration. It is authorized by Section 335.093, and Subsections 339.08(2)(j), and 339.155(2)(a) 4., F.S.

## **SECTION 7. UTILITY AGREEMENTS**

Authorized by Sections 337.401 and 337.403, F.S., Procedures for Utility Agreements are contained in **Procedure No. 710-010-050**, [Utility Relocation Agreements](#). Contact person would be the District Utility Manager. The district utility section is responsible for arranging to clear utilities on highway construction projects, for maintaining the Department's project file, and for certifying that utilities have been cleared.

Utility Agreements authorize utility accommodations. These agreements provide for adjusting, relocating, or otherwise accommodating utility facilities on Department right of way. Types of Utility Agreements include:

- Reimbursable
- Non-Reimbursable
- Joint Project
- Lump Sum

## **SECTION 8. ROADWAY ILLUMINATION AGREEMENTS**

Authorized by Section 337.11(14), F.S., there is no procedure for these agreements. Information on such projects can be found in Part III of the [Work Program Instruction Manual](#). The contact person would be the District Traffic Engineer/Designer. The Department will provide assistance to a Utility Owner Agency (UOA) to provide a roadway lighting system using the UOA's poles.

## **SECTION 9. NATIONAL SCENIC BYWAY AGREEMENTS**

Authorized by Section 335.093, F.S., there is no procedure for these agreements. Information on such projects can be found in Part III of the [Work Program Instruction Manual](#). The contact person would be the District Scenic Highway Coordinator. The Department provides funds to local governments to develop scenic byway programs and related projects along roads designated National Scenic Byways.

## **SECTION 10. JOINT USE DRAINAGE AGREEMENTS**

Joint Use Drainage Agreements are often used to accommodate Departmental needs relating to drainage. The joint use agreement form and context varies. Joint use situations can be addressed by way of a real property surplus or exchange agreement. On the other hand, the joint use can be accomplished through settlement prior to or as a part of an Order of Taking within the context of an Eminent Domain proceeding. In this Joint Use scenario, the real property owner whose property is adjacent to state road right of way accepts or treats storm-water drainage from the right of way for the mutual benefit of both the property owner and the Department.

In all situations involving Joint Use Drainage Agreements, the District Drainage Engineer should be directly involved in the negotiation and agreement process.

Typical situations where Joint Use is utilized include the following:

- The real property is located adjacent to or near state road right of way and is encumbered with a blanket easement or is encumbered by historic flow and drainage patterns. In order to develop the property, the land owner approaches the Department to accept and handle the Department's drainage so as to allow development of the property.
- The real property owner desires that the Department allow reconfiguration of or relocation of Department-owned ponds (or ponds over which the Department owns a drainage easement).
- In order to minimize the impact of a taking, the Department agrees to certain restrictions or limitations on how drainage is directed onto an adjacent property. Arrangements vary widely for these situations.

Local governments may request that the Department work with them to allow storm-water retention areas to be reconfigured or relocated to achieve goals of the local governmental agency. Or the Department may approach the local government and offer its help with such reconfigurations or relocations.

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In all these situations, the office of the District General Counsel should be contacted as soon as possible since there are serious and significant legal issues associated with joint use situations.

## **Appendix D - Statutory Authority and Responsibilities of the Department's Project Manager**

### **Fiscal Monitoring**

The role of government has changed from delivering to managing the delivery of products and services. Department management recognizes project managers are not fully equipped to handle this changing role. Project managers must ensure acquired products and services are:

- delivered in a timely manner.
- of the desired quality.
- for a fair and a reasonable cost.

The purpose of this appendix is to provide best practices and guidelines to help project managers better understand these responsibilities. These guidelines apply regardless of the type of agreement (for example, contract, grant, purchase order, memorandum of understanding, and so forth).

Financial accountability is recognized as an enterprise-wide problem by Florida's Chief Financial Officer. Comptroller Memorandum No. 8 (2001-2002) asserts the authority to withhold or offset funds when an agency lacks proper accountability over the use of state funds and/or the delivery of services.

### **Statutory Authority**

In this Handbook the term "Project Manager" is used to identify the individual responsible for enforcing performance of contract terms and conditions. In Florida Statutes, the terms "Contract Manager" and "Department Managers" are used to identify these individuals. Statutory responsibilities are outlined in the following citations:

#### **Subsection 334.048, Florida Statutes (F.S.)**

- "Legislative intent with respect to department management accountability and monitoring systems. The department shall implement the following accountability and monitoring systems to evaluate whether the department's goals are being accomplished efficiently and cost-effectively, and to ensure compliance with all laws, rules, policies, and procedures related to the department's operations:"
- ". . . (5) All department managers shall be accountable for the implementation and enforcement of all laws, rules, policies, and procedures adopted for their areas of responsibilities."
- ". . . Such systems are herein established to quickly identify and resolve problems, to hold responsible parties accountable, and to ensure that all costs to the taxpayer are recovered."

#### **Subsection 287.057(15), F.S.**

"For each contractual services contract, the agency shall designate an employee to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. The

agency shall establish procedures to ensure that contractual services have been rendered in accordance with the contract terms prior to processing the invoice for payment.”

**Subsection 287.057(16), F.S.**

“Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department.”

## **Accountability**

Accountability is accepting the consequences, good or bad, for the outcome of a situation for which one is responsible. Project Managers are accountable for the choices they make and the resulting consequences. This accountability cannot be shared—the project manager has the “ultimate responsibility.”

**Management accountability** is the expectation that managers are responsible for:

- the quality and timeliness of program performance.
- increasing productivity.
- controlling costs.
- mitigating adverse aspects of department operations.
- assuring that programs are managed with integrity.
- compliance with applicable laws and regulations.

The purpose of management accountability is to ensure effective organizational and decision-making structures.

**Program accountability** is ensuring that programs and services are relevant and responsive to current needs and achieve the desired results.

**Financial accountability** is ensuring that moneys are spent wisely and in conformity with the law.

## **Project Manager Responsibilities**

The project manager must ensure that the acquired product is of the desired quality, and delivered in a timely manner at a fair and a reasonable rate.

Project managers must have professional skepticism—an attitude that includes a questioning mind and a critical assessment. Professional skepticism requires the project manager not to assume that contractor is either honest or dishonest but rather to base his or her assessment on available information.

Contract monitoring is an involved, interactive, and proactive activity. While the contractor/consultant has responsibility to perform under the terms of the agreement, the project manager has responsibility to reasonably and objectively evaluate the contractor's/consultant's performance. Effective monitoring can assist in identifying and reducing fiscal or program risks as early as possible, thus protecting public funds and ensuring the delivery of required services.

Typical responsibilities of the contract manager are as follows:

- Develop and write a clear, concise, detailed description of the work to be performed.
- Review the draft contract for contract provisions, scope of work, technical requirements, completion dates, benchmarks, timelines, estimated quantities, dollar amounts, and final product.
- Ensure compliance with all federal or special regulations.
- Ensure that funding is available and the contract is encumbered in conformance with statutory provisions.
- Notify the contractor to begin work.
- Maintain all contract documentation.
- Monitor the contract to ensure compliance with all contract provisions:
  - Monitor progress of work to ensure that services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract: for example, review progress reports and interim products.
  - Ensure that all work is completed and accepted by the department before the contract expires.
- Assess and request amendments, renewals or new contracts as required. Allow sufficient time to process and execute such changes before the contract expires or funds are depleted in order to prevent a lapse in service.
- Review and approve invoices for payment to substantiate expenditures for work performed and to prevent penalties being assessed.
- Monitor contract expenditures to:
  - Ensure there are sufficient funds to pay for all services rendered.
  - Identify low spending levels and consider partial disencumbrance and reassignment of funds.
- Notify appropriate personnel of equipment purchases, if applicable, and ensure property is tagged and inventoried before approving cost reimbursement.
- Monitor use of Disadvantaged Business Enterprise (DBE) subcontractors and suppliers to ensure attainment of approved contract participation goals.
- Verify that the contractor has fulfilled all requirements of the contract before approving the final invoice.
- Identify and approve the final invoice, as appropriate, and forward it for payment.
- Complete the contractor evaluation.
- Approve the final products or service.

## **Contract Cost Analysis**

When appropriate, project managers should perform a cost analysis for proposed contract terms. Cost analysis is the review and evaluation of the separate cost elements and profit in a contractor's proposal including:

- Cost or pricing data.
- Information other than cost or pricing data.
- The application of judgment to determine how well the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

## **Reviewing Invoices**

The contractor/consultant should submit documentation evidencing the delivery of services prior to the payment request, regardless of the method of payment. The project manager's responsibilities include verifying:

- The payment request billing period agrees with documentation submitted.
- Amount(s) invoiced are in accordance with the contract for the goods/services received.
- Services were rendered within the terms of the agreement and were satisfactory.

Project managers must review invoices to ensure that costs are reasonable, allowable and necessary. Invoices must be reviewed and paid promptly in accordance with statutory provisions (Section 215.422. F.S.).

A cost is **reasonable** if, in its nature or amount, the cost does not exceed that which would be incurred by a prudent business person in the conduct of a competitive business. In determining reasonableness of a given cost, consideration shall be given to:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the state or federal award.
- The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; state, federal and other laws and regulations; and terms and conditions of the state or federal award.
- Market prices for comparable goods or services.
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the state or federal government.
- Significant deviations from the established practices of the governmental unit which may unjustifiably increase the state or federal award's cost.

A cost is **allowable** if it is expressly provided in regulatory or contractual provisions. The Department may refuse to allow costs incurred by contractors that are unreasonable in amount or contrary to public policy.

A cost is **necessary** if it is required to meet the terms of the contract.

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The supporting documentation of agreements must be reviewed to give the project manager reasonable assurance that services have been completed.

<b>Type of Contract</b>	<b>Payment Verification Actions</b>
Fixed Unit Rate	Verify that invoice provides unit description and unit price.  Compare units of service to supporting documentation during monthly billing period.  Verify that rate billed coincides with agreement rate.
Fixed Price	Verify amount requested with the agreement.  Review supporting documentation and determine if minimum performance standards are met.
Cost Reimbursement	Verify that expenditures are:  Allowable in the agreement budget  Allowable pursuant to other rules and regulations.  Directly related to the scope of work.  Reasonable.  Within the agreement period.  Documented.  Verify minimum performance standards are met and apply sanctions as needed.
Combination Contracts	Apply above criteria for appropriate combination.

**Problems**

There are a number of resources available to assist project managers when problems arise. As appropriate, project managers should include their supervisor, District Financial Services Staff, Office of Comptroller, Office of Inspector General, Office of General Counsel, or other office in the resolution process.