



# Municipal Technical Advisory Service

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Dear Reader:

The following document was created from the MTAS electronic library known as MORE. This online library is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MORE material.

Sincerely,

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## Step 8: Negotiate the Contract

Reference Number: MTAS-697

### **Scope of Services**

As soon as possible after selecting the top-ranked firm, the owner (as represented by the chief administrative officer of the city) should begin negotiations with that firm. The entire selection committee generally is not included in contract negotiations. However, one or two members of the selection committee may participate in contract negotiations. The objective here is for the owner and the firm to clarify needs and expectations and to jointly define the scope of the project, the scope of professional services required and the contract.

This gives the owner access to the advice and expertise of the top-ranked firm in revising the proposed scope of work. A detailed and comprehensive scope of services to be provided by the firm should be developed jointly by the owner and the design professional. This often is accomplished through one or more meetings and leads to the development of contract language and a work plan. The work plan should list the consultants to be used, the roles and responsibilities of all members of the design team, and the owner's roles and responsibilities.

### **The Fee**

After the owner and design professional have agreed upon a scope of services, the design professional submits a detailed fee proposal to the owner. If the proposed fee is more than the owner budgeted, the owner and design professional work together to modify the scope of services. This process makes both parties aware of known limitations and problems on the front end. This type of teamwork greatly enhances the working relationship and project outcome.

There are several methods of computing fees for engineering services.

- Salary cost times multiplier plus direct non-salary expense. Salary costs are direct salaries plus fringe benefits. Non-salary expenses must be defined, but they may include travel expense, telephone expense, computer-related costs and so forth. The multiplier is a negotiable value. A common range of multiplier values is 2.0 to 3.0. The purpose of the multiplier is to cover overhead costs, contingencies and profit. This method of compensation is used frequently. It provides protection for the design professional when the scope of services is not well defined. However, it also is used for projects where the scope of services is well defined.
- Per diem. Per diem normally refers to a day's work of eight hours. This method of compensation is well suited for short-term engagements such as expert witness services, consultation, inspection and presentations. It also is used for studies and investigations where there is no well-defined scope of services.
- Cost plus fixed fee. Under this method, the design professional is reimbursed for costs, which include salary, overhead and direct non-salary expense, and a fixed fee. The fixed fee covers contingencies, readiness to serve and profit. The amount of the fixed fee depends on the size and complexity of the project and the scope of services.
- Lump sum. This method of compensation frequently is used for projects where the scope and complexity of the project are well defined. (e.g., studies, investigations and basic services).
- Percentage of construction cost. Compensation for professional services as a percentage of construction cost has been widely used. Some state and federal grant agreements provide percentage of construction cost guidance on engineering fees. However, there often is not a direct relationship between the professional's costs and the project construction costs.

If an agreement on the project scope, the services required, the fees, and the contract form cannot be reached, the owner may terminate negotiations with the top-ranked firm and begin talks with the second-ranked firm. However, normally it is not difficult to reach an agreement, since the QBS process facilitates an early understanding of the project scope and of professional requirements.

After making the selection, notify the interviewed firms about the results (A-13: Memo to Firms Interviewed and Not Selected [1]). Again, it is important to keep scoring sheets in a safe place and available for public viewing upon request.

**Other Essential Contract Elements**

The contract should be a written agreement. The two parties may wish to use standard forms of agreement, which are time tested, widely used, and drafted to fairly protect the interests of the owners and design professionals. A commonly used standard form of letter agreement between owner and engineer for professional services is available from the Engineers Joint Contract Documents Committee, issued and published jointly by the National Society of Professional Engineers, the Consulting Engineers Council and the American Society of Civil Engineers. The contract forms can be accessed at the American Society of Civil Engineers website at [www.asce.org](http://www.asce.org) [2].

Owner-engineer contracts should contain

- Effective date of agreement
- Names, titles, descriptions and addresses of parties to the agreement
- The name, description, nature, extent and character of the project; its location and time limitations
- Specific scope of services to be rendered by the engineer
- Specific services to be rendered by the owner
- Schedule of work including start date, milestones and finish date
- Names, titles and addresses of any subcontractors to the contract
- The amount of compensation and payment procedures
- Provisions for changes in the scope of services and payment
- Provisions for dispute resolution
- Insurance to be provided by the engineer
- Ownership of the contract documents
- Termination procedures — the reasons, required steps and compensation for work done

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**Links:**

[1] <http://mtasresource.mtas.tennessee.edu/reference/13-memo-firms-interviewed-and-not-selected>

[2] <http://www.asce.org>

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