



**Policy Title: Directive 1C-4 Extra Compensation Authorizations**

**Responsible Office: Design & Construction**

**Last Revised Date: March 2024**

DIRECTIVE 1C-4

Issue date: March 2024

## EXTRA COMPENSATION AUTHORIZATIONS

### 1. General

- a. An Extra Compensation Authorization (ECA) letter from the Fund authorizes the Consultant, to provide extra services in accordance with the [Consultant's Agreement](#) in exchange for agreed upon compensation. This Directive does apply to Purchase Orders, Lump Sum Agreements, Commissioning Agreements, Construction Manager Agreements, and other forms of Agreement as specifically indicated in the individual agreement. The authorized ECA supersedes the Consultant's proposal. Extra services include those not covered as basic services within the Agreement and, where applicable, Schedule B, and Program Directives, or where a significant change to the basic services is requested by the Fund. Services may be performed by the Consultant and/or its approved subconsultants, other consultants, contractors, testing laboratories and/or other firms.
- b. The Consultant shall not perform extra services unless it receives prior written authorization from the Fund. To avoid schedule delays, the Consultant must anticipate the need for extra services and provide timely notice of such a need.
- c. The Consultant shall be familiar with its Consultant's Agreement related to ECAs and payments thereof.
- d. The Consultant shall manage and coordinate the extra services with the Fund, the subconsultant(s), the Campus, Contractor(s), testing laboratory, etc. to insure its timely and satisfactory completion.

### 2. Basic Procedure for the Consultant's Proposed ECA

- a. Generally, a proposed ECA will be broken down into separate parts based on: Each service provider and a description of its services; the method by which the service provider(s) will be paid; and related costs. **The breakdown of services in the Consultant's proposal should be at the same level of detail needed for billing for the services.** The proposed ECA should align with the breakdown requirements described in the "Direct Labor Method" and "Actual Cost Method" in



the “Payment” section below. A proposed ECA should not be submitted on a lump sum basis without providing detailed breakdown of tasks, personnel, hours and hourly rates.

- b. The Consultant may propose to perform ECA services themselves; propose to have a previously approved subconsultant perform the work; and/or propose that the services be performed by a firm that is not a previously approved subconsultant for the project. If the extra services require engaging a firm that is not a previously approved subconsultant for the project, then the Consultant should seek a qualified NYS approved MBE or WBE firm to provide these services.
- c. When the Consultant will perform the ECA services by itself and/or with a previously approved subconsultant, the Consultant shall submit a written request to the Fund containing the following:
  - 1) A description of the proposed services, a justification for why the services are required and their ultimate objective.
  - 2) A justification to support that the proposed services are not considered part of basic services.
  - 3) An itemized breakdown of the services and their proposed costs by task, hours, personnel, hourly rates, unit costs applicable to technical services (i.e. sampling, testing) and special reimbursable expenses (i.e. photos, equipment, special printing). Subdivide the proposed tasks to limit the hours proposed for any task to eight (8) hours or less for each assigned person. Payment for special reimbursables can only be made if they are authorized in the ECA. Proposed hours for one day’s services should not exceed eight (8) hours unless the person performing the services receives compensation for time worked beyond eight hours per day and when approved by the Fund.
  - 4) Reimbursable expenses not listed in the Fund’s “*Bulletin on Payment of Consultant Fees*” (printing, photography, equipment rental, etc.) should be included in the Proposed ECA. Payment for these special reimbursables can only be made if they are specified in the ECA request. Requests for payment of these expenses should reference the ECA. (See [Consultant's](#)



[Agreement](#)). An exception would be when all associated reimbursable expenses can be defined as part of a per unit cost rate.

- 5) A justification of the reasonableness of the proposed cost and, or the rationale for selection of a subconsultant, contractor or vendor.
  - i. A sample breakdown of the major service components and labor is shown below:

Tasks/Phase		Principal	Engineer	CAD Tech	Totals
<b>No.</b>	<b>Item</b>	\$40*	\$29.55*	\$22.67*	
<b>1</b>	Prepare calculations (describe in detail)	1.0	6.0		7.0
<b>2</b>	Develop design concepts (describe in detail)	2.0	12.0	37.5	51.5
<b>3</b>	Review Meetings (specify location)	4.0	4.0		8.0
<b>Labor Totals</b>		<b>7.0</b>	<b>22.0</b>	<b>37.5</b>	<b>66.5</b>
Direct labor cost (Consultant only – subconsultants should use their billing rate)		<b>\$280.00</b>	<b>\$650.10</b>	<b>\$850.12</b>	
Overhead multiplier (Consultant only – subconsultants should omit this line since the cost is covered in their billing rate above)		2.5*	2.5*	2.5*	
<b>TOTAL FEE</b>		<b>\$700</b>	<b>\$1,625.25</b>	<b>\$2,125.31</b>	<b>\$4,450.56</b>



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\* Use the multiplier in Schedule B of the Agreement where applicable. The pay rates in the ECA request should align with the breakdown requirements described in the "Direct Labor Method" and "Actual Cost Method" in the "Payment" section below.

The breakdown should reflect an itemized description of the identifiable segments of services with the corresponding estimate of hours, personnel and their direct labor rate. Direct labor costs are as defined in Section IV of the Fund's "Bulletin on Payment of Consultant Fees".

The direct labor subtotal times the overhead multiplier allowed per the Consultant's Agreement (e.g. 2.50 or 150% or as identified in Schedule B), yields the estimated total maximum labor cost. For Site Representative(s), the overhead multiplier allowed shall be per the Consultant's Agreement (i.e.: 1.4 or 40%).

- ii. In addition to its own breakdown, the Consultant shall provide breakdowns of the costs for all subconsultants in the above format, regardless of whether or not the manner of payment of the ECA is based on a lump sum or a not-to-exceed amount. The Consultant's proposal should incorporate and summarize the costs proposed by the subconsultants.
- iii. For the unit cost method, a sample breakdown of the major work components and labor is shown below:

Not to exceed fee based on the following						
			units	unit description	unit price	line total
Mobilization / onsite meeting			4	hours	\$50	\$200
Sampling			50	each	\$10	\$500
Testing	PCM		25	each	\$15	\$375
	TEM		25	each	\$35	\$875
Document test locations and results			12	hours	\$50	\$600
Post report onsite meeting			6	hours	\$50	\$300
					Total, not to exceed	\$2,850
Unit prices above include all associated reimbursable expenses.						
10% override fee for subconsultant work*						285
Total including the override fee						\$3,135



\* Unless approved by the Fund, an ECA Proposal should not include the 10% when the consultant includes their own personnel as part of the ECA.

Since the sampling and testing units above are estimated as an allowance for bidding, it would be reasonable to add a 10% contingency to the estimate for each unit total to permit field adjustment of the quantities without requiring modifications and revisions to the proposal and the ECA (e.g., Sampling estimate is 45 locations but was rounded up to 50 in the above example.)

3. Optional Methods: When directed by the Fund, the Consultant will utilize one of the two methods below to engage a firm to provide the ECA services.
  - a. Three (3) Quote Method: For services that do not require a professional license, the Consultant must solicit proposals/quotes from a minimum of three (3) subconsultants, contractors or vendors. The Consultant shall review the proposals for accuracy and completeness and determine if the low bidder meets the requirements of the scope of work and if the proposal is fair and reasonable. The Consultant will provide the Fund with copies of all proposals within the ECA request.



- b. One (1) Quote Method: If the estimated total cost of the services is less than or equal to \$200,000, the Consultant may submit one (1) proposal/quote from a single NYS approved MBE or WBE firm without having to obtain three (3) proposals/quotes. The Consultant must determine the fair and reasonableness of the proposal/quote, and provide the Fund with justification to support that determination.
- c. Regardless of the method chosen, the Consultant must provide a draft RFP to the Project Coordinator for review and approval prior to issuance. The RFP must include the following;
- 1) The nature and description of the scope of work and deliverables.
  - 2) Insurance requirements. For contractor work, testing services, and other building services required during design and construction administration, require insurance for Worker's Compensation, Disability Benefits, Business Automobile Liability and Commercial General Liability to match the Fund's Construction Agreement, Article V.
  - 3) The due date for proposal submission and schedule for completion of work. Allow two weeks from the Fund's receipt of a complete ECA request to provide approval to proceed.
  - 4) For Proposals based upon unit costs, the Consultant shall provide a specific estimate of quantity allowances and locations for each bidder to use.
- d. The Consultant will coordinate field work with the Campus (i.e. Physical Plant staff). The Consultant will identify if services must be provided during premium time (evenings, weekends or Holidays) and include this cost in the proposal.
- e. Provide a timely review of proposals and submit a proposed ECA expeditiously to the Fund as required, adhering to the program schedule.
- f. Depending on contract type, the Consultant can be paid based upon the actual cost of the service plus 10%. The 10% markup allowance on proposals compensates the consultant for the time to prepare the RFP, solicit firms, evaluate proposal(s), recommend action to the Fund and coordinate the work of the ECA. The cost for field time associated with observing conditions exposed, verification



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of sample locations, etc., may be excluded from the 10% markup allowance. Three exceptions include:

- 1) Where field supervision is desired, such as for geotechnical drilling and hazardous material sampling, the Consultant’s field time will be paid for in addition to the 10% override. An example based on the sample unit price breakdown above is:

Actual cost, not to exceed	\$2,850		
10% override fee	\$285.0		
Maximum cost, actual cost plus 10%	\$3,135		
Estimated labor for onsite supervision:			
personnel	hours	hourly rate	line total
Engineer	10	\$ 29.55	\$ 295.50
Architect	4	\$ 32.50	\$ 130.00
Subtotal of direct labor cost			\$ 425.50
150% multiplier			\$ 638.25
Total labor cost			\$ 1,063.75
Total, actual cost plus labor cost,			\$ 3913.75

- 2) In rare cases, where significant documentation is required, the Consultant may be paid to prepare an RFP based on the actual bid cost plus direct labor rates plus 150% (time and material basis) and the 10% mark up will not be paid. In this case the Consultant must justify the need for significant documentation and the effort required to prepare such documentation. The Fund prefers the most efficient means of creating an RFP, such as the use of standard AIA forms, unit prices with a reasonable approximation and location of quantities, etc. Using these efficient means of creating the RFP keeps the level of effort within the compensation provided by the 10% mark up.
- 3) Contracts where the cost of the testing and additional services is included as allowance in the fee.

**4. ECA Setup and Payment**

- a. Payment for the additional (extra) services will be based on one of three setup methods; lump sum cost, the Consultant’s direct labor cost or the Sub-consultant’s



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actual cost. **The Fund will choose the payment method(s) so the Coordinator must be consulted during the ECA setup.** A single ECA may utilize multiple methods and therefore could be broken down into multiple parts.

1) Lump Sum Method

- i. ECA Setup: Lump sum is the preferred method when the scope of work can be reasonably defined and quantified and the amount is deemed to be fair, reasonable, and comparable to costs for similar work. The authorized lump sum amount will include the 10% markup to the Consultant if work is performed by a sub-consultant and a markup is authorized to be paid to the Consultant.
- ii. ECA Billing: The total amount of work to be performed will be billed based on the percentage of work completed. The signed acknowledgment of the ECA must be received by the Fund before payment can be made.

2) Direct Labor Method

- i. ECA Setup: The Direct Labor Method is used when the work to be performed is provided by the Consultant only. The Direct labor Method is the preferred method when the services cannot be adequately defined but only estimated due to some inherent uncertainty associated with the services. The total amount of work to be performed is authorized as direct labor plus the Consultant's multiplier (as defined in the Consultant's Agreement), with a not-to-exceed amount that is determined to be fair, reasonable, and comparable to costs for similar work. The work to be performed will usually be identified as a single not-to-exceed amount (line) on ECA Schedule of Additional Services – Attachment A. However, if appropriate, additional not-to-exceed amounts (lines) may be included at the discretion of the Fund.
- ii. ECA Billing: The Consultant will bill based upon their actual direct labor cost, in accordance with the Agreement. Payment will require breakdown by names, titles, direct labor rates, overhead multiplier, and dates worked. The total amount for each ECA line may not be





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exceeded but the actual staff used during the services may vary from the names and hours originally estimated.

- 3) Actual Cost Method
  - i. ECA Setup: The Actual Cost method is used when the work to be performed is provided by a sub-consultant, person, firm or corporation other than the Consultant. It is supported by specified per-unit costs originally contained within a proposal. The per-unit costs proposed by a sub-consultant as well as the total not-to exceed amount, must be considered to be fair, reasonable, and comparable to costs for similar work. The work to be performed should be broken down into separate ECA lines with separate per-unit rates, unit types (hourly rates by staff or common staff pay rate, cost per test, cost per day, cost per foot, etc.) and expected quantities. It should be the exception that an actual cost method will be created with a quantity of "1". While quantities billed against an actual cost line item may vary from those authorized in ECA Schedule of Additional Services – Attachment A, the billing rates shall not vary from those authorized.
  - ii. ECA Billing: The Consultant will be paid based on their actual costs, supported by an invoice from the firm performing the work, in accordance with the approved ECA. The invoice should be at the same level of detail as authorized on the ECA Schedule of Additional Services – Attachment A. For example, if the ECA authorized 20 tests at \$50 each, and the sub-consultant is billing for 10 tests, the invoice should read "10 tests at \$50" with an extended total of \$500. For a given ECA, the total billed for all lines using the actual cost method may not exceed the total aggregate amount authorized for all of the actual cost lines.
- b. Follow all procedures in the *"Bulletin on Payment of Consultant Fees."*
- c. Timecards documenting direct labor costs may be requested to show that the work occurred after the effective date of the ECA. Do not submit timecards unless requested to do so.



- d. Special reimbursable expenses explicitly listed in the Fund's ECA letter are reimbursed as part of the ECA. Attach receipts and invoices for special reimbursables.
- e. Reimbursable expenses (i.e. travel, lodging, and telephone) will be reimbursed similar to basic fee reimbursable expenses. If the Consultant lists these reimbursable expenses in their proposal, those expenses will not be included in the Fund's ECA but paid similar to a basic fee reimbursable expense. Exception: Reimbursable expenses can be included in the ECA as part of the per-unit cost rate of the item of work and the Consultant shall so state this in the ECA proposal.
- f. ECAs that require acknowledgement by the Consultant cannot be paid until the countersigned original requested in the ECA letter is returned to the Fund (PDF copies are acceptable).
- g. Payment will be made upon completion and acceptance of services authorized under the ECA. Progress payments may be requested monthly.
- h. The direct labor cost of field labor for survey and construction activities shall be consistent with the NYS Prevailing Wage Rates Schedule.
- i. Consultant contracts with its subconsultants and all others shall include prompt payment for work or services completed under Fund-authorized ECAs.

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