Double vertical lines in the margin indicate areas of material change since the October 1997 edition.

CHAPTER 4

DESIGN PROFESSIONAL SERVICES FOR PROJECTS OF STATE AGENCIES AND DEPARTMENTS, POSTSECONDARY EDUCATION, PSCA, AND SIMILAR AUTHORITIES

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A. APPLICABILITY of CHAPTER

Chapter 3 addresses the requirements of architects and engineers in the preparation of project drawings and specifications. This chapter sets forth requirements and procedures relating to the employment of design professionals for projects supervised and administered by the Technical Staff. The types of projects to which this chapter applies include:

- $ State Agencies & Departments
- $ Postsecondary Education
- $ Public School & College Authority (PSCA)
- $ Alabama Building Renovation Finance Authority (ABRFA)
- $ Alabama Corrections Institution Finance Authority (ACIFA).
- $ Alabama Mental Health Finance Authority (AMHFA)
- $ Other "authorities" established by legislative acts to fund specific construction or improvement programs and which are assigned by the legislative act to the

ABC for administration and supervision.

B. REQUIRED EMPLOYMENT of DESIGN PROFESSIONALS

The Awarding Authority of a public construction or improvement project that is to be supervised and administered by the ABC shall employ the services of registered architects and engineers in accordance with Title 34, Chapter 2 - Architects and Chapter 11 - Engineers and Land Surveyors, Code of Alabama 1975. An architect or architectural firm shall be employed as the primary design professional to design and observe the construction or improvement of a building or facility. An engineer or engineering firm specializing in a certain discipline of engineering may be employed as the primary design professional when the primary purpose and design of the project is within the specialty of the engineer or engineering firm and architectural design is incidental to the overall project design.

FULL PROFESSIONAL TEAM: The primary design professional shall employ the services of consulting engineers, and consulting architects in the case of an engineering project, so as to provide a full professional team as dictated by the disciplines of architectural and engineering design involved in the project. Designs of structural, mechanical, electrical, and other specialized phases of engineering shall be performed by or under the supervision of professional engineers registered in Alabama (See Chapter 3 for exceptions involving "incidental work"). The consultants selected by the primary design professional are to be named in the O/A Agreement and are, therefore, subject to the approval of the Awarding Authority and ABC. The consulting engineers named in the O/A Agreement are not to be changed without the written consent of the Awarding Authority.

C. PROCEDURES for SELECTING DESIGN PROFESSIONALS

The ABC's recommended procedures for selecting a primary design professional are contained in Appendix D. These procedures are recommended for use by all Awarding Authorities of the state in their selection of design professionals.

D. FORM of AGREEMENT for DESIGN PROFESSIONAL SERVICES

ABC Form B - 2: AGREEMENT BETWEEN OWNER AND ARCHITECT
ABC Form B - 2A: STANDARD ARTICLES of the AGREEMENT BETWEEN OWNER AND ARCHITECT
ABC Form B - 4: AMENDMENT to AGREEMENT BETWEEN OWNER AND ARCHITECT

The form of agreement to be used in contracting for design professional services for projects supervised and administered by the Technical Staff consists of ABC Form B-2: Agreement Between Owner and Architect (the "Agreement form") and ABC Form B-2A: Standard Articles of the Agreement Between Owner and Architect (the "Standard Articles") ~~and~~ ABC Form B-4: Amendment to Agreement Between Owner and Architect is to be used when an executed agreement is to be modified. These uniform documents are contained in Appendix B and are available from the ABC's Web site (www.bc.state.al.us) where forms requiring insertion of information can be completed

"on-line". The Standard Articles are incorporated into the Agreement form by reference and do not need to accompany an Agreement form that is being circulated for approvals and signatures.

The Agreement form and the Standard Articles are to be reproduced from the samples contained in Appendix B or printed from the ABC's Web site. The form of Amendment to the O/A Agreement may be retyped as long as the format and information are not changed.

It should be noted that the language of the Standard Articles is designed to be used by both the ABC and the SDE; therefore, the Standard Articles contain references to requirements and procedures of both the ABC and the SDE, either or both of which can apply. It is incumbent upon the design professional to ascertain at the outset which requirements and procedures apply and proceed accordingly.

E. MANDATED FEATURES of the O/A AGREEMENT

The following features of the O/A Agreement are mandated by the rules of the Commission and are not to be modified or omitted without specific approval of the Director.

1. PROJECT BUDGET

The Agreement form provides for the insertion of an agreed amount that is budgeted for the cost of the planned construction or improvement work, Cost of the Work. This amount shall not only establish the project budget, but shall also be the basis for establishing the basic fee to be paid the primary design professional. The project budget may be a fixed, lump sum amount or it may be an amount that is tentative pending development of design and cost estimates by the design professional. If the project budget is tentative, the budgeted amount shall be validated by the design professional or mutually adjusted by the contracting parties prior to advertising the project for bids.

2. BASIC FEE

The "Basic Fee" to be paid for design professional services is defined as that fee which will be paid to the design professional for providing the Basic Services, which are defined in the agreement. The Basic Fee may be a Fixed Fee (lump sum amount) or an amount to be determined by a Basic Fee Rate as a percentage of the actual Cost of the Work. Section F of this Chapter discusses negotiation of the Basic Fee and establishing other fees when the design professional is to provide services which differ from the Basic Services of the Standard Articles.

The Basic Fee shall not exceed an amount that would be determined in accordance with Chapter 4 Supplement, Determination of Basic Fee or Basic

Fee Rate for Design Professional Services.

3. COST OVER-RUNS

If the lowest responsible and responsive bid received by the Awarding Authority is greater than the project budget; the design professional will, upon instructions from the Awarding Authority, make revisions to the plans and specifications as may be necessary to re-bid the project within budget, or a higher amount as may be authorized by the Awarding Authority. The design professional shall be reimbursed for revising the plans and specifications where the bid over-run is up to 10% of the project budget. If the bid over-run is greater than 10% of the project budget, the design professional will revise the plans and specifications to conform to the project budget at no cost to the Awarding Authority. However, such redesign at the design professional's expense is required only if, **(1)** the Awarding Authority has received bids for the work within 90 days after final approval of the plans and specifications and **(2)** the reason that the over-run exceeds 10% of the project budget is not attributable to a unique or unexpected market condition which the design professional would not have reasonably contemplated in its estimates of the cost of construction.

4. SUBSEQUENT DUPLICATION

The Standard Articles contain a provision which discounts the Basic Fee of future O/A Agreements if the future agreements involve substantial duplication of design(s) performed under the present agreement. The method of discounting the Basic Fee of a future agreement would be the same as described in paragraph C.4 of Chapter 4 Supplement except that the fee schedule in effect at the date of the future agreement would apply.

F. NEGOTIATION of the AGREEMENT

The Standard Articles establish minimum Basic Services and standardized terms and conditions that are appropriate for most ABC projects. However, it is essential that ~~an~~ each agreement be tailored to fit the needs of its project. The complexity, or simplicity, of a project and particular requirements of the Awarding Authority or funding source can dictate that the minimum services be altered, which may, in turn, warrant negotiation of the Basic Fee or Fee Rate. If the negotiated Basic Fee or Fee Rate is higher than determined by Chapter 4 Supplement, it must be approved by the Director; therefore, the Awarding Authority should consult the Director or Technical Staff before concluding such negotiations.

Under "Determination of the Basic Fee", the Agreement form must be marked to indicate whether the Basic Fee has been determined in accordance with Chapter 4 - Supplement or negotiated; if negotiated, the basis of determining the Basic Fee must be explained in the Special Provisions section of the form. This does not require an accounting of specific values that were negotiated (which is usually impractical), but rather a straight-forward statement of agreed alterations of the Standard Articles (citing

Article and Paragraph numbers) which were taken into consideration when negotiating the Basic Fee.
When negotiations add easily distinguishable services (testing, inspection by a roofing consultant, etc.), clarity of the agreement is best served by incorporating such services into the Special Provisions as "Special Services" with separate fee arrangements segregating them from the Basic Services and Basic Fee. Such a provision should completely define the scope of the services and state how much is to be paid to the primary design professional for the services and the terms of payment. If payment for such a service is to be based upon an hourly or other rate, a maximum payable amount should be established.

The following are items that are most commonly the subject of negotiations:

1. SPECIAL CONSULTANTS

The graduation of fee rates by five Building Groups in the Schedule of Basic Fee Rates is intended to compensate for the level of consultants' services required to design the buildings and improvements within each Building Group. Therefore, the Standard Articles state that the Basic Services and Basic Fee include the services of engineers and consultants required to design the Work covered by an Agreement unless the Work is to include features, equipment, or systems not normally included in such work. If, in the opinion of the design professional and the Awarding Authority, it is necessary that the design professional employ the services of a consultant in a specialized field not normally involved in such a design, these services can be added as "Special Services" or negotiated into the Basic Services and Basic Fee.

2. PERIODIC INSPECTIONS by CONSULTING ENGINEERS

Standard Article 10, Engineering Services, obligates the primary design professional to require its consulting engineers and other consultants to perform, or to have their qualified representatives perform, inspections of the Work appropriate to their discipline of design and in keeping with the primary design professional's obligations to the Awarding Authority. The number of "periodic inspections" to be made by consulting engineers is not defined in the Standard Articles; therefore, the Awarding Authority may wish to establish a minimum number of "periodic inspections' to be performed by the various consultants.

3. ROOFING CONSULTANTS

Unless the design professional is knowledgeable of roofing systems and their details and specifications, the design professional should, as a Basic Service, employ the services of a roofing consultant during design. However, the ABC encourages the employment of a qualified roofing consultant for not only the design stage of the project, but also for frequent inspections of the in-progress work. For re-roofing projects, the roofing consultant may be used to obtain information defining the existing conditions and exact procedure for code

compliance in roof replacement or recovery. The specific scope and basis of payment for these services should be clearly defined in the agreement.

4. ADJUSTMENT FOR MAJOR RENOVATION

An increase of up to 25% in the Basic Fee Rate is allowed for major renovation projects as stated in Chapter 4 Supplement. The Schedule of Basic Fee Rates is structured for new construction and may not adequately cover additional work that is often required of design professionals for renovation projects. This additional work required for renovation projects usually involves investigating and developing drawings of existing conditions before design can be developed. If the Awarding Authority can provide the design professional with drawings of the existing conditions, this adjustment may be minimized or eliminated.

Standard Article 4, Basic Fees, states that the agreed Basic Fee covers any renovation work that may be involved in the Project. Therefore, if the Awarding Authority and design professional agree to increase the Basic Fee Rate of the Schedule for Major Renovation, this must be stated in the spaces provided in the Agreement form. When stating the Basic Fee Rate on the form, state the increased rate.

5. FEE RATES for EXTRA SERVICES

Standard Article 5 specifies a method for compensating the design professional for extra design and/or administrative services, if no other method is agreed upon. A commonly used alternative is to stipulate in the Special Provisions hourly and daily rates of compensation for Extra Services by the primary design professional, consultants, and staff members. Such rates should be inclusive of overhead and profit and may include miscellaneous expenses.

If the need for Extra Services should arise, it should be noted that in certain circumstances Standard Article 5 requires the execution of an amendment for the extra services prior to their performance. If this is not possible, a memorandum of understanding should be agreed upon prior to any extra services being performed. Extra Services may also be subject to review by the Legislative Oversight Committee. See Section H of this chapter.

This article does not apply to events for which the design professional is responsible nor to routine construction change orders for which the design professional's services would be compensated by the Basic Fee Rate.

6. EXTRA PLANS AND SPECIFICATIONS

Basic Service D of Standard Article 3 requires the design professional to provide up to 25 sets of plans and specifications for the bidding and prosecution of the work. If more than 25 sets are required, the Awarding Authority is to reimburse the design professional for the cost of reproducing the extra plans and specifications that are not paid for by the recipient. Standard Article 3 stipulates documentation to be provided by the design professional relative to extra plans

and specifications for which payment is requested. If it is anticipated that more than 25 sets will be required, it is recommended that competitive rates for reproduction be obtained and agreed upon in the Special Provisions or at least in advance of printing.

7. ADVERTISEMENTS for BIDS

Before bids can be received for a project, the project must be advertised pursuant to the Public Works Law. As stated in Standard Article 2, the design professional will prepare and make arrangements for the advertisement, but the Awarding Authority is responsible for the cost of the advertisement, either by direct payment or by reimbursement to the design professional under Standard Article 6, Reimbursable Expenses. If the Basic Fee is negotiated to include this cost, a statement to that effect must be included in the Special Provisions modifying the provisions of Standard Articles 2 and 6.

8. ARCHITECT'S ON-SITE REPRESENTATIVE

For larger, more complex projects, continuous monitoring of the in-progress work may be necessary, which is a service that is not included in the Basic Services of the Standard Articles. If this service is to be included, it must be specifically provided for in the Special Provisions section of the Agreement form, or later authorized by an amendment to the agreement, with the scope of the service, authority of the representative,, and terms of payment for the service clearly stipulated.

9. PREPARATORY SURVEYS, TESTS, AND CONSULTANTS

As stated in Standard Article 2, the Awarding Authority is to furnish or reimburse the design professional for the cost of obtaining information regarding the site such as surveys and soil borings or other tests that may be required by the design professional for the design of the project. The design professional should make arrangements for obtaining such information or testing that may be needed. To simplify administration, such services are often included in the O/A Agreement as "Special Services" or negotiated into the Basic Services and Basic Fee.

10. "AS-BUILT" DOCUMENTS

"As-built" drawings and specifications improve the Awarding Authority's ability to operate and maintain their facility and become very important to future expansion and renovation. Article 11 of the General Conditions of the Construction Contract requires the construction contractor to furnish two sets of "as-built" drawings and specifications to the Awarding Authority at the end of the Project; however, the specified quality of these "as-built" documents is the minimum standard traditionally accepted in the construction industry. The specified requirement is to record on blueprints any changes made to the original drawings and record actual locations of certain concealed elements; the

contractor is not required to re-draw the plans. Alternatives are available that may better serve the Awarding Authority's needs. Reproducible drawings as well as blueprints may be desirable and, given the technology of generating drawings by computer, it may be practical to have the plans re-drawn by either the contractor or the design professional.

The ABC strongly recommends that during negotiations of the O/A Agreement the Awarding Authority determines its "as-built" documents requirements and, if they differ from those in the General Conditions, provides for them under the Special Provisions of the O/A Agreement. This can involve simply stating how the design professional is to modify the contractor's requirements in the Bid Documents or may involve describing an additional service to be provided by the design professional.

G. PREPARING the AGREEMENT FORM

ABC Form B - 3: CHECKLIST FOR PREPARATION OF AGREEMENT BETWEEN OWNER AND ARCHITECT

The Agreement form is to be prepared by the design professional and presented to the Awarding Authority for acceptance. ABC Form B-3, Checklist for Preparation of Agreement Between Owner and Architect, contained in Appendix B, is to be used when preparing the Agreement form and is to provided to the Awarding Authority with the Agreement form. Numbered instructions in the "Checklist" correspond to numbers positioned in the left margin of the Agreement form adjacent to spaces where information must be inserted and/or an appropriate box must be marked. If a space is not applicable to the negotiated agreement, "N/A" should be inserted in the space.

General points of emphasis in preparing the Agreement form are:

1. The ABC utilizes a computerized document management system in which all documents relative to a project are recorded under a seven-digit Building Commission Project Number [Example: BC#20000123]. If the design professional has been advised that a BC Number has been assigned to the project at the time of preparing the Agreement form, the number should be inserted in the spaces provided on the form. If a BC Number has not previously been assigned to the project, the Technical Staff will assign a number and add it to the Agreement form when they receive it. The BC Project Number assigned to the O/A Agreement will also cover all resulting bid packages and construction contracts. **All project related correspondence and documents subsequently submitted to the ABC must clearly display the BC Project Number**.

2. Six (6) copies of the Agreement form, signed by the design professional and Awarding Authority, are to be submitted to the Technical Staff for approval, processing, and distribution.

3. The name, or description, of a project should be easily identifiable with the

design documents to be produced and resulting contracts to be performed. This is particularly important for projects of multiple bid packages and construction contracts. Vague identifications such as "Re-roofing of Various Schools of the XYZ Board of Education" are rarely traceable to the titles given to subsequent bid packages and contracts, which only confuses matters.

4. Language in the Standard Articles refers to the Architect as the primary design professional. However, the Agreement form accommodates identification of the primary design professional as "Engineer", thereby substituting "Engineer" for "Architect" thereafter.

5. If the spaces provided in the Agreement form are not adequate for inserting fully descriptive information, the use of attachments to the form are encouraged. Clarity of the Agreement protects all parties to the Agreement. Attachments may be necessary to fully describe the scope of the Work, identify consulting engineers and other consultants, or to delineate Special Provisions. If attachments are used, they should be referred to in the space in which the information of the attachment applies.

H. PROCESSING the O/A AGREEMENT

Appendixes A-1, A-2, and A-3 describe typical routing and processing of O/A Agreements for PSCA, State Agency, and Postsecondary Education projects. Processing of O/A Agreements for special construction projects or programs are to be developed consistent with the Legislature's authorizations of such projects or programs.

Legislative Oversight Committee: Contracts between Awarding Authorities and design professionals and consultants are Professional Services Contracts. Pursuant to Title 29-2-41, Personal and Professional Services Contracts entered into by departments or agencies of the State must be reviewed by the Contract Review Permanent Legislative Oversight Committee prior to their execution. Agreements for professionals' services must be reviewed by the Legislative Oversight Committee, unless they: (1) are let by competitive bid, (2) are entered into by public corporations or authorities, or (3) do not exceed $1,500.00, including both compensation and reimbursement of expenses. It is the responsibility of the Awarding Authority, not the ABC, to submit such contracts to the Committee. Such contracts should be approved by the Committee before they are submitted to the Technical Staff.

I. PAYMENT for PROFESSIONAL SERVICES
ABC Form B - 5: SAMPLE ARCHITECT'S STATEMENT FOR SERVICES

ABC Form B-5, Sample Architect's Statement for Services is contained in Appendix B and provides the format and sequence of information required for ABC approval and processing of payments for design professionals' services. The design professional may develop a Statement that is project-specific, contains additional information for his

or her purposes, or is computer generated; however, the format and sequence of information in the sample form should not be altered.

Six (6) copies of the Statement, signed by the design professional and the Awarding Authority, are to be submitted to the ABC for approval, processing, and distribution. Typical routing of the Statement is described in Appendixes A-1, A-2, and A-3. To be comparable with the ABC's document management system, the Statement and any supporting documentation should conform to the following criteria:

1. Submit original documents - no carbon copies.
2. Do not highlight text. Highlighting obscures scanned images.
3. Preferably, submit only letter size (8½ X 11) documents.
4. Preferably, send only one-sided documents.

Payments under an O/A Agreement may be approved by the ABC based on the following:

1. **SERVICE A (Schematic Design Phase)** - Design documents must have been reviewed and approved by ABC Review staff and the Statement approved by the Awarding Authority.

2. **SERVICE B (Preliminary Design Phase)** - Same as above.

3. **SERVICE C (Final Design Phase)**

a. Fixed Fee: If the Basic Fee is a Fixed Fee, the fee for Service C can be paid in monthly progress payments equal to the estimated percentage of Service C that has been completed.

b. Basic Fee Rate: If the Basic Fee is determined by a Basic Fee Rate, only 90% of the fee for Service C can be approved prior to bid and completion of Service D. The first 90% can be paid in monthly progress payments equal to the estimated percentage of Service C that has been completed. After Service D has been completed, previous payment for Services A, B, and C must be recomputed, and the unpaid portion of Service C computed, based upon the amount of the awarded Construction Contract.

4. **SERVICE D (Construction Contract Procurement)** - The design professional must have prepared and distributed the certified Tabulation of Bids and Construction Contract to the Owner and the ABC.

5. **SERVICE E (Construction Contract Administration)** - The first 90% of the Service E fee is payable as the contractor's work progresses, based on the total amount of work completed per the contractor(s) periodic estimates. The last 10% of this fee is payable after the design professional deliver's required submittal documents to the Awarding Authority. See Standard Article 7.

6. BID ALTERNATE DESIGN FEE - Payable with payment for Service D.

7. EXTRA SERVICES - Payments are due after Extra Service is included in the Agreement by amendment and then on a monthly basis as the Extra Service is rendered.

8. REIMBURSABLE EXPENSES - Reimbursable Expenses are payable on a monthly basis as incurred. A copy of the invoice for the expense, approved by the design professional, should be attached to the design professional's Statement for Services. If such expenses are incurred during periods in which payments for basic or other services are not earned, Statements covering only Reimbursable Expenses may be submitted, but generally not more frequently than once a month. Additional backup documentation to substantiate reimbursable expenses may be required prior to approval for payment.

9. PAYMENTS WITHHELD for ERRORS and OMISSIONS

If an error or omission by the Architect: **(i)** is due to the Architect's failure or neglect to exercise the reasonable care, competence, technical knowledge and skill which is ordinarily exercised in similar situations by architects registered in Alabama, and **(ii)** results in an additive Contract Change Order (including Contract Change Orders required to effect compliance with plan review comments of the ABC, SDE, or other reviewing authorities), the Owner is entitled to withhold from payments due or to become due the Architect an amount equal to:
(1) the resulting increase in the Contract Sum, less, as agreed between the Owner and Architect, the competitive price that would have been included in the Contractor's bid, if the Work in question had been correctly or completely represented in the Bid Documents, plus
(2) the portion of the Basic Fee attributable to the Contract Change Order when included in the Cost of the Work.

10. FINAL PAYMENT

Final Payment under an O/A Agreement is payable and due 30 days after:

(1) expiration of the period established in the last Certificate of Substantial Completion for the Contractor's completion of "punch List" items,

(2) the Architect's delivery to the Owner of either the Contractor's "as-built" documents, warranties, and other closeout documents required in the Construction Contract or evidence that the Architect has made a reasonable effort to obtain these items from the Contractor, and

(3) the Architect's delivery to the Owner of a complete set of the Contractor's approved Submittal documents, organized in a logical manner.

ACCOUNTING OF OTHER FEES AND REIMBURSABLE EXPENSES MUST BE

MAINTAINED SEPARATELY FROM BASIC FEES ON THE STATEMENT.

J. USE OF ABC STANDARD FORMS

During the performance of design and construction administration services, the design professional will be required to utilize the ABC's standard forms which are contained in Appendix B and are available through the internet from the ABC's Web site [www.bc.state.al.us]. where forms can be completed "on line". Uniform documents and standard forms to be incorporated into the project specifications are addressed in Chapter 5. Below is a listing of the Appendix B forms and where to refer in this manual for a discussion of each form.

APPENDIX B FORMS

	Standard Form	Reference
ABC Form B-1:	Transmittal of Plans and/or Specifications	Chapter 3B
ι ABC Form B-2:	Agreement Between Owner and Architect	Chapter 4
ABC Form B-2A:	Standard Articles of the Agreement Between Owner and Architect	Chapter 4
ABC Form B-3:	Checklist for Preparation of Agreement Between Owner and Architect	Chapter 4G
ι ABC Form B-4:	Amendment to O/A Agreement	Chapter 4D
ABC Form B-5:	Sample Architect's Statement for Services	Chapter 4I
ABC Form B-6:	Certified Tabulation of Bids (Sample)	Chapter 6E
ABC Form B-7:	Checklist for Preparation/Approval of Contract and Bonds	Chapter 7D
ABC Form B-8:	Pre-construction Conference Checklist	Chapter 8E
ABC Form B-9:	Project Data Form	Chapter 7D
ABC Form B-10:	Statement of Field Observations	Chapter 8D
ABC Form B-11:	Change Order Justification	Chapter 7H
ABC Form B-12:	Change Order Checklist	Chapter 7H
ABC Form B-13:	Final Payment Checklist	Chapter 7G

ι Denotes forms for which substitute, PSCA versions are contained in Chapter 9.