

**Department of Financial Services
Division of Accounting and Auditing
Bureau of Auditing**

**Guidelines
for
Settlement Agreements**

**State of Florida
Department of Financial Services
Bureau of Auditing**

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Introduction

Pursuant to s. 17.03 and 17.04 F.S., the CFO is charged with the responsibility to settle all accounts, claims, and demands, whatsoever, against the State. As defined in the Reference Guide for State Expenditures, a settlement is an agreement obligating the State or agency use state funds to discharge a debt due a person, entity or group of persons when the amount owed, pursuant to a contract, purchase order or other form of indebtedness, is in dispute.

Disputes appear in many forms and because of the variety of reasons, settlements are evaluated on a case by case basis. Some of the frequent reasons for settlements include but is not limited to:

- To settle a lawsuit, damages, or legal fees
- Absence of an executed agreement or other appropriate authorization
- Agreement executed after services were rendered (non-compliance with s. 287.058(2), F.S.)
- Services rendered after the agreement has expired
- Performance of services not included in the agreement

The “**Guidelines for Settlement Agreements**” is designed to provide instruction in preparing and processing settlement agreements. These guidelines should be used for preparing the voucher schedule, description letter, settlement agreement document, and supporting documentation that is required for submitting a complete settlement agreement packet. Properly completed settlement agreement packets are to be submitted to the Department of Financial Services/Bureau of Auditing for approval by the Chief Financial Officer.

Upon receipt of the settlement voucher, the Bureau of Auditing will –

- Place the voucher in “R-99” status in FLAIR. This marks the voucher as a settlement agreement transaction received by a settlement transaction auditor and reduces the possibility of inadvertent posting or deleting of the voucher. It also serves as a record that the payment request has been received in the Bureau and in the audit process.
- Review the settlement packet to verify and validate the information is accurate, all inclusive, and complete.
- Request additional information/documentation if necessary. Requests will be emailed to the agency’s settlement agreement contact as identified in the packet or on Auditing’s settlement contact list.
- Upon concluding all required elements have been received and voucher is approved, the voucher will be posted in FLAIR and the Contract Audit System (CAS) updated.

Settlement Agreement Packet

This package must contain the following:

- Voucher Schedule
- Description Letter
- Settlement agreement document
- Supporting documentation
- Additional Requirements

Voucher Schedule

A properly authorized voucher schedule must be submitted with the settlement agreement package. To expedite the review process, the voucher should be clearly labeled and identified on the face of the voucher schedule as a settlement agreement.

When preparing the voucher schedule to submit to the Bureau of Auditing, the following are required:

- Voucher schedule should identify the FLAIR ID number (unless an exempted settlement type).
- Total settlement amount and total voucher schedule must agree.

- Settlement amounts may not be combined with other payments and should not be split on multiple voucher schedules.
- For settlements with invoices less than \$10,000.00, agencies should put an “A” in the bookkeeping indicator field when processing the invoice.

Description Letter

A description letter addressed to the Chief of Auditing must be provided in the settlement agreement packet and should include the following items.

- A clear and detailed description of the circumstances that resulted in the claim against the agency
- The period of time covered by the settlement agreement (i.e., 1/1/17 – 5/11/17)
- The methodology used to determine the settlement amount. If a settlement is for multiple project disputes, the agency should outline the circumstances and identify the amount for each dispute
- A brief explanation as to why the settlement is in the best interest of the State
- A brief description of what measures the agency will take to avoid a recurrence
- The contact information (name, telephone number and e-mail address) for the agency staff responsible for addressing potential issues.

Settlement Agreement Document

The settlement agreement document is legally binding when properly signed and executed by authorized individuals from each party. Authorized individuals, for the purpose of this section, is defined as individuals appropriately designated by law (agency head) or properly delegated (documented delegation of authority) to enter into contracts and obligate funds for their respective organizations.

The settlement agreement document must contain the following language:

- The agreement must define the service period that is being settled. The identified service period must cover the complete time period for all disputed claims.
- Language must summarize the situation creating the need for settling the dispute. A brief outline of the events is necessary so that the parties involved clearly understand what is being settled.
- Language noting the vendor’s assertion of a colorable claim.
- Language that releases the State of Florida and the agency from future claims arising from the same disputed claims.*

The Department of Financial Services legal staff has developed minimum acceptable release language that agencies may use as a general guideline as follows:

(Petitioner) for (himself/herself), (his/her) attorneys, heirs, executors, administrators, successors and assigns, does hereby fully, finally and forever release and discharge the State of Florida, (Agency name) and its

agents, representatives, and attorneys, (collectively referred to as the "Respondent"), of and from all claims, demands, actions, causes of action, suits, damages, losses and expenses, of any and every nature whatsoever arising from any or all of the facts or circumstances which gave rise to this action, including but not limited to, those claims asserted or any federal, state, or administrative action or other claims that were or might have been asserted by or on behalf of Petitioner against Respondent in (Name of court or commission in which action was filed) and any other suits or charges filed or which may be filed by or on behalf of Petitioner with any federal, state or local agency or court relating to these facts or circumstances whatsoever.

** The appropriate release language is governed by the facts and circumstances of each dispute, and in some instances, the above-suggested language may not be sufficient based on the particular circumstances of the claim.*

- The settlement agreement language must state ***“the settlement is contingent upon approval by the State of Florida’s Chief Financial Officer”***.

Supporting Documentation

Each settlement agreement packet should contain sufficient evidence to support:

- A request for payment (properly detailed invoice(s))
- the reason for settlement,
- the settlement period,
- services were satisfactorily performed,
- methodology for determining the claim amount,
- Agency certification of satisfactory receipt and acceptance of services

Additional documentation that may be required includes:

- Copies of executed contracts, leases, and amendments that are directly related to the disputed claims
- Source documentation evidencing the performance of disputed services
- Subcontracts with agency approval of subcontracts
- Statutory authority reference
- Timesheets and Payroll registers
- Salary and Fringe Benefit documentation
- Travel Forms in accordance with Section 112.061, FS
- Third Party Invoices
- Notarized Signed Affidavit
- Proof of provider’s expenditures (check numbers/bank statements)

The above documentation is a brief list of what may be necessary to provide in a settlement agreement packet. The documentation required differs for each settlement based on the unique circumstances of each dispute being settled. Each settlement is reviewed on a case-by-case basis and requests may be made for additional documentation as authorized in Section 17.03, FS.

Additional Requirements -

- For settlement agreements greater than \$1 million, copies of notices to the President of the Senate, Speaker of the House of Representatives, Senate and House minority leaders, and the Attorney General and certification from the agency that the proposed expenditure is provided for by an existing appropriation pursuant to Section 45.062, FS.
- If the dispute involves payment of to a current or former state employee, the agency should provide a copy to the Bureau of State Payrolls.

Example Scenarios creating a settlement situation

Example #1:

The agency competitively procured a service through an Invitation to Bid (ITB). The selected provider was one of three successful bidders and began providing services as directed by the agency on July 1, 2004. However, the contract was not executed until November 1, 2004. This situation creates a need for a settlement agreement and the period to be settled is July 1, 2004 through October 31, 2004. The necessary documentation to provide in settlement amount support would follow the requirements of the contract as executed on November 1, 2004. The agency would need to review this documentation, address any discrepancies, and certify the amount being claimed.

Example #2:

The agency had a current lease for 5,000 square feet of private rental space. There was a need for an additional 800 square feet to be leased. The Lessor provided the space to the agency. The agency failed to request a lease modification to increase space, therefore, was without authority to request payment for the Lessor's invoice for the additional space. This situation requires a settlement agreement for the time period the additional space was not covered by lease. The necessary settlement support amount documentation is the Lessor's invoice with agency signature acknowledging receipt of goods and the agency's lease agreement for the original amount of space.

Example #3:

The agency contracted with a private law firm for services. The Attorney General provided the necessary authorization for the contract. The agency requested additional services not existing in the contract and the contract was not amended to include the additional services. This creates a settlement agreement situation that would be strictly for the additional services. The necessary documentation to be provided would be the existing contract with the provider, the approval from the Attorney General and the provider's invoice with agency signature acknowledging receipt of services. Travel records, in accordance with Section 112.061, FS, would need to be provided as well, if the additional services required travel.

Sample Settlement Agreement

SETTLEMENT AGREEMENT BETWEEN
STATE OF FLORIDA, DEPARTMENT OF XXXXX
AND
MAINTENANCE SERVICES, INC.

THIS agreement made this ____ day of _____, 200x, between the state of Florida, Department of XXXXX, an agency of the State of Florida, 11 Kinley Drive, Tampa, Florida 33612, (hereinafter referred to as "**DEPARTMENT**"), AND Maintenance Services, Inc., 44 Gold Lane, Tampa, Florida 33624 (hereinafter referred to as ("**CONTRACTOR**").

WHEREAS, on October 29, 200x, the **DEPARTMENT** and the **CONTRACTOR** entered into contract no. E-73 to provide highway lighting maintenance on S.R. 18 in Hillsborough County, more specifically WPI #76, State Project No. 1012, for a period of one-year with a renewal option; and,

WHEREAS, on October 28, 200x, the **DEPARTMENT** issued Notices to Proceed to the **CONTRACTOR** in order to insure a smooth transition to a new contract year; and,

WHEREAS, the **CONTRACTOR**, in good faith, provided necessary services and invoiced the **DEPARTMENT** accordingly; and,

WHEREAS, due to unforeseen circumstances, the renewal contract was not executed by the contractor's Surety until after the contract had expired; and

WHEREAS, said invoices were rejected on the grounds that there was no formal contract in place; and

WHEREAS, the **CONTRACTOR** has asserted a colorable legal claim in support of its demand for payment; and,

WHEREAS, the **DEPARTMENT** by entering into this agreement admits no liability for payment of the work performed by the **CONTRACTOR**.

1. Upon receipt of payment, as provided in paragraph #2 below, the **CONTRACTOR**, for its attorneys, heirs, executors or administrators, does hereby fully, finally, and forever release and discharge the State of Florida, **Department of XXXXX**, and its agents, representatives, and attorneys, of and from all claims, demands, actions, causes of action, suits, damages, losses and expenses, of any and every nature whatsoever, arising out of or in any way related to the contracts and state project, and any invoices for such work including, but not limited to, those claims asserted or other claims that were or maybe asserted in any federal, state or local agency or court, by or on behalf of the **CONTRACTOR**.

2. The **DEPARTMENT** herein agrees to submit to the Chief Financial Officer of the state of Florida for payment of Nine Thousand, Six Hundred, One Dollars and Zero Cents (\$9601.00) in full and complete satisfaction of any amounts or costs associated with the work performed by the **CONTRACTOR** and any claims and invoices associated therewith, or with any other written or verbal supplementation and/or renewal thereto, including all interest and costs and fees associated with the claim matters referenced herein.
3. This agreement is contingent upon approval by the Chief Financial Officer of the State of Florida. Until such approval is received, the **DEPARTMENT** has no obligation to make any payments pursuant to this agreement.
4. The parties to this agreement further agree and covenant that this agreement is binding on the parties, their heirs-at-law, and their assigns and successors in interest as evidenced by their signatures and lawful executions below.
5. All terms and conditions of this settlement as fully set forth in this document and no other material terms of settlement exist outside this document.

IN WITNESS WHEREOF, the parties hereto, have caused these presents to be executed, the date first above written.

 Department of XXXXX
 Title

 NAME IN PRINT

 Settlement Party Name

 NAME IN PRINT

References

Various Florida Statutes, Comptroller's memorandums and the Reference Guide for State Expenditures provide additional information for settlement agreements.

Florida Statutes may be viewed at

<http://www.leg.state.fl.us/statutes/index.cfm?Mode=ViewStatutes&Submenu=1> :

- Section 17.03, FS
- Section 45.062, FS
- Section 287.058, FS

Comptroller's Memorandum and the Reference Guide for State Expenditures may be viewed at <https://www.myfloridacfo.com/division/AA/default.htm> :

- Comptroller's Memo No. 04 (1987 – 88)
- Comptroller's Memo No. 14 (1992 – 93)
- Comptroller's Memo No. 14 (1993 – 94)
- Comptroller's Memo No. 07 (2002 – 03)

Contact Information

The Settlement Agreement and required documents should be submitted to:

Department of Financial Services
Bureau of Auditing
101 E. Gaines St., Fletcher Bldg.
Tallahassee, Florida 32399-0350

Any questions should be directed to:

Kim Holland	850-413-5700
Email:	Kim.Holland@myfloridacfo.com
Suzette Harris:	850-413-5788
Email:	Suzette.Harris@myfloridacfo.com
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