

**House of Representatives**  
**Committee on Health Regulation**  
**2001-2002 Interim Study on Privatization of Health Practitioner Regulation**  
**Questionnaire for the Department of Business and Professional Regulation**

Please answer the following questions with regard to the regulation of engineers. For each question asked, please provide an explanation of how the Department determined the answer, which staff member(s) provided the answer, and a list of all documents from which the information was gathered. Please attach a copy of all documents used in answering the questions.

1. Which specific regulatory powers, duties, and functions are conducted by the Florida Engineers Management Corporation (FEMC) under contract with the Department of Business and Professional Regulation (DBPR)? Which specific powers, duties, and functions are still conducted by DBPR employees? If not all powers, duties, and functions have been contracted with FEMC, please explain why not?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: The specific regulatory powers, duties, and functions conducted by FEMC are set forth within the contract, along with the powers, duties, and function conducted by DBPR employees. DBPR has retained its police powers, along with the regulation of unlicensed activity, given the lack of legal authority to contract such duties to a non-governmental entity.

2. How many DBPR employees perform services relating to the regulation of engineers? What powers, duties, and functions do these persons exercise or perform? What is the cost of these services and from what source are they paid?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: Only one DBPR employee is charged with performing services relating to the regulation of engineers, which is the Executive Director. However, the Executive Director does rely on support from Planning and Budgeting and the Division of Administration.

The powers, duties, and functions of the Executive Director are set forth in the Contract.

The cost of the Executive Director for fiscal year 2000 – 2001 was \$88,660.00. This amount is paid from the \$200,000.00, which is retained by DBPR from FEMC's annual appropriation.

3. Which entity, DBPR or FEMC, investigates and prosecutes unlicensed activity? Why? How much does it cost? How many cases are received annually? How many cases result in an arrest for unlicensed practice?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: Florida Statutes 471.038(5)

Answer: Pursuant to Florida Statutes 471.038(5), DBPR investigates and prosecutes unlicensed activity. It is DBPR's position that legally FEMC does not have jurisdiction over unlicensed activity. The total cost of investigating and prosecuting unlicensed activity was \$35,667.00 for fiscal year 2000 –2001. DBPR received 53 complaints for this time period, of which none resulted in an arrest.

4. Which entity, DBPR or FEMC, exercises the police powers of the state? Why? Which police powers are exercised or anticipated to be used?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: DBPR has retained and exercises the police powers of the state, based on the lack of legal authority which would allow DBPR to contract such powers to a non-governmental entity. Those police powers retained by DBPR include determination of legal sufficiency or insufficiency of a disciplinary complaint, and all activities that relate to rulemaking, licensing, and other official actions of the Board of Professional Engineers ("Board"). FEMC is prohibited from performing any lobbying activities on behalf of the Board.

5. Which entity, DBPR or FEMC, issues or has the power to issue emergency suspension or emergency restriction orders? How many emergency orders have been issued since 1998? Which staff person would draft the order and who would execute the order?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: Florida Statutes 471.038(5)

Answer: Pursuant to Florida Statutes 471.038(5), DBPR is solely responsible for the issuance of any emergency suspension orders. FEMC has not referred a case to DBPR recommending that an emergency suspension order be issued. The Executive Director would draft the order and execute it, with the approval of the General Counsel.

6. Which entity's staff, DBPR or FEMC, makes recommendations to the Board of Professional Engineers (board) relating to licensure application recommendations? Does DBPR staff review licensure applications?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: Although the Executive Director does review licensure applications, it is the responsibility of Board Counsel to make recommendations. DBPR contracts with the Attorney Generals Office to provide Board Counsel

7. Does DBPR review and approve settlement agreements negotiated by the FEMC attorney prior to the settlement being presented to the board? Why?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: The Executive Director does review settlement agreements negotiated by FEMC prior to the settlement being presented to the Board. DBPR provides this function in an oversight capacity.

8. Does DBPR have any control over the location in which board meetings are held? Can the board hold their meetings in luxury hotels or in cities which are not easily accessible by commercial airplane? Are there any restrictions in the contract or otherwise that control meeting locations?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: DBPR does not have specific control over the location in which board meetings are held, but does have control over the travel budget. Board meetings have been held in luxury hotels or in cities that are not easily accessible by commercial airplane in the past, however the travel budget was then reduced for the following fiscal year in hopes of curtailing such activity. There are no restrictions in the contract that control meeting locations.

9. Does DBPR have any control over the budget of FEMC? If so, what type of control?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: Florida Statutes 471.038(3)(i)(2)

Answer: Florida Statutes 471.038(3)(i)(2) provides FEMC must submit an annual budget for approval by DBPR. DBPR reviews the annual budget on a line by line basis, and does withhold approval if FEMC fails to comply with its recommendations.

10. Does DBPR restrict out-of-state travel for board members? If so, how? Are all board members allowed to attend the same out-of-state conference at the same time? If so, what was the cost of sending all board members and what was the public benefit to the people of the State of Florida to send all members to the same conference?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: Florida Statutes 471.038(3)(i)(2)

Answer: DBPR does not restrict out-of-state travel for board members. FEMC does submit a budget for travel to conferences for DBPR approval, which FEMC then uses in its discretion. The budget is adjusted based on the recommendation of DBPR. The total cost of sending board members to conferences during the fiscal year 2000 –2001 was \$10,835.00. The board members are very active in the National Council of Examiners for Engineering and Survey (NCEES) which develops the exams for certification as a professional engineer. Therefore, there is a benefit to the public of having these members attend.

11. Are engineers' license fees sufficient to cover all costs of regulating engineers? How much money is in the engineers' trust fund account? What would happen if the engineers were unable to pay the full cost of regulation? What if budget trimming were not sufficient to ensure availability of funds to pay the contract? What would happen to pending licensure applications and pending disciplinary complaints?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: Professional Regulation Trust Fund Annual Financial Report Twelve Months Ending June 30, 2001

Answer: The engineers' license fees are sufficient to cover all costs of regulating engineers. The balance of the engineer's trust fund account as June 30, 2001, was \$7.3 million. It is doubtful the engineers would be unable to pay the full cost of regulation, given the current trust fund balance. The Board is charged with setting fees at an amount to cover the cost of regulation. The Department could process pending licensure applications and proceed with pending disciplinary complaints, should FEMC be unable to continue under the contract.

12. Is there a competency examination for the engineers? Is it a written test or practical exam? How much does that examination cost? Is it administered by FEMC or DBPR staff, or neither? Is it a state-developed test or national exam? How many other states use the exam? In how many locations in Florida is the exam administered and how frequently?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: None

Answer: There is a written competency examination for the engineers. The examination is administered by FEMC and the fee for each exam charged by NCEES varies among the 13 disciplines. It is a national exam, used by all 50 states. The exam is given two times a year, and is offered in five locations in Florida.

13. How much does it cost to regulate engineers? How much does it cost per engineer? What is the current licensure renewal fee? Does the renewal fee currently cover the full cost of regulation?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: The contract amount for fiscal year 2000 – 2001 was \$2.17 million. Of that amount \$300,000.00 is held in reserve, leaving a balance of \$1.87 million. There are approximately 28,000 engineers licensed in the State of Florida, therefore the cost per engineer is \$66.78. The current licensure renewal fee is \$125.00. Therefore, the renewal fee currently covers the full cost of regulation.

14. Which staff person determines legal sufficiency for a complaint against a professional engineer to move forward? How many complaints are reviewed annually for a legal sufficiency determination?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: FEMC and DBPR Contract

Answer: The Executive Director reviews all complaints when FEMC determines the complaint lacks legal sufficiency. For fiscal year 2000 – 2001, the Executive Director reviewed 28 complaints that were initially determined by FEMC to be legally insufficient.

15. Since FEMC is a non-profit entity created in statute, what is the economic incentive for it to reduce expenses and save money?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: None

Answer: There is little economic incentive for FEMC to reduce expenses and save money. In the past, FEMC's primary incentive has been to increase services, at the Board's request, which in turn leads to increased costs.

16. Has the Board of Professional Engineers realized an improvement in the quality and quantity of services being provided since contracting with FEMC instead of using DBPR employees to provide the service? Have the services of FEMC met or exceeded the board's expectations? Are the services provided to the board by FEMC better than those provided by DBPR? If so, please explain. Do the board and probable cause panel members believe that the FEMC attorney and prosecutor have specialized knowledge in the practice of engineering and that such specialized knowledge is at a level which makes a difference in the quality of investigations and prosecutions? If not, what is being done to increase their knowledge and training? If so, please explain how such knowledge has resulted in better protection of the public.

Persons Providing Answer: David K. Minacci

Documents Used to Answer: OPPAGA Performance Review

Answer: The Office of Program policy Analysis and Government Accountability

(OPPAGA) reviewed FEMC for the period of January 1, 1998, through January 1, 2000.

The outcome of the review was that although regulatory costs increased, FEMC processed more complaints and established a stronger compliance monitoring system than DBPR. The main advantage appears to be FEMC having dedicated staff, however this does increase costs. The Board appears to be very satisfied with the services provided by FEMC. The Probable Cause Panel is continuing to work with the prosecuting attorney and investigator to develop the specialization required to process disciplinary matters.

17. Has DBPR privatized any other boards or particular functions of other boards? If so, please list the boards and the functions which have been privatized.

Persons Providing Answer: David K. Minacci

Documents Used to Answer: None

Answer: DBPR has not privatized any other boards or particular functions of other boards.

18. Does DBPR have plans to privatize additional professions? Would DBPR recommend other professions be completely privatized or only certain functions?

Persons Providing Answer: David K. Minacci

Documents Used to Answer: None

Answer: DBPR does not have plans to privatize additional professions. DBPR is reviewing the possibility of privatizing functions as opposed to completely privatizing entire boards.



STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

July 18, 2001

*Florida's Future...*

**Right Here.  
Right Now.**

Jeb Bush  
Governor

Kim Binkley-Seyer  
Secretary

Office of the  
General Counsel

1940 North Monroe Street

Tallahassee, Florida

32399-2202

VOICE

850.487.4526

FAX

850.922.1278

INTERNET

[www.myflorida.com](http://www.myflorida.com)

Natalie Lowe  
Florida Engineers Management Corporation  
1208 Hays Street  
Tallahassee, Florida 32301

Re: Agreement between Florida Engineers Management Corporation and  
the Department of Business and Professional Regulation

Dear Natalie:

Enclosed is the executed agreement between the Florida Engineers  
Management Corporation and Department of Business and Professional  
Regulation signed by Secretary Kim Binkley-Seyer on July 11, 2001.

The Secretary has requested that the Florida Engineers Management  
Corporation provide a technical plan regarding compliance with paragraph  
2.1.1.1.6 of the contract. This provision provides:

1. All services provided by FEMC shall be web based by January 1, 2003.
2. All records and data in a computerized database shall be integrated with  
the computer database of the Department and all applications and services  
shall utilize the Department's system by January 1, 2003.

I look forward to hearing from you, and if you have any questions or  
concerns regarding the above, please do not hesitate to call or write.

Sincerely,

David K. Minacci  
Deputy General Counsel

DKM:ijr

Enclosure

**Agreement Between Florida Engineers Management Corporation  
and Department of Business and Professional Regulation**

This Agreement is made and entered into between the Florida Engineers Management Corporation, a not for profit Florida Corporation hereinafter referred to as "FEMC" and the Department of Business and Professional Regulation, hereinafter referred to as "Department" to set forth their mutual duties and responsibilities pursuant to section 471.038, Florida Statutes (2000).

1.0 Purpose. FEMC was created pursuant to section 471.038, Florida Statutes (2000), to provide administrative, investigative and prosecutorial services to the Florida Board of Professional Engineers ("FBPE") in accordance with the provisions of part I of Chapter 455 and Chapter 471, F.S. Section 471.038, F.S. (2000), requires that FEMC operate under an annual written contract with the Department which is to be approved by the FBPE to provide the above outlined services.

2.0 Appointment of the Board Executive Director. The Secretary of the Department shall appoint the Executive Director of the Board ("ED") in accordance with §455.203(2), F.S. The members of the FBPE may provide periodic comments to the Secretary of the Department regarding the performance of the ED. The ED shall be an employee of the Department and also serve as the contract administrator for this contract. The responsibilities of the ED shall include the following: Supervision of the DBPR contract; attendance at all FBPE meetings, FEMC Board meetings and committee meetings; provide support to the Chair of the FBPE with relation to the preparation of the FBPE agenda content; provide support to the Chair of the FBPE in the conduct of the FBPE meetings with relation to presentation of all rulemaking, disciplinary, licensing and other official actions of the FBPE relative to the police powers of the State of

Florida exercised through the FBPE; provide support to the FBPE licensing committees in the making of final determination of whether a license application is complete for presentation to the FBPE; provide support to the Probable Cause Panel with respect to whether a complaint should be processed or dismissed as not within the FBPE's jurisdiction; provide support to the Chair of the FBPE in scheduling an item for rulemaking (i.e., coordination with FBPE and Board counsel on all rulemaking initiatives); review all cases determined by FEMC staff to be legally insufficient, and make a determination of legal sufficiency or insufficiency of those cases.

2.1 Services to be Provided by FEMC. The services to be provided will include but not be limited to the following:

2.1.1 Administrative Services to be provided to the FBPE. Administrative services to be provided to the FBPE include but are not limited to the following: agency clerk functions; preparation of required reports; responding to public information inquiries pursuant to Florida Statutes; processing applications for examination and licensure; issuance of initial licenses and notices of renewal; renewal of licenses; collection of fees; training of new board members; maintaining files; maintaining inventory of personal property; providing telecommunication systems; providing computer systems pursuant to section 2.1.1.6 below; examination services; maintaining licensure records; providing official certificates; handling examination reviews and challenges; providing staff support services to the FBPE; recording and preparing minutes of FBPE meetings; and maintaining confidentiality of records that are not public. FEMC shall submit an annual budget that complies with FBPE rules for approval by the FBPE and the Department. FEMC shall, at the direction of the ED, assist in rule promulgation as well as scheduling, noticing, and planning FBPE meetings. It is FEMC's responsibility to comply with the requirements of Chapters 119, 120, and 286.011, F.S., as limited by Chapters 455 and 471,

F.S. FEMC must file a copy of all administrative complaints, final orders and notices of appeal (filed by any party) with the Department's Agency Clerk as soon as is practicable. If FEMC refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and the Department's efforts to resolve the access are refused by FEMC, then the Department, after consultation with the FBPE, may unilaterally terminate this agreement. FEMC shall provide all necessary services to manage its own corporation, including but not limited to, finance and accounting and personnel administration. FEMC's services shall apply to all licensees under the jurisdiction of the FBPE, including Special Inspectors of threshold buildings. FEMC shall, no later than August 1, 2001, submit its by-laws and articles of incorporation to the Department for its approval.

2.1.1.1 Revenue. FEMC shall be responsible for the collection and processing of application and examination fees, initial licensure fees, active renewal fees, inactive renewal fees, delinquency and reactivation fees, reimbursement of administrative costs, fines, and other miscellaneous revenue. FEMC will deposit all receipts to the state concentration account to the credit of the Professional Regulation Trust Fund within seven working days of their receipt. The Department will provide FEMC with sequentially numbered deposit slips. Each deposit slip must be accounted for. FEMC will stamp the back of all checks deposited with the endorsement contained in attachment 1.

All revenue collected by FEMC shall be entered using the appropriate "object code" and "OCA code" listed in attachment 2. Deposit detail containing these codes shall be transmitted to the Department within 24 hours of the deposit.

FEMC is responsible for collecting or earmarking out of current licensure fees the \$5.00 fee for unlicensed activity as provided for in Section 455.2281, F.S. Fees collected under

Section 455.2281, F.S., shall be used by the Department to prosecute Chapter 471 unlicensed activity cases or undertake programs at the direction of the FBPE as contemplated by Section 471.038(6). FEMC will be provided a copy of any financial or statistical data relating to unlicensed activity simultaneously with the FBPE.

FEMC will have in place a method to collect checks written on insufficient funds ("bad checks"). Redeposits of money from bad checks shall be made in accordance with the procedures stated in attachment 3.

FEMC will provide the Department with the information necessary for the Department to comply with its requirement to file quarterly financial reports.

FEMC shall provide for persons charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond in the amount of \$500,000.00.

2.1.1.2 Expenditures. The amount of this contract shall be \$1,664,946.47 subject to the appropriations of the Legislature. Of that amount, \$41,000.47 will be reserved for renewal expenses in the fiscal year 2002-2003. The Department shall retain an additional \$200,000.00 in the Professional Regulation Trust Account for the benefit of FEMC, to be used to offset certain expenses detailed below. In addition to the contract amount, the Governor's Office of Policy and Budget shall retain \$300,000.00, as provided in the 2001 Appropriations-Act. Subject to approval by the Comptroller's Office pursuant to Section 216.181, F.S. (2000), and upon FEMC's request to the ED, the Department will fund FEMC in the manner set forth below provided that FEMC has certified in writing the following: that FEMC has implemented all fiscal controls and audit mechanisms required by law to assure compliance with reporting requirements of Section 471.038, F.S.; and that FEMC has acquired sufficient technology capability and staff and is

sufficiently prepared to carry out the duties and responsibilities of the Agreement; and that FEMC is in full compliance with this agreement. An advance payment equal to 25 percent of the contract amount may be made as soon after July 1, 2001, as feasible. The remaining funding will be provided in equal payments on a quarterly basis beginning on or after October 1, 2001, January 1, 2002, and April 1, 2002. In the event FEMC's expenses exceed its draw in any given quarter, and the cash balance available is insufficient to cover those expenses, FEMC may request an advance of funds, not to exceed \$200,000.00. Prior to the release of funds for each quarter, FEMC will provide the Department with a report which details the following information for the preceding quarter: the number of license applications received; the number approved and denied and the number of licenses issued; the number of examinations administered and the number of applicants who passed or failed the examination; the number of complaints received; the number determined to be legally sufficient; the number dismissed; the number determined to have probable cause; the number of administrative complaints issued and the status of the complaints; and the number and nature of disciplinary actions taken by the FBPE. Contingent upon receipt of the required information and a determination by the Department of satisfactory performance, the Department will process each quarterly payment within fourteen calendar days after all conditions have been met. Funding is contingent on the Florida Legislature appropriating money for FEMC's budget in a "grant and aids category" and a timely request by FEMC.

Any undisbursed funds with FEMC after June 30 of each year will be treated similarly to the State's certifications forward process. The funds will remain with FEMC for disbursement for all accounts payable on its books as of June 30. Any funds remaining with FEMC after the

accounts payable have been certified will be returned to the Department and will remain as cash to the credit of the Board within the Professional Regulation Trust Fund.

Funds advanced to FEMC shall be deposited in a separate interest bearing account until the balance, not including the interest, is totally expended for the purposes allowed by the Agreement. All interest income attributable to or derived from funds advanced to FEMC shall be returned on a quarterly basis to the Department and will remain as cash to the credit of the FBPE within the Professional Regulation Trust Fund. FEMC may use a portion of the interest derived from the FEMC account to offset the costs associated with the use of credit cards for payment of fees by applicants or licensees.

It is FEMC's sole responsibility to maintain its records in a fashion which will allow for an annual financial and compliance audit of its financial accounts and records by an independent certified public accountant in accordance with generally accepted auditing standards. The annual audit report shall include a detailed supplemental schedule of expenditures for each expenditure category and a management letter. The annual audit report must be submitted to the FBPE, the Department, and the Auditor General for review. The Auditor General may conduct an audit and FEMC shall provide all requested information immediately upon request.

FEMC shall be responsible to pay, out of its allocated budget, to the Department the following: all costs of representation by the board counsel, including salary and benefits, travel, and any other compensation traditionally paid by the Department; all costs incurred by FEMC or the FBPE of the Division of Administrative Hearings of the Department of Management Services and any other cost for utilization of these state services; all costs associated with the ED/Contract Administrator of the Department, including salary and benefits, travel, and other

related costs traditionally paid to state employees. The \$200,000.00 retained by the Department shall be utilized to offset these expenses.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S., for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

In accordance with Section 287.058(1)(a), Florida Statutes, FEMC will maintain all invoices pertaining to the daily operation of the corporation in its office with sufficient detail to enable the Department to monitor its expenditures. This documentation will be retained for a minimum of three years.

FEMC shall develop, with the Department, performance standards and measurable outcome for the FBPE to adopt by rule in order to facilitate efficient and cost-effective regulation.

2.1.1.3 Licensure. FEMC will maintain licensure records in accordance with paragraph 2.1.1.6 below which shall include historical licensure data. This shall include the responsibility for maintaining records of address changes, name changes and other licensure status changes.

Subsequent to the FBPE's determination of eligibility for licensure, FEMC is responsible for the issuance of initial licenses to those under the jurisdiction of the FBPE, the issuance of Certificates of Authorization, and providing official certification of licensure records.

FEMC is responsible for issuing renewal licenses to active and inactive engineers, special inspectors of threshold buildings, Certificates of Authorization based on information given to FEMC by the FBPE, and for providing notices of pending cancellation of a license pursuant to Section 455.273, F.S.

The licensure management system FEMC chooses shall be accessible to the Department. Additionally, the system shall match technologically with the system utilized by the Department as a result of the Department's re-engineering during the fiscal year 2000-2001 and thereafter.

FEMC is responsible for maintaining and providing licensing information to Chapter 471 licensees, prospective licensees and the public consistent with Florida and applicable federal law. Prior to each examination, the ED shall review any license application determined by FEMC to be incomplete. All completed applications shall be forwarded to the FBPE for review and determination.

2.1.1.4 Testing. FEMC has the responsibility for providing to the FBPE complete files of all engineering and special inspectors of threshold buildings seeking licensure. The ED shall have the ability to review and audit any and all application files upon request. FEMC is also responsible for administering the relevant licensure examinations. FEMC shall provide any application file deemed to be incomplete to the ED for review and approval. FEMC's responsibility also includes the following:

- 1) FEMC is responsible for the preparation of records and files for determination of eligibility for examination by the FBPE;

2) Scheduling candidates for examination and administering the relevant state and national licensure examinations;

3) Ensuring examination security. FEMC shall ensure the examination security during the transportation of examinations and overnight storage of examinations. FEMC shall contract with sites to hold the examination, and ensure that there is an appropriate level of monitoring during the licensure examination;

4) Reporting examination scores to the candidates;

5) Handling examination review, challenges and appeals at all levels (i.e., administrative hearing or civil action). As part of this review, FEMC will provide the following information monthly to the ED no later than the tenth calendar day of the subsequent month:

a) Name of applicant, and licensure applied for;

b) Date of petition;

c) Brief description of petition;

d) Last action taken;

e) Next appropriate action;

f) Whether a formal administrative hearing has been requested and if

so the proposed date of the hearing;

g) The disposition of the petition;

h) A copy of the recommended order if applicable;

i) A copy of the final order if applicable;

j) Notice of an appeal by an applicant;

6) Ensuring the preparation and administration of examinations in an applicant's native tongue if necessary pursuant to 455.218, F.S., and collecting the necessary costs in the event it is determined by a court of competent jurisdiction that the FBPE is required to have the examinations translated;

7) Providing for examination of foreign-trained professionals pursuant to 455.218, F.S., if required by a court of competent jurisdiction;

8) Ensuring necessary special accommodations including, but not limited to, compliance with Chapter 553, Part V, Florida Statutes, and Federal ADA requirements and religious considerations;

9) Maintaining a contract with a national testing vendor for the engineering examination as required by Chapter 471, F.S., and as approved by the Board; and

10) Ensuring the adequacy of the examination, maintaining examination records and complying with all testing requirements of Section 455.217, F.S.

2.1.1.5 Notices of Appeal. FEMC shall notify the Department of any appeal taken by a party in any action involving testing. FEMC is responsible for defending such appeals but must provide a copy of any intended appellate filing (briefs, motions, etc.) for Department approval sufficiently in advance of the deadline to allow for meaningful review. No appellate filing can be made without Departmental approval. The Department shall communicate its approval or disapproval in advance of any applicable deadline.

2.1.1.6 Technology. All services provided by FEMC shall be web-based by January 1, 2003. All records and data in a computerized database shall be integrated with the computerized database of the Department and all applications and services shall utilize the Department's system by January 1, 2003.

2.1.2 Prosecutorial Services. Prosecutorial services include but are not limited to the following: coordination with investigators; review and take appropriate action on complaints; prepare cases for presentation to probable cause panel; prepare administrative complaints, notices of noncompliance and citations; prosecute complaints at disciplinary hearings; prosecute appeals; maintain complaint data base; report alleged criminal violations to the Department and appropriate authorities; review disciplinary guidelines; and provide prosecutorial services at mediations. Prosecutorial services shall not include a determination that a case is legally insufficient. Any case recommended by FEMC to be legally insufficient shall be reviewed and approved by the ED. In the event that FEMC and the ED disagree, the case shall be submitted to the probable cause panel for its determination.

2.1.3 Investigative Services. Investigative services include but are not limited to the following: receive complaints; interview complainants; interview witnesses; interview subjects of complaints; take sworn statements; compile documentary evidence; prepare investigative reports; coordinate with prosecutors; hire experts where necessary; testify at hearings; and coordinate investigative activities with appropriate regulatory and law enforcement agencies in consultation with the Department.

2.1.3.1 Supervision of Disciplinary Process. FEMC shall provide a monthly report to the Department no later than the 10th calendar day of the subsequent month, which shall include the following:

- 1) A list and status of all complaints (open and closed). Status information should include:
  - a) The name of complainant;
  - b) The name and license number of subject;

- c) The date of the complaint;
  - d) The alleged violation;
  - e) The last action taken; and
  - f) The next appropriate action recommended.
- 2) A list of all cases FEMC closed as legally insufficient with the approval of the ED since the last monthly report;
- 3) A copy of each closed file (closed for any reason) since the last monthly report;
- 4) A report showing the status of compliance with all final orders with pending provisions.

FEMC is responsible for complying with the notice and time requirements of Section 455.225, F.S. If FEMC believes notice is not required under this section, FEMC must have written Departmental approval which must be requested as soon as practicable and will be acted upon by the Department within 10 calendar days.

FEMC shall furnish the ED a copy of all documents to be presented to the Probable Cause Panel not less than 10 calendar days before submission of the materials to the Probable Cause Panel. (This deadline may be shortened on a case-by-case basis with prior approval of the Department.)

FEMC shall furnish the ED a Probable Cause Panel agenda not less than 10 calendar days before submission of the agenda to the Probable Cause Panel.

FEMC shall furnish the ED a copy of each settlement stipulation prior to placing the case on the agenda of the Board for final action.

FEMC shall notify the ED within five calendar days of the issuance of a DOAH Recommended Order of its intention to file or not to file exceptions to the DOAH Recommended Order. FEMC shall provide a draft of any proposed exceptions five calendar days before their filing.

FEMC shall furnish the ED a copy of all documents to be presented to the FBPE for final action prior to submission to FBPE members for approval by the ED.

FEMC shall notify the Department of any appeal taken by a party in any disciplinary matter. FEMC is responsible for defending such appeals and must provide a copy of any intended appellate filing (briefs, motions, etc.) for Department approval sufficiently in advance of the deadline to allow for meaningful review. No appellate filing can be made without Departmental approval. The Department shall communicate its approval or disapproval in advance of any applicable filing deadline.

FEMC shall immediately notify the Department upon learning of any information which may be the basis for an emergency suspension or restriction of license or be of such a nature that FEMC believes it warrants referral for criminal prosecution. The Department is solely responsible for the issuance of any emergency suspension orders.

FEMC shall immediately notify the Department of any information on unlicensed activity which may be the basis for the Department's exercise of jurisdiction over-unlicensed activity.

FEMC shall notify the Department of any petition to invalidate a subpoena. FEMC may request and the Department may issue a subpoena which complies with Section 455.223, F.S.

## 2.2 Services Not to be Provided by FEMC

2.2.1 FEMC shall not exercise the police powers inherent in the Department and the FBPE, including a determination of legal sufficiency or insufficiency of a disciplinary complaint.

2.2.2 Preparation of the FBPE agenda.

2.2.3 Supervision of the DBPR contract for the FBPE.

2.2.4 Any and all activities with relation to rulemaking, disciplinary, licensing and other official actions of the FBPE; except that FEMC staff may process the necessary paperwork for these activities, at the direction of the ED.

2.2.5 Support to FBPE licensing committees in making the final determination on completeness of applications.

2.2.6 Support to the Probable Cause Panel regarding whether a complaint should be processed or dismissed.

2.2.7 Lobbying activities on behalf of the FBPE.

3.0 Approvals. No later than August 1, 2001, the following documents shall be submitted to the Department for review and approval by the FBPE and the Department:

3.1 The Articles of Incorporation of FEMC.

3.2 The Bylaws of FEMC.

3.3 The proposed annual budget.

4.0 Review. The Board and the Department shall annually review for the preceding fiscal year the performance of FEMC under the terms of this agreement and shall certify that FEMC is performing under this agreement in a manner that is consistent with goals and purposes of the FBPE and in the best interest of the state. This certification shall be recorded in the FBPE minutes and shall occur no later than October 31 of each year.

4.1 Upon a determination made by the FBPE and the Department at any time during the term of the contract that FEMC no longer operates for the benefit of the FBPE and in the best

interest of the State, all monies and property held in trust by FEMC shall revert to the FBPE, or the State if the FBPE ceases to exist.

5.0 Contract Administration. Executive Director shall also serve as a contract administrator as provided in 471.038(3)(I)4, F.S. (2000), to actively supervise the administrative, investigative and prosecutorial activities of FEMC and to ensure compliance with this contract and the provisions of Chapter 455 and Chapter 471, F.S. Said administrator shall also act as liaison for the Department, FBPE and FEMC to ensure the effective operation of FEMC.

In order to ensure effective supervision, FEMC must timely respond to the contract administrator's request for information or access. FEMC shall allow the Department complete and immediate access to all data maintained by FEMC including access to FEMC's computer data base. FEMC shall provide the information required under Florida Statutes, this agreement, or requested by the ED, to the ED at 1940 North Monroe Street, Tallahassee, Florida 32399-2202. Information requested by FEMC shall be provided to the FEMC President at 1208 Hays Street, Tallahassee, Florida 32301. In the event the ED or the FEMC representative changes, the new representative's name will be provided within 10 calendar days.

6.0 Funding. This agreement shall be funded through appropriations by the Florida Legislature on an annual basis, allocated to the regulation of professional engineers and special inspectors of threshold buildings from the Professional Regulation Trust Fund. FEMC will be responsible for submission of budget information requests and budget amendments to the Department on a timely basis. Section 216.347, Florida Statutes, provides that if this contract is funded from a grants and aid appropriation, the expenditure of funds from this contract for the purposes of lobbying the Legislature, the judicial branch or a state agency is specifically prohibited.

7.0 Termination. Upon termination of this agreement and annual renewal or revision thereof whereby the FEMC no longer is approved to provide services as contemplated by this agreement, all monies and property held by FEMC shall revert to the Board or to the State of Florida if the FBPE ceases to exist. In the event of contract termination, FEMC shall be responsible for ensuring that all data relating to licensure and discipline can be converted for use on Department systems and FEMC is solely responsible for the cost of such conversion.

8.0 Insurance. FEMC will maintain during the term of this agreement the insurance coverages attached as attachment 4 to this agreement. The insurance must provide coverage to defend, indemnify, and hold harmless FEMC and its officers and employees, the Department and its employees, and the State in an amount to be approved by the Department. The Department and its employees and the State are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of FEMC. FEMC has represented to the Department that it has obtained all commercially available insurance to meet the requirements of Section 471.038(4)(i)7, F.S. Both parties acknowledge that Section 471.038(4)(i)7, F.S., would not require FEMC to obtain coverage for itself and the Department which is not obtainable for public policy reasons. However, if at any time it is determined that insurance becomes available which would otherwise be required under the statute; FEMC will immediately acquire such insurance. Failure by FEMC to secure and maintain the insurance coverages provided for in this paragraph or in violation of 471.038(4)(i)7, F.S., shall be grounds for terminating this contract. All of the insurers indicated on the policies attached hereto are qualified and do business with the State of Florida. Execution of this agreement by the Department indicates compliance with the requirement concerning providing proof of insurance. FEMC shall provide for persons charged with the responsibility of receiving and depositing fee

and fine reserves to have a faithful performance bond in such an amount and according to the terms and conditions outlined in paragraph 2.1.1.1 above.

9.0 Accounting. FEMC must retain the services of a Certified Public Accountant to provide an annual financial and compliance audit of its financial accounts and records, in accordance with generally accepted auditing standards. Evidence of this engagement shall be provided to the Department no later than August 1, 2001. The annual audit report required by paragraph 2.1.1.2. above shall be submitted to the FBPE and to the Department for their review and approval and copies shall be submitted to the Secretary and the Legislature together with any other information requested by the Secretary, the FBPE or the Legislature. FEMC shall submit to the Secretary, the FBPE and the Legislature on or before January 1 of each year a report on the status of FEMC which includes information concerning the programs and funds that have been transferred to FEMC and which shall also include the number of license applications received; the number approved, denied and issued licenses; the number of examinations administered and the number of applicants who passed or failed the examination; the number of complaints received, together with the number of complaints determined to be legally sufficient, how many were dismissed, how many were determined to have probable cause, the number of administrative complaints issued and the status of the administrative complaints and the number and nature of the disciplinary actions taken by the Board. The annual audit report must be submitted to the FBPE, the Department and the Auditor General for review. The Auditor General may, pursuant to his or her own authority or at the direction of the Legislative Auditing Committee, conduct an audit on FEMC.

10.0 Term. This agreement shall terminate on June 30, 2002. It is the intent of the parties, however, that it be renewed annually pursuant to section 471.038, F.S. Annual renewals

shall be subject to appropriations by the legislature, compliance by FEMC with the terms of this agreement and the provisions of section 471.038, F.S., and the required approvals by the Department and the FBPE.

11.0 Effective Informal Dispute Resolution. The parties agree that any disputes between the parties regarding their responsibilities under this Agreement or any provision of Florida law should be resolved as soon as possible at the lowest level possible in the most informal manner possible in order to conserve the resources of the parties. The parties agree to use their best efforts to assure speedy and non-confrontational resolution of any and all disputes. FEMC recognizes that the Department is mandated by Florida Statutes with the active supervision of FEMC's activities, and after consultation with the FBPE, has the authority to resolve disputes.

12.0 Continuing Education. FEMC shall establish a continuing education compliance monitoring system of FBPE licenses. FEMC shall ensure compliance with §471.017(3), F.S., prior to renewal of any engineering license.

13.0 Miscellaneous. FEMC shall make only prudent expenditures directly related to the responsibilities of the FBPE, and in accordance with this contract. FEMC employees and board of directors are not public employees for the purposes of Chapter 110 or Chapter 112, except that the board of directors and the staff are subject to the provisions of §112.061, F.S. FEMC shall maintain all records in accordance with the guidelines of the Department of State and shall not destroy any records prior to the limits imposed by the Department of State.

14.0 Single Audit Act Requirements. The administration of funds awarded by the Department to FEMC may be subject to audits and/or monitoring by the Department.

14.1 Monitoring. In addition to reviews of audits conducted in accordance with Section 216.3491, Florida Statutes, monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits, and/or other procedures. By entering into this agreement, FEMC agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event that the Department determines that a limited scope audit of FEMC is appropriate, FEMC agrees to comply with any additional instructions provided by the Department to FEMC regarding such audit. FEMC further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Comptroller or Auditor General.

14.2 Audits. This part is applicable if FEMC is a non-state entity as defined by Section 216.3491(2)(l), Florida Statutes.

1) In the event that FEMC expends a total amount of State awards (i.e., State financial assistance provided to the recipient to carry out a State project) equal to or in excess of \$300,000.00 in any fiscal year, FEMC must have a State single or project-specific audit for such fiscal year in accordance with Section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600, Rules of the Auditor General. Page 4, Section 2.1.1.2, Expenditures, indicates that State funds awarded through the Department to FEMC is \$1,664,946.47, of which \$300,000.00 is retained by the Governor's Office of Policy and Budget and another \$200,000.00 is retained in the Professional Regulation Trust Account, pursuant to Section 2.1.1.2 of the original contract. In determining the State awards expended in its fiscal year, FEMC shall consider all sources of State awards, including State funds received from the Department.

2) In connection with the audit requirements addressed above, FEMC shall ensure that the audit complies with the requirements of Section 216.3491(7), Florida Statutes. This includes submission of a reporting package as defined by Section 216.3491(2)(d), Florida Statutes, and Chapter 10.600, Rules of the Auditor General.

14.3 Report Submission.

1) Copies of reporting packages required by 14.2 of this Section shall be submitted by or on behalf of the Contractor directly to each of the following:

A. Department of Business and Professional Regulation  
Office of the General Counsel  
1940 North Monroe St.  
Tallahassee, FL 32399-2202

B. The Auditor General's office at the following address:

State of Florida Auditor General  
Room 574, Claude Pepper Building  
111 West Madison Street  
Tallahassee, FL 32302-1450

2) Any reports, management letters, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with Florida Statutes, and Chapter 10.600, Rules of the Auditor General, as applicable.

3) FEMC, when submitting audit reports to the Department for audits done in accordance with Florida Statutes and Chapter 10.600, Rules of the Auditor General, should indicate the date that the audit report was delivered to FEMC in correspondence accompanying the audit report.

14.4 Record Retention. FEMC shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of three years from the date the audit report is issued, and shall allow the Department, or its designee, access to such records upon

request. FEMC shall ensure that audit working papers are made available to the Department, or its designee, upon request for a period of three years from the date the audit report is issued, unless extended in writing by the Department.

All provisions in the original contract and any attachments thereto in conflict with this addendum shall be and are hereby changed to conform with this addendum.

All provisions not in conflict with this addendum are still in effect and are to be performed at the level specified in the original contract.

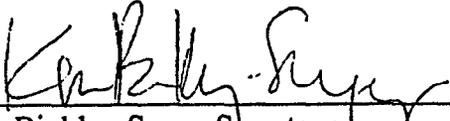
This addendum is hereby made a part of the original contract.

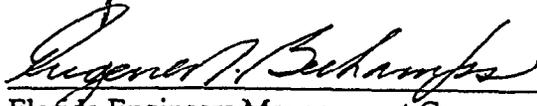
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IN WITNESS WHEREOF the parties agree to all provisions and conditions of this

Agreement.

DONE AND ORDERED this 11<sup>th</sup> day of July, 2001.

  
\_\_\_\_\_  
Kim Binkley-Seyer, Secretary  
Department of Business and Professional  
Regulation

  
\_\_\_\_\_  
Florida Engineers Management Corp.  
By: Eugene Bechamps  
As its: Chair

Approved by the Board of Professional  
Engineers

  
\_\_\_\_\_  
By: John W. Springstead  
As its: Chair

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
 BOARD OF PROFESSIONAL ENGINEERS  
 TWELVE MONTHS ENDING JUNE 30, 2001

## GRAND TOTAL

	PRORATED	DIRECT	TOTAL
010000 SALARIES AND BENEFITS	30,069.		30,069.
121000 TEMPORARY EMPLOYMENT	300.		300.
151000 SOCIAL SECURITY	23.		23.
TOTAL OTHER PERSONAL SERVICES	323.		323.
133200 EMPLOYMENT OPPORTUNITIES & VACANCY ADS	3.		3.
139900 INDEPENDENT CONTRACTOR-NOT OTHERWISE CLASSIFIED	105.		105.
151000 SOCIAL SECURITY	1.		1.
158000 STATE PERSONNEL ASSESSMENTS	47.		47.
221000 TELEPHONE	416.		416.
221100 CELLULAR TELEPHONES	118.		118.
223000 INFORMATION TECHNOLOGY COMMUNICATIONS	9.		9.
225000 POSTAGE	63.		63.
229000 CURR CHGS & OBLIGAT-COMMUNICATIONS/FREIGHT OTHER	19.		19.
230000 PRINTING AND REPRODUCTION	13.		13.
241000 REPAIRS AND MAINTENANCE - COMMODITIES	59.		59.
242000 REPAIRS AND MAINTENANCE - SERVICES	66.		66.
261000 IN-STATE TRAVEL	206.		206.
261800 IN STATE TRAVEL-TRAINING	212.		212.
262800 OUT OF STATE TRAVEL-TRAINING	3.		3.
264000 CLASS C MEAL ALLOWANCE	8.	6.	14.
363000 PARTS AND FITTINGS	1.		1.
371000 GASOLINE	178.		178.
377000 LUBRICANTS	3.		3.
380000 CUR CHGS-OFFICE SUPPLIES	119.		119.
391000 INFORMATION TECHNOLOGY SUPPLIES	37.		37.
399000 OTHER MATERIAL AND SUPPLIES	85.		85.
414000 FIRE FUND INSURANCE	3.		3.
421000 UNEMPLOYMENT COMPENSATION BENEFITS	94.		94.
431000 FROM DEPT OF MANAGEMENT SERVICES	870.		870.
434000 FROM NON-GOVERNMENTAL ENTITIES	2,993.		2,993.
442000 COPYING	211.		211.
443000 POSTAGE	26.		26.
492000 SUBSCRIPTIONS	7.		7.
497000 PAYMENT FOR INFORMATION AND EVIDENCE		65.	65.
499000 OTHER CUR CHGS-OTHER	42.		42.
511000 BOOKS AND OTHER LIBRARY RESOURCES	2.		2.
512000 FURNITURE AND EQUIPMENT	3.		3.
516000 INFORMATION TECHNOLOGY EQUIPMENT	476.		476.
519000 OTHER FURNITURE AND EQUIPMENT	3.		3.
TOTAL EXPENSES	6,501.	71.	6,572.
100021 ACQUISITION/MOTOR VEHICLES	854.		854.
100047 LEGAL SERVICES CONTRACT	53,211.		53,211.
411000 AUTOMOBILE FLEET INSURANCE	68.		68.
412000 GENERAL LIABILITY INSURANCE	155.		155.
413000 WORKERS' COMPENSATION INSURANCE	54.		54.
415000 CIVIL RIGHTS INSURANCE	621.		621.
419000 OTHER INSURANCE	139.		139.
TOTAL RISK MANAGEMENT INSURANCE	1,037.		1,037.
131300 CONSULTING SERVICES		417,500.	417,500.
750000 STATE FINANCIAL ASSISTANCE		1,252,500.	1,252,500.
TOTAL G/A-FEMC CONTRACTED SVCS		1,670,000.	1,670,000.