

OP-B-11-D2 ADMINISTRATION OF CONSTRUCTION MANAGER AGREEMENTS

SPECIFIC AUTHORITY

Sections 240.209(3)(p), 1001.74, 1013.46, F. S.

OBJECTIVE

To establish procedures for administration of construction manager agreements, including negotiation, contracting and payments.

OVERVIEW

This document describes contract administration procedures for Construction Manager agreements, including negotiations for pre-construction services and for the Guaranteed Maximum Price; amendments and change orders; approval of pay requests; subcontractor pre-qualification and bidding.

A. SCHEDULING THE NEGOTIATION

Upon approval of the construction manager selection as described in FSU Online Policies and Procedure OP-B-11-C2, Construction Managers Selection Process, the Facilities Design and Construction Office (FDC) schedules the negotiation meeting with representatives of the construction manager. The FDC transmits to the construction manager the standard Agreement between Owner and Construction Manager, the Project Manual, the Supplementary General Conditions for Construction Manager Agreements, applicable Supplements to the Project Manual and the link to download this procedure document. FDC directs the construction manager to prepare a proposal for pre-construction services in accordance with the "Guidelines for Construction Managers for the Preparation of Proposals for Pre-construction Services" (forms section).

B. NEGOTIATION FOR PRE-CONSTRUCTION SERVICES

FDC representatives meet with the construction manager to negotiate the pre-construction portion of the contract.

If negotiations with the first ranked firm are unsuccessful, negotiations with that firm may be terminated and negotiations may be commenced with the second ranked firm. If negotiations with the second ranked firm are unsuccessful, the negotiations with that firm may be terminated and begun with the third ranked firm. If negotiations with the third ranked firm are unsuccessful, negotiations with the third ranked firm may be terminated and additional firms from the original pool may be selected or the project may be re-advertised. At any time during the negotiation process, negotiations may be terminated entirely and the use of construction management for the project may be reconsidered.

1. Preparation of agreement

Upon completion of successful negotiations, the FDC prepares the Agreement between Owner and Construction Manager. After approval by the University General Counsel, the FDC transmits five (5) copies of the agreement to the construction manager for execution.

2. Distribution of executed agreement

Upon final execution of the agreement by the University President, copies of the agreement are distributed as follows: the construction manager, the FDC, the University Accounting Office (2) and the architect/engineer.

3. Pre-construction agreement file

The FDC maintains a pre-construction agreement file containing: the pre-construction agreement, the pre-construction fee proposal and any additional information related to the pre-construction negotiation.

C. NEGOTIATION OF GUARANTEED MAXIMUM PRICE (GMP)

When it is time for the construction manager to develop the GMP proposal, the project manager directs the construction manager to prepare it in accordance with the "Guidelines for Construction Managers for the Preparation of Guaranteed Maximum Price Proposals" (forms section).

After the construction manager develops the GMP, FDC reviews the proposal. The project manager ensures the architect/engineer receives a copy for review and obtains a written recommendation from the architect/engineer that the GMP be accepted. When all parties have reviewed the GMP proposal, the project manager schedules the negotiation meeting.

If negotiations regarding terms of the GMP proposal are unsuccessful, FDC may terminate negotiations with that firm and begin negotiations with the second ranked firm from the original selection. If negotiations with the second ranked firm are unsuccessful, FDC may terminate negotiations with that firm and begin negotiations with the third ranked firm from the original selection. If negotiations with the third ranked firm are unsuccessful, FDC may terminate negotiations with the third ranked firm and may select additional firms from the original pool or re-advertise the project. At any time during the negotiation process, FDC may terminate negotiations entirely and reconsider the use of construction management for the project or may re-advertise the project.

D. PREPARATION OF THE GMP AMENDMENT

Upon successful negotiation of the GMP, FDC prepares the GMP amendment to the Agreement between Owner and Construction Manager. The amendment shall establish the GMP amount, number of calendar days for completion and the liquidated damages amount (see FSU Online Policies and Procedures OP-B-11-E, Establishment of Construction Contract Time and Liquidated Damages) and shall reference any applicable supplements to the Project Manual. FDC also prepares the Performance Bond and the Labor and Materials Payment Bond.

E. TRANSMITTAL OF AMENDMENT TO CONSTRUCTION MANAGER

After approval by the University General Counsel, the FDC transmits five (5) copies of the amendment to the construction manager, together with five (5) copies each of the Performance Bond and Labor and Materials Payment Bond, for execution. An example transmittal letter is included in the forms section.

F. REVIEW OF INSURANCE ISSUES

Upon receipt of the signed amendment, insurance certificates and bonds from the construction manager, the FDC will provide the Insurance Consultant (if such services are being provided on the project) with insurance documents for review. If an Insurance Consultant is not providing service on the project, the FDC reviews the bonds and insurance for compliance with the specifications.

G. DISTRIBUTION OF EXECUTED GMP AMENDMENT

Upon final execution of the GMP amendment by the University President, the amendment is distributed (each with a set of bonds), as follows: the construction manager, the FDC, the University Accounting Office (2) and the architect/engineer.

H. GMP FILE

The FDC maintains a GMP file containing: the executed GMP amendment, the Performance and Payment Bonds, the insurance certificates, the approved GMP proposal, a recommendation letter from the architect/engineer, documentation of the approval of the bonds and insurance if reviewed by an insurance consultant, documentation of the calculation for liquidated damages and any correspondence related to the GMP.

I. 100% CONSTRUCTION DOCUMENTS

When the GMP was based on documents prior to the final 100% Construction Documents, the construction manager shall be required to execute a change order which accepts the 100% Construction Documents as the basis for construction. If there are scope increases between the 100% Construction Documents and the documents on which the GMP was based, those shall be addressed in the change order.

J. BIDDING SCHEDULE

The project manager discusses the bidding schedule with the construction manager. Based on the proposed schedule, FDC develops a payment schedule with the architect/engineer for the architect/engineer's bidding phase payments.

K. PRE-QUALIFICATION OF SUBCONTRACTORS

The construction manager develops procedures for pre-qualification of trade contractors and coordinates with the FDC to ensure that the procedures are acceptable.

L. BID OPENINGS AND AWARD RECOMMENDATIONS

The project manager ensures that the construction manager publicly advertises for each bid package. While the bid openings are not required to be public, a university representative, generally the project manager, must be present when they are opened by the construction manager.

The project manager instructs the construction manager to provide a recommendation for award of each bid package, the recommendation from the architect/engineer, a copy of the bid tabulation form and a copy of each bid proposal.

M. CONSTRUCTION MANAGER INVOICES AND PAY REQUESTS

During the pre-construction and construction phases, the construction manager is paid as provided for in "Invoicing Procedures" (forms section).

N. REQUESTS FOR SELF-PERFORMANCE

If the construction manager makes a request to self-perform any portion of the work, the request is handled as described in "Procedures for Self-Performance of Work" (forms section).

O. CONSTRUCTION MANAGER'S CONTINGENCY AUTHORIZATIONS

The GMP includes a contingency amount for the construction manager's use as described in the Agreement between Owner and Construction Manager. The project manager must approve a CM Contingency Authorization for all expenditures of this contingency. These expenditures are to be supported by detailed breakdowns, including labor and material costs.

P. CHANGE ORDERS

Prior to approval, change orders must be supported by bids or by the unit prices established in the original bid. The CM markup on the change order will be limited to the percentage of profit approved in the original GMP. If changes are funded from bid savings, they are not eligible for a CM markup until the originally contracted GMP amount has been exceeded.

FORMS

Guidelines for Construction Managers for the Preparation of Proposals for Pre-Construction Services

Guidelines for Construction Managers for the Preparation of Guaranteed Maximum Price Proposals

Example Transmittal Letter

Invoicing Procedures

Procedures for Self-Performance of Work



FLORIDA STATE UNIVERSITY
GUIDELINES FOR CONSTRUCTION MANAGERS FOR THE
PREPARATION OF PROPOSALS FOR PRE-CONSTRUCTION SERVICES



The construction manager is typically selected at the beginning of the design process. The Guaranteed Maximum Price is usually prepared based on 50% Construction Documents. In these typical cases the pre-construction deliverables include reports at the completion of Advanced Schematic Design, Design Development and 50% Construction Documents. The deliverable at 50% Construction Documents includes the Guaranteed Maximum Price proposal. Reports include discussion of the items outlined in the Agreement as pre-construction services. If the design phases are different from the standard phases, or deliverables are required which differ from the standard project described above, the construction manager will be notified and the pre-construction proposal will be prepared accordingly.

The following costs are to be included in the proposal:

- direct labor costs
- printing costs
- overhead (included as a multiplier)
- travel (when approved)
- personnel expense
- number of hours by team member for each phase

A sample format:

Project Name	Rates	SD		DD		50% / GMP		Preconstruction	
Project Number	\$ / hour	Hours	Total \$	Hours	Total \$	Hours	Total \$	Hours	Total \$
Project Exec	35	0	0	0	0	4	140	4	140
Project Director	29	24	696	72	2,088	96	2,784	192	5,568
Project Manager	25	16	400	72	1,800	96	2,400	184	4,600
Sr. Estimator	28	16	448	12	336	24	672	52	1,456
Estimators	22	0	0	24	528	32	704	56	1,232
Total Direct Labor		56	1,544	180	4,752		6,700	488	12,996
*Multiplier			1.6		1.6		1.6		1.6
Total Labor Cost			2,470		7,603		10,720		20,794
*Travel			0		0		0		0
*Printing			75		100		125		300
Project Total			2,545		7,703		10,845		21,294

* See attached breakdowns

NOTE: The multiplier, travel (if allowed) and printing items must include a further breakdown.

TRAVEL BREAKDOWN

- Driving = number of miles to be traveled times the state mileage rate (currently \$0.29 per mile)
 - Flying = the air fare
 - Approved State of Florida per diem amount for meals:
 - \$3 for breakfast if trip commences prior to 6.00 a.m.
 - \$6 for lunch
 - \$12 for dinner if the trip extends beyond 8:00 p.m.
 - Hotel rate
- (Firms who represent that they have, or will have, an office local to the project site are not eligible for travel expenses.)

PRINTING BREAKDOWN

- Number of pages of specifications times the printing rate
- Number of sheets of plans times the printing rate

MULTIPLIER BREAKDOWN

- Lists all items included in the firm's personnel expense multiplier (may differ by employee).
- Overhead and profit are **not** included in the pre-construction phase, as those items will be included in the GMP for the construction phase.



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GUIDELINES FOR CONSTRUCTION MANAGERS FOR THE PREPARATION OF GUARANTEED MAXIMUM PRICE PROPOSALS



The Guaranteed Maximum Price (GMP) proposal is developed at the phase specified in the Agreement between Owner and Construction Manager, usually at 50% Construction Documents.

The GMP proposal should be bound and entitled, "Guaranteed Maximum Price Proposal for (*name of project, project number*)" and must include a date on the cover. Proposal pages must be numbered. Bound inside the proposal, in the order indicated, should be:

- Transmittal letter (including confirmation of project team)
- Table of Contents

Tab 1 – GMP Summary (brief general summary of scope of work, alternates, etc.)

Tab 2 – List of documents (project manual(s), drawings by sheet number & date)

Tab 3 – Description of Work

- *Specification listing* - detailed listing of specifications by division and section which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert "as per specifications"
- *Qualifications and Assumptions* - summary of all qualifications and assumptions included in specification listing
- *Exclusions* - summary of exclusions included in specification listing, plus exclusions not related to specifications
- *Value Engineering Recommendations* - if applicable
- *Allowance Schedule* - if applicable
- *Add Alternate Schedule* - if applicable (a description of alternates with accompanying breakdown of GMP cost)

Tab 4 – GMP Cost Summary

- A detailed summary of costs using CSI format, organized according to anticipated bid packages, which includes quantities, unit prices and cost extensions
- Following the cost summary of the work, the construction manager's fee (as identified in Paragraph 7.2 of the Agreement) must be broken down further. This breakdown must include a detailed listing of home office support, field staff and all other items listed in the definition of "fee" in the Agreement between Owner and Construction Manager. Calculations made to arrive at cost extensions must be shown for each team member, i.e., actual salary rate times number of hours = subtotal, times personnel expense multiplier = total labor cost. A detailed breakdown justifying the multiplier used for personnel expense must be included. The profit multiplier portion of the fee shall be shown on a separate line of the cost summary.

Tab 5 – Master Project Schedule



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TRANSMITTAL OF GMP AMENDMENT
TO CONSTRUCTION MANAGER FOR EXECUTION



RE: _____
 Project Name

FS- _____
 Project No

Dear _____:

Under cover of this letter, I am transmitting five (5) copies of Amendment No. XX which accepts the Guaranteed Maximum Price for the above referenced project for execution.

Please execute all five (5) copies as follows:

1. Have your president or other authorized officer execute each copy, have a second officer attest the signature and seal the agreements, and have a witness sign the agreements. All five (5) copies of the Payment and Performance Bonds must be signed and the corporate seal affixed thereto. The resident agent for the surety company must sign and seal each copy. A power of attorney must be included for both bonds and the power of attorney must be dated the same as the date appearing on the bond signature page. Do not fill in the date of the Agreement on the first page of the Payment of Performance Bonds -- we will enter this date upon execution of the Agreement.
2. Please return a Certificate of Insurance, ensuring that the Certificate includes the coverages required by Section E, Article 11, of the Project Manual and of the supplements to the Project Manual referenced in your agreement. The Certificate must specify that notification will be given to the Owner of cancellation of insurance. If the standard "ACCORD" certificate of insurance is used, the Existing Cancellation Provision **should be modified** to comply with Section E, Article 11.1.3 of the project manual as follows: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the below named certificate holder." The modification should be initialed by an authorized representative of the Insurance Company. The Florida State University must be listed as a Named Additional Insured and it must be noted that the coverage is to provide a "Waiver of Subrogation."

Please return all five (5) copies of the amendment, each bond and the insurance certificate. Upon final execution, we will send you a set of documents for your files. If you have any questions regarding the execution of this Amendment, please call me at _____.

Sincerely,

Name

cc: project A/E
 project manager



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INVOICING PROCEDURES

CONSTRUCTION MANAGEMENT PROJECTS



PRE-CONSTRUCTION PHASE PAYMENTS

Pre-construction Phase fees are negotiated as a lump sum amount, fees being associated with individual deliverables. Upon approval of the deliverable, the CM may invoice the amount stated in the contract for that deliverable. One (1) original invoice and three (3) copies are required (2 including backup, if any) and are to be submitted to the Facilities Design and Construction Office (FDC). If any additional services have been authorized in writing by the University, a copy of the authorization (and supporting documentation as required by the authorization) must be attached to the invoice.

CONSTRUCTION PHASE PAYMENTS

Construction Phase payments are made using the Certificate for Partial Payment form in the Project Manual and are sent to the architect/engineer. These payments are approved by the FDC. The actual construction is paid based on percentage completed as supported by the schedule of values. Four (4) copies of the pay request must be submitted, two (2) of which must include complete backup.

Fee and General Conditions Pay Request Documentation

- a) The overhead and profit portion of the fee, approved during the negotiations as a percentage of cost of work, may be invoiced in proportion to the percentage of work completed. No backup documentation is required.
- b) General Conditions items which were awarded based on competitive bidding are paid based on percentage completed as supported by the schedule of values. No additional documentation is required.
- c) *Full-time site staff*: A calculation showing number of hours times the hourly rate for days worked during the pay period. Line item amounts from the GMP for these costs shall not be exceeded without prior approval of the University. Overtime allowed only if included in the original GMP proposal or specifically approved in writing by the project manager.
- d) *General conditions and fee items not provided by the CM*: e.g. utilities to site trailer, custodial service, office equipment rental or purchase, bonds, etc. A copy of the invoice or rental agreement from the provider must be included in the pay request.
- e) *Fee or General Condition items provided by the CM*: e.g. home office labor support, site cleanup (if not provided by a subcontractor and if approved for self-performance under the procedures established herein). A calculation showing number of hours times the hourly rate for the days worked during the pay period. Include time sheets. Line item amounts from the GMP for these costs shall not be exceeded without prior approval of the University.

Self-Performed Work

- a) If the CM is self-performing work for which the CM's price is the result of being the low bidder (if the work was competitively bid) or of being the low proposed price (if three (3) quotes were provided), then the pay request is made in the same manner as for other subcontractors.
- b) If circumstances are such that the CM is self-performing work and the award was not based on the conditions described in Paragraph a) above (e.g. schedule requirements, emergencies, etc.), then the CM shall include the following documentation to support that portion of the pay request:
 - All labor shall be documented on weekly time records at a wage scale commensurate with that paid in the area and trade including all labor taxes and insurance. (The CM shall provide justification for rates used.)
 - Material purchases in amounts exceeding \$10,000.00 shall be documented by written quotations from at least three (3) vendors. Documentation for material purchases for amounts less than \$10,000.00 shall include documented telephonic quotations from at least three (3) vendors. Documentation of the required quotations shall be submitted with the first pay request which includes payment for such materials.

Savings

- a) *Trade contracts*: if the bid for a bid package exceeds the line item amount provided in the GMP, the entire cost is payable to the CM with the balance funded by the CM contingency, provided that the GMP is not exceeded. Savings in trade contracts accrue to the CM contingency.
- b) *General Conditions and Fee*: items budgeted as part of the fee (as identified by Paragraph 7.2 of the Agreement between Owner and Construction Manager) or as General Conditions (as identified by Paragraph 8.2 of the Agreement) are line item budgets and are not interchangeable without specific approval of the project manager. A change or increase to field staff or home office support staff must have prior approval of the project manager.



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PROCEDURES FOR SELF-PERFORMANCE OF WORK ON FLORIDA STATE UNIVERSITY CONSTRUCTION MANAGEMENT PROJECTS



These procedures are to be followed for any work which is neither included in the Construction Manager's fee (percentage amount for OH&P) nor competitively bid.

Paragraph 2.2 of the Agreement between Owner and Construction Manager provides, "Unless otherwise authorized by the owner, all work shall be performed under Trade Contracts held by the construction manager. The construction manager shall not bid on any of the Trade Contractor Work or perform such work with its own forces without the prior written consent of the owner, in accordance with FSU Online Policies and Procedures OP-B-11-D2, Administration of Construction Manager Agreements.

PRIOR CONSENT

The construction manager must make its request to self-perform work to the University. If the University concurs, the project manager shall send written authorization to the construction manager.

Consent may be given either:

- 1) for the CM to bid on a specific portion of the work, or
- 2) for the CM to submit a proposal for self-performance of the work, together with three (3) quotes from other contractors for performance of that same work. If the CM is unable to secure three (3) quotes due to insufficient trade contractor interest, the CM shall provide documentation of its efforts to secure the required quotes.

Items which will be considered for self-performance include, but are not limited to:

- 1) General Conditions items.
- 2) Work for which sufficient scope does not exist to attract trade contractor interest, or for which the schedule for the work spans a time period which is sporadic and broken over the duration of the Project.
- 3) Work which must be performed to eliminate safety violations or remedy emergency conditions.
- 4) Unforeseen work for which the timing has significant and negative impact on the schedule of the project or work for which the owner mandates an accelerated schedule to complete component parts of the project. (Circumstances such as completeness of architectural drawings, time required to generate appropriate bid packages and change order liability will be considered.)
- 5) Portions of the work for which the CM has a proven track record of performing such work, and for which the participation by the CM would be advantageous to the owner.