




STATE UNIVERSITY SYSTEM OF FLORIDA
325 West Gaines Street, Tallahassee, Florida 32399-1950

January 22, 1999

CHANCELLOR'S MEMORANDUM CM-N-08.01 -01/99

TO: Members, Council of Presidents

FROM: Adam W. Herbert 

SUBJECT: Administration of Construction Manager Agreements

AUTHORITY: Sections 240.209(3)(p), 255.29(3), F. S.
Rules 6C-14.007, 6C-14.020, F.A.C.

POLICY/PURPOSE: To establish procedures for the administration of construction manager agreements, including negotiation, contracting, and payments

Contracting Authority. The university is the contracting authority for Construction Manager agreements in accordance with Rule 6C-14.007, F.A.C.

Scheduling the Negotiation. Upon approval of the construction manager selection as described in Chancellor's Memorandum CM-N-07, Selection of Construction Managers, the university schedules the negotiation meeting with representatives of the construction manager and university. The university 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 a copy of this Chancellor's Memorandum. These documents can be obtained from the SUS Office of Facilities Planning. The university directs the construction manager to prepare a proposal for preconstruction services in accordance with the "Guidelines for Construction Managers for the Preparation of Proposals for Preconstruction Services" (Attachment 1).

Negotiation for Preconstruction Services. Representatives of the university meet with the construction manager to negotiate the preconstruction portion of the contract.

If negotiations with the first ranked firm are unsuccessful, the university may terminate negotiations with that firm and begin negotiations with the second ranked firm. If negotiations with the second ranked firm are unsuccessful, the university may terminate negotiations with that firm and begin negotiations with the third ranked firm. If negotiations with the third ranked firm are unsuccessful, the university may terminate negotiations with the third ranked firm, and may select additional firms from the original pool

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or re-advertise the project. At any time during the negotiation process, the university may terminate negotiations entirely and reconsider the use of construction management for the project.

Preconstruction Agreement File. The university maintains a preconstruction agreement file containing: the preconstruction agreement, the preconstruction fee proposal, a copy of the contractor's license for the construction manager, and any additional information related to the preconstruction negotiation.

Preparation of Agreement. Upon completion of successful negotiations, the university prepares the "Agreement between Owner and Construction Manager" for preconstruction services. After approval by the university general counsel, the university transmits five copies of the agreement to the construction manager for execution.

Distribution of Executed Agreement. Upon final execution of the agreement by the university president, the university distributes the copies as follows: the construction manager, the university facilities office, the university accounting office, the architect/engineer, and the State Comptroller's Office.

Negotiation of Guaranteed Maximum Price (GMP). When it is time for the construction manager to develop the GMP proposal, the university directs the construction manager to prepare it in accordance with the "Guidelines for Construction Managers for the Preparation of Guaranteed Maximum Price Proposals" (Attachment 2).

After the construction manager develops the GMP, the university reviews the proposal. The university ensures that the architect/engineer receives a copy for review. When all parties have reviewed the GMP proposal, the university schedules the negotiation meeting.

If negotiations regarding the terms of the GMP proposal are unsuccessful, the university 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, the university 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, the university 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, the university may terminate negotiations entirely and reconsider the use of construction management for the project.

Preparation of the GMP Amendment. Upon successful negotiation of the GMP, the university prepares the GMP amendment to the Agreement between Owner and Construction Manager. The amendment shall establish the GMP amount, the number of calendar days for completion and the liquidated damages amount (see CM-N-11, Establishment of Construction Contract Time and Liquidated Damages), and shall

reference any applicable supplements to the Project Manual. The university also prepares the Performance Bond and the Labor and Materials Payment Bond.

Transmittal of Amendment to Construction Manager. After approval by the university general counsel, the university transmits five copies of the amendment to the construction manager, together with five copies each of the Performance Bond and Labor and Materials Payment Bond, for execution. An example transmittal letter is included as Attachment 3.

Review of Insurance Issues. Upon receipt of the signed amendment and the required insurance certificates and bonds from the construction manager, the university will review the bond and certificate documents for compliance with the specifications.

Distribution of Executed GMP Amendment. Upon final execution of the GMP amendment by the university president, the university distributes the copies, each with a set of bonds, as follows: the construction manager, the university facilities office, the university accounting office, the architect/engineer, and the State Comptroller's Office.

GMP File. The university maintains a GMP file containing: the executed GMP amendment, the Performance and Payment Bonds, the insurance certificate(s), the approved GMP proposal, a recommendation letter from the architect/engineer, documentation of the university's approval of the bonds and insurance, documentation of the calculation for liquidated damages, and any correspondence related to the GMP.

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

Prequalification of Subcontractors. The construction manager develops procedures for prequalification of trade contractors, and coordinates with the university to ensure that the procedures are acceptable.

Bid Openings and Award Recommendations. The university ensures that the construction manager publicly advertises for each bid package. While the bid openings are not required to be public, a university representative must be present when bids received by the construction manager are opened by the construction manager.

The university instructs the construction manager to provide a letter of recommendation for award of each bid package, the letter of recommendation from the architect/engineer, a copy of the bid tabulation form and a copy of each bid proposal. The university maintains this information on file for audit purposes.

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Construction Manager Invoices. During the preconstruction and construction phases, the construction manager is paid as provided for in "Invoicing Procedures" (Attachment 4).

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" (Attachment 5).

Change Orders. Prior to approval by the university, change orders must be supported by bids or by the unit prices established in the original bid.

Contact: Kenneth Ogletree
Office of Facilities Planning
SUNCOM 278-5251, Local (850) 488-5251
Internet Address: ogletrk@borfl.org

AWH/nld

Attachments

ATTACHMENT 1

Guidelines for Construction Managers for the Preparation of Proposals for Preconstruction 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 preconstruction deliverables include reports at the completion of Advanced Schematic Design, Design Development and 50% Construction Documents. The deliverables at 50% Construction Documents include the Guaranteed Maximum Price proposal. Reports include discussion of the items outlined in the Agreement as preconstruction 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 preconstruction proposal will be prepared accordingly.

The following costs are to be included in the proposal: direct labor costs, travel, printing costs, personnel expense and overhead (included as a multiplier). The proposal should include the number of hours by team member for each phase. A sample format:

Proj. Name Proj. No.	Rates \$/hr	SD hours	SD total \$	DD hours	DD total \$	50%/GMP hours	50%/GMP total \$	Preconst. hours	Preconst. Total \$
Proj. Exec.	35	0	0	0	0	4	140	4	140
Proj. Director	29	24	696	72	2,088	96	2,784	192	5,568
Proj. Mgr.	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		200
*Printing			75		100		125		300
Project Total			2,545		7,703		10,845		21,294
*see attached breakdowns									

The multiplier, travel and printing items must include a further breakdown.

The travel breakdown includes: if driving, the number of miles to be traveled times the state mileage rate (currently \$0.29 per mile); if flying, the air fare; the approved per diem amount for meals (currently \$3 for breakfast if trip commences prior to 6.00 a.m., \$6 for lunch, and \$12 for dinner if the trip extends beyond 8:00 p.m.); and, hotel rate. Firms who represent that they have, or will have, an office local to the project site are not eligible for travel expenses.

The printing breakdown includes the number of pages of specifications times the printing rate and the number of sheets of plans times the printing rate.

The multiplier breakdown lists all items included in the firm's personnel expense multiplier. Overhead and profit are not included in the preconstruction phase, as those items will be included in the GMP for the construction phase.

ATTACHMENT 2

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

The Guaranteed Maximum Price 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 below:

- 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 - provide a 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 - a summary of all qualifications and assumptions included in the specification listing
- Exclusions - a summary of all exclusions included in the specification listing, plus any exclusions not related to the 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 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

ATTACHMENT 3

TRANSMITTAL OF GMP AMENDMENT TO CONSTRUCTION MANAGER FOR EXECUTION

RE: Project Name, BR-__

Dear _____:

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

Please execute all five 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 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 and 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 Board of Regents and (*name of university*) must be listed as Named Additional Insured, and it must be noted that the coverage is to provide a "Waiver of Subrogation."

Please return all five 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

ATTACHMENT 4

INVOICING PROCEDURES, CONSTRUCTION MANAGEMENT PROJECTS

1. Preconstruction Phase Payments

Preconstruction Phase fees are negotiated as a lump sum amount, with fees associated with individual deliverables. Upon approval of the deliverable, the CM may invoice the amount stated in the contract for that deliverable. The form to be used is included as the third page of this attachment. One original invoice and four copies are required (including backup, if any), and are to be submitted to the university.

If any additional services have been authorized in writing by the university, a copy of the authorization (and supporting documentation, if required by the authorization) must be attached to the invoice.

2. Construction Phase Payments

Construction Phase payments are made using the Certificate for Partial Payment form in the non-technical specifications, and are sent to the architect/engineer. These payments are approved by the university.

The actual construction is paid based on percentage completed as supported by the schedule of values.

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 hours times the hourly rate for the 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.
- d) **General conditions and fee items not provided by the CM:** e.g. utilities to the 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 Conditions 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 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 quotes

were provided), then the pay request is made in the same manner as for other subcontractors.

- b) If circumstances (e.g. schedule requirements, emergencies, etc.) are such that the CM is self-performing Work, and the award was not based on the conditions described in the paragraph above, then the CM shall include the following documentation with 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 vendors. Documentation for material purchases for amounts less than \$10,000.00 shall include documented telephonic quotations from at least three 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 a bid package exceeds the line item amount provided in the GMP, the entire cost is payable to the CM, provided that the GMP is not exceeded. Savings in trade contracts accrue to the CM's 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 university. A change or increase to field staff or home office support staff must have prior approval of the university.

ATTACHMENT 5

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

These procedures are to be followed for any Work which is neither included in the CM's fee, 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 State University System Chancellor's Memorandum No. CM-N-08.01-01/99".

PRIOR CONSENT

The construction manager must make its request to self-perform Work to the university. If the university concurs, the university president, or designee, 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 quotes from other contractors for performance of that same Work. If the CM is unable to secure three 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.