

ARTICLE 3 MODIFICATIONS TO THE GENERAL CONDITIONS FOR WASHINGTON STATE FACILITIES CONSTRUCTION

The General Conditions for Washington State Facilities Construction and Supplemental Conditions For Washington State Facilities Construction apply to the GC/CM Contract as modified by the GC/CM Manual:

3.1 Part 1, 1.01 Definitions

“Contract Documents” shall include, in addition to the documents mentioned, The GCCM’s response to the RFQ and the GC/CM manual for this project.

Where “contractor” or “contractor’s” is used, substitute “GC/CM” or “GC/CM’s”. Wherever “sub-contractor” is used, substitute “trade contractor”.

3.2 Part 1 1.03.5 Execution and Intent add paragraphs below:

The Owner has a separate agreement with the Architect/Engineer (A/E) to design the facility and to provide the limited construction observation services necessary to ensure that the construction conforms to the drawings and specifications but does not absolve the GC/CM of its role as Construction Manager or General Contractor to assure performance.

Both the GC/CM and the A/E shall be given direction by the owner, normally by the Owner's project manager or designated representative. The relationship between the GC/CM and the A/E is intended to be cooperative and proactive, both participating on the same team with the Owner. Meeting minutes during construction will be taken by the GC/CM and distributed to all parties within five calendar days. The A/E will provide attachments addressing design issues when appropriate.

3.3 Bidding on subcontract work by the GC/CM or its subsidiaries is prohibited, except as provided for under RCW 39.10.390

In the event that no bids are received or the bids received are over the budget amount for the subcontract specialty or the subcontractor fails to perform, then, with the prior approval of the owner, the GC/CM may:

- Negotiate with the low responsive responsible bidder in accordance with RCW 39.10.380 (see Appendix A of the GC/CM Manual); or
- Provide written explanation to reject all bids and Rebid the bid package.

In preparing subcontract bid packages, the GC/CM must not require the subcontractor to violate or waive terms of a collective bargaining agreement.

3.4 The GC/CM shall use the General Conditions For Washington State Facilities Construction and Supplemental Conditions in all subcontracts. GC/CM subcontract form and other conditions specific to the project are allowed to the extent that the GC/CM's documents do not conflict with the state documents. The documents shall be provided to the Owner for review and approval at least 60 days prior to bidding.

3.5 Potential buy-out savings, within this article, shall be defined as the difference between the bid package MACC and the bid amount plus Team Change Memos (TCMs). There is no potential

buy-out savings if the total amounts awarded plus TCMs exceeds the total of the bid package estimates which are identified within the negotiated MACC.

- During the period of time between the bidding of the first bid package and until 80% of all work has been awarded, the full amount of the negotiated MACC is available to the GC/CM for awarding bid packages and for writing TCMs.
- The GC/CM shall be allowed to carry a maximum 5% of buyout savings after 80% of the work has been awarded to subcontractors. An evaluation will be performed by the Owner to determine the exact amount allowed. This allowance is in addition to any contingencies or other allowances within the negotiated MACC. The GC/CM shall carry this amount for six months after which the buyout savings goes to zero. The MACC will be adjusted to reflect buyout savings by change order.
- The Specified General Conditions, GC/CM Fee percentage and original scope of work will remain unchanged.
- The Owner may negotiate with the GC/CM to add scope to the MACC within the legislative intent and the scope in the advertisement for the GC/CM's services. The percent fee will be applied to any change of scope. Revision to the percent fee shall be negotiated if the MACC changes by more than 15%. The GC/CM will provide a bond for the revised TCC.
- All project savings accrue to the owner upon completion of the project.

3.6 The MACC should include sufficient allowance and contingencies to accomplish the work. The Risk Contingency amount will be agreed upon at the time the MACC is negotiated, and will not exceed 5%.

3.7 **The GC/CM shall provide timely notification to the owner and A/E in writing of items missing or incomplete in the drawings and specifications.** The GC/CM shall carry sufficient contingency and/or allowances within the negotiated MACC to correct such deficiencies. The GC/CM shall use the Risk Contingency or allowances noted above only upon the prior written authorization of the owner.

3.8 **If the A/E's estimate and the GC/CM's estimate on a bid package are not in agreement,** then the A/E, the GC/CM, and the owner shall make whatever efforts necessary to come to agreement and make any necessary changes prior to advertising the bid package. This should take place within seven calendar days of receipt of the estimate. Efforts shall include but not be limited to program revisions, architectural/ engineering revisions, and construction adjustments, etc.

3.9 Accounting Records

- The GC/CM shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this contract. The accounting and control systems shall be satisfactory to the owner.
- During the period from the date when bids are opened on the first bid package until completion of the project, the GC/CM shall provide, on a monthly basis, a complete and comprehensive cost-accounting to the Owner of the status of all actual and budgeted costs within the MACC.

- Accounting shall be provided in accordance with Article 9 of the GC/CM Contract Provisions.

3.10 PAYMENT AND PERFORMANCE BONDS

A payment and performance bond for 100% of the Total Contract Cost (TCC) and Washington State sales tax shall be furnished by the GC/CM. The GC/CM shall include within their bid the cost for providing a payment and performance bond in the full amount of the Total Contract Cost, including Washington State sales tax.

Note: AIA Payment Bond and Performance Bond forms (A312) are required. These forms will not be provided by the Owner.

All Subcontractors who bid work over \$300,000 shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount plus Washington State sales tax. All other subcontracts under \$300,000 shall provide payment and performance bonds, if required by GC/CM.

3.11 CHANGES IN THE CONTRACT SUM

Refer to Part 7 of the Washington State General Conditions for terms and conditions for changes in the work. The GC/CM shall not be entitled to any markup on subcontractor work, except for payment and performance bond, builders risk insurance, general liability insurance and the GC/CM firm's fee. The GC/CM may be eligible for mark-ups on changes per Part 7 of the General Conditions on work where the GC/CM is self-performing as a subcontractor.

3.12 PREDETERMINATION OF SUBCONTRACTOR ELIGIBILITY

When determination of subcontractor eligibility prior to seeking bids is in the best interest of the project and critical to the successful completion of a subcontract bid package, the Owner and GC/CM may evaluate and determine bidder eligibility. The process shall adhere to the requirements of RCW 39.10.400 including public notification and public hearing of intent to evaluate and determine bidder eligibility with opportunity for written and verbal comments on the justification for conducting bidder eligibility, the evaluation criteria, and weights for each criteria and sub criteria.

A written final determination shall be issued to all interested parties. Any potential bidder determined not to meet eligibility criteria has one opportunity to establish its eligibility by providing additional information and meeting with the Owner and GC/CM within three business days of the final determination. [potential add similar language to responsibility criteria appeals. – instructions to bidders, 0.11.B.]

The criteria used to determine eligibility may include:

- Adequate financial resources or the ability to secure such resources.
- History of successful completion of a contractor of similar type and scope.
- Project management and project supervision personnel with experience on similar projects and the availability of such personnel for the project.
- Current and projected workload and the impact the project will have on the subcontractor's current and projected workload.
- Ability to accurately estimate the subcontractor bid package shop drawing and other coordination procedures.
- Eligibility to receive an award under applicable laws and regulations
- Ability to meet subcontract bid package scheduling requirements.

When subcontractor eligibility was not determined before bidding, the subcontract bid packages must include the specific objective criteria that will be used to evaluate bidder responsibility. Bidder responsibility must be determined in accordance with criteria listed in the bid documents per RCW 39.04.350.

3.13 GC/CM OPTIONAL SELECTION OF ELECTRICAL & MECHANICAL SUBCONTRACTORS

The GC/CM must competitively bid all subcontract work with public bid openings. The exception to this is the optional selection of electrical and/or mechanical subcontractors (known as ECCM and MCCM) using a similar process to the selection of the GC/CM in accordance with RCW 39.10.385. Department of Enterprise Services must approve the use of this alternate selection of subcontractors; this may only be used when the anticipated value of the subcontract will exceed \$3,000,000. The GC/CM firm may bid on subcontract work subject to limitations defined in RCW 39.10. Should the total value of the sum of the competitively bid subcontracts plus owner approved change orders be less than the negotiated MACC, then the difference (defined as the "buyout savings") accrues to the Owner. If the construction is completed for more than the MACC, the additional costs are the responsibility of the GC/CM.

3.14 SELF-PERFORMANCE

The GC/CM, or its subsidiaries, may bid on subcontract work if

- The work within the subcontract bid package is customarily performed by the GC/CM;
- The bid opening is managed by the public body and is in compliance with RCW 39.10.380; and
- Notification of the GC/CM's intention to bid is included in the public solicitation of bids for the bid package.

In no event may the value of subcontract work performed and equipment and materials supplied by the GC/CM exceed thirty (30) percent of the negotiated maximum allowable construction cost.

3.15 INFORMATION FOR CAPITAL PROJECT ADVISORY REVIEW BOARD

The GC/CM and its subcontractors shall be obligated to provide and submit project information to Enterprise Services, Engineering and Architecture Services as required by the board in RCW 39.10.