

MEMORANDUM

Date: May 9, 2019
From: James Hoffman
CPDC - Chief of Construction Management
Re: Self-Performed Work

Following are CSU policies for self-performed work required to satisfy statute, CSU policy, and price control requirements.

1. All potential self-performed scopes of work that the Trustees (CSU) will allow as a part of any construction agreement shall be identified by the Trustees in the RFP that solicits proposers for that agreement.
2. Proposers shall identify in their proposal, in response to the RFP, which scopes of work they intend to self-perform.
3. After award, based on the mutually agreed upon needs of the project, Trustees may authorize self-performed scopes of work previously identified as described above.
4. The self-performed scope of work shall be assumed to be CM@R for CM@R contracts or CDB for CDB projects.
5. After agreement on the self-performed scopes of work, the GC may competitively bid against other trade contractors for a low-bid award of that scope.
6. For scopes of work that the Trustees and the General Contractor / Design-Builder (GC) agree will be self-performed as described above, the following conditions shall apply when scopes are not competitively bid:
 - a. GC to provide the Self-Performed Bid Package (SPBP) scope of work description.
 - b. GC to establish a target budget for the SPBP that supports the overall project budget.
 - c. GC to identify 3 independent estimators for CSU to choose from to provide an independent estimate for SPBP.
 - d. CSU to obtain and pay for the SPBP independent estimate with GC funding.
 - e. The SPBP target budget, estimating process, and final estimate must be kept confidential from the GC.
 - f. GC shall concurrently develop a GMP for the SPBP.
 - g. When the GC has submitted the SPBP GMP, CSU shall compare the proposed GMP to the independent estimate, and the Design-Builder target budget, as if they were competitive bids.
 - h. CSU may make a "best value" decision as to authorizing Design-Builder's self-performance of the SPBP, if the SPBP GMP is deemed competitive based on the estimate and if it is deemed in the Trustees Best Interest to proceed.
 - i. The independent estimate and proposed GMP may be normalized to assure uniformity of scope.
 - j. All self-performed work shall be a contract allowance to be executed as a GMP as prescribed by the contract documents.
 - k. CSU and Design-Builder may elect to create a shared savings incentive on the SPBP GMP allowance to induce Design-Builder to return GMP savings.
 - l. If the SPBP GMP is not competitive, CSU may decide to not award the construction phase sub-contract to the Design-Builder and may proceed to use the documents developed to date to competitively bid the scope of work, or as Bridging Documents to bid the work to other Design-Build trade contractors.
7. GC OH&P and Site Management Fees on proposed self-performed work may be proposed on separately as a part of the proposed fees in the RFP. Efficiencies related to more efficient management structure and competition related to this, should result in lower GC markups on the SPBP.

Following are the pertinent sections of the: RFP, General Conditions, Statute, and CM Guidelines affecting these policies:

Collaborative Design Build RFP

6.03 Recommend Subcontractor Procurement Methodology

The Design-Builder shall determine the most beneficial and appropriate method to procure the trade contractors required to construct the Project. Trade contractor participation may include design-assist, design-build, competitive bids on complete construction documents, or a combination of methods. Design-Builder may prepare the necessary bid packages and procure the trade contractors during the Design Phase, if appropriate, however Design-Builder will not be allowed to receive additional design fee except as allowed in RFP 10.03. Trade Contractors that provide design services shall show their design fee as a separate line item of their proposal. Design-Builder's proposal shall include all preconstruction costs for design-assist and/or design-build trade participation, Design-Builder will not receive additional compensation for these services.

6.30 - Design-Builder Allowances

Design-Builder may include allowances in the GMP for potential expenditures. Allowances may also be created during the Project for a new, previously unknown potential expenditure provided there are surplus funds in the GMP. The Design-Builder is to estimate the cost for that scope of work and put that amount into a Design-Builder Allowance to be included in the GMP. The Design-Builder Allowance shall be for a specific and discrete scope of work; the Design-Builder shall not aggregate the Design-Builder Allowances to create another Project contingency. The Design-Builder bears the cost risk of completing the work covered by a Design-Builder Allowance and shall return unused portions of the Design-Builder Allowance to the Trustees with a credit change order.

Any scope of work not competitively bid shall be a Design-Builder Allowance. All portions of the General Requirements that are not competitively bid shall be a Design-Builder Allowance.

6.32 - Allowance Process

The Design-Builder shall carry both types of allowances (Design-Builder's and Trustees') as directed by the Trustees in its Schedule of Values as part of the Construction Budget, and the Design-Builder will apply its fee for Contingency, and Overhead and Profit to them. Allowances shall only be used for their identified specific and discrete purpose. Allowance balances may not be used to make up deficits on other line items. The Trustees shall authorize use of Allowances with a Field Instruction, and /or zero cost change order. The Design-Builder's charges against either allowance shall consist of either time-and-material or Trustees-approved lump sum direct costs from trade contractors. The Design-Builder shall include trade contractor mark-up on these direct cost items in accordance with Contract General Conditions Article 37; however, the Trustees will not award the Design-Builder additional fees on allowances already a part of the GMP and included in the Design-Builder fees. Upon completion of an allowance item, and if the allowance has not been fully expended, the Trustees shall process a credit change order for the unused balance of the allowance plus the Design-Builder's fees. If a Trustees' Allowance is exceeded the Trustees shall process a change order in accordance with Contract General Conditions Article 37 to compensate the Design-Builder for the overrun. The Design-Builder shall itemize the use of the allowances and account for the allowance balances on a separate accounting accompanying the monthly payment request.

Contract General Conditions

38.01 f. - Use of Allowances

The Trustees limit the use of allowances; however, the Trustees shall approve the use of any allowance, on a case by case basis. If the Trustees so approve, allowances may only be used for specific and discrete scopes of Work that were indeterminate at the time of producing the GMP, such as for trades where the Design-Builder did not receive a bid, when the Design-Builder is self-performing Work, or when review of trade bids reveals necessary Work that is not included. The Design-Builder shall not aggregate allowances to create another



Project contingency; the Design-Builder bears the cost risk of completing the Work covered by a Design-Builder Allowance, and shall return unused portions of the Design-Builder Allowance to the Trustees in a credit change order. The Trustees are responsible for the estimate on a Trustees' allowance.

The Design-Builder shall only use allowances for their identified specific and discrete purpose. The Design-Builder may not use allowance balances to make up deficits on other line items. The Trustees shall authorize each debit from an allowance in writing, using a field instruction. The Design-Builder shall maintain a detailed cost accounting, including allowances, and submit it with the monthly payment application for the Trustees' approval. The trade contractors shall mark-up direct cost items in accordance with this Article, however, Trustees will not award to Design-Builder additional mark-ups or fees on allowances.

40.05 - Final Contract payment

The Design-Builder shall calculate the amount of such final payment as follows:

a. Final Cost Report

The Design-Builder shall include the following in the final cost report:

- (1) Overhead and Profit – lump sum
- (2) Site Management Fee – lump sum
- (3) Contingency - a not-to-exceed line item.

Design-Builder shall itemize all uses of contingency and provide the contingency balance. After Design-Builder deducts its shared portion of the unused contingency, Design-Builder shall return any Contingency savings to the Trustees with a credit change order.

- (4) Allowances – a not-to-exceed line item.

Design-Builder shall itemize all allowances and provide the balance for each. Design-Builder shall return any Allowance savings to the Trustees with a credit change order.

- (5) Change Orders - Provide a line item breakdown for Trustees' change orders.

(6) Trade Contractor Contract Breakdown - For each Trade Contractor Bid showing adjustments by change orders. If the total of the Trade Contractor amounts bid, as adjusted by change orders, is less than the total of the Trade Contractor amounts as built, as adjusted by change orders, the Design-Builder shall submit a credit change order to the Trustees for the difference.

Public Contract Code

PCC 10708

(a) When, in the opinion of the trustees, the best interests of the California State University dictate, the trustees may enter into an agreement with a contractor to provide all or significant portions of the design services and construction of a project under this chapter. The contractor shall design the project pursuant to the scope of services set forth in the request for proposals, build the project, and present the completed project to the trustees for their approval and acceptance.

(b) Work under this section shall be carried out by a contractor chosen by a competitive bidding process that employs selection criteria in addition to cost. Any design work performed pursuant to this section shall be prepared and signed by an architect certificated pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code.

(c) When the design of portions of the project permits the selection of subcontractors, the contractor shall competitively bid those portions. The contractor shall provide to the trustees a list of subcontractors whose work is in excess of one-half of 1 percent of the total project cost as soon as the subcontractors are identified. Once listed, the subcontractors shall have the rights provided in the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1).

PCC 10724 (separate from PCC 10710 – Unit Price Contracting)

Bids may be received and contracts awarded on a unit basis, that is, the bids compared upon the basis of estimates of the quantities of the work to be done.

(Added by Stats. 1984, Ch. 1128, Sec. 4.)

PCC 10725

Except in unit basis contracts, contracts shall not be made exceeding in amount the estimates of costs approved by the trustees. Plans and specifications and estimates of costs, including expense of advertising and



inspection, shall not be approved by the trustees requiring a greater expenditure of money than is appropriated for the specific purpose in the law authorizing the expenditure.