



**State of Oklahoma
Office of Management and Enterprise Services
Division of Capital Assets Management
Construction and Properties**

**Contract Management for
Construction Management At-Risk**

1. Conflict of Interest and Best Practices

The Architect and Construction Manager shall be separate, independent firms and shall have no common business interests. This practice will avoid conflicts of interest, expand the depth of the project team, and avoid appearances of impropriety. Generally, the process incorporated into State Law and further defined herein conforms to the Best CM Practices for Public Projects developed and endorsed by the design and construction industry.

2. Duties of the CM Firm. Reference is made to the provisions of the contract.

Expectations of DCAM for Pre-Construction Services: Beginning with conceptual cost estimating, work with the Using Agency and Architect to develop a project package within the limitations of the budget. Provide guidance to the project team that maximizes both cost and value. 'Cost' relates to getting the most building for the least price. 'Value' relates to decisions that affect long term operating and maintenance costs to the State.

3. Fees and Expenses

For projects where the scope is clearly defined, the Pre-Construction fee, Construction Management Fee and General Conditions expense reimbursement will be set at the time of contract negotiations. Each item is a lump sum amount that does not change unless the project is materially expanded or reduced.

When it is not reasonable to anticipate such costs, the fee for Pre-Construction Services will be negotiated as a lump sum fee. The CM fee and General Conditions will be set according to estimates provided by the CM and may be expressed as percentages of the budgeted construction cost. These percentages will not be exceeded and will be converted to lump sum amounts when the Contract for Construction is converted to a lump sum amount.

4. Establishing the Guaranteed Maximum Price (GMP)

The GMP is set at the inception of the project and is represented by the Owner's stated construction budget. From the point of initial conceptual cost-estimating on, the GMP will include a contingency commensurate with the CM's risk. As work progresses through the design phases, DCAM/CAP expects the contingency to be reduced and more of the dollars allocated to the actual construction. This relates to maximizing the amount of building delivered and value to the State. Prior to issuing the project for bids, the CM will commit to the GMP.

If the total of all bids exceeds the GMP, the CM will review with DCAM, Using Agency and Architect. Unless DCAM agrees to increase the GMP, the CM shall make recommendations to reduce fees, expenses, and/or bid package requirements and recommend award or partial award of packages to maintain the GMP.

Where projects are funded in predictable increments, DCAM, the CM, Architect and Using Agency will develop and agree on a phased bidding plan and conditions to establish the GMP.

5. Bid Pool Management

From inception of the project on, DCAM expects the CM to establish relations with as many trade contractors as possible using both personal relations and distribution through the normal construction publications. Emphasis should be put on identifying potential bidders local to the project. DCAM/CAP's implicit instruction to the CM is "the CM process shall not inhibit fair and open competition among the trades and suppliers."

DCAM/CAP rarely invokes any type of prequalification for bidders. The intent is to encourage participation by all interested bidders. Where specialized, critical building components are a part of the project, the CM is to work with the Architect to identify the necessary qualifications of that particular trade and any requirements for post-bid submittals for evaluation. The Architect is to incorporate those specific requirements into the technical specification (for example the Quality Assurance section of the spec). DCAM/CAP is to review and approve all such requirements so stated in the documents. After bids are received, the CM shall evaluate the bid proposals and recommend to DCAM/CAP the need for qualifications review. Jointly, the CM, Architect and DCAM/CAP will determine the lowest responsible bidder. This procedure is to be used only after careful consideration and prior approval by DCAM/CAP.

6. Contractor-Subcontractor Agreements and Supplementary Conditions

Because subcontractors participate in a public bidding process directly to the State, DCAM/CAP has authority over any conditions of the contract and the form of agreement used by the CM. At the same time, DCAM/CAP understands that the CM is performing the work 'at risk' and has a vital stake in the contract documents used for that purpose.

The DCAM/CAP General Conditions are a part of the contract documents. Some provisions filter down to the subcontract level, while some requirements are, by nature, not normally part of the subcontract. DCAM/CAP's contracts and conditions are designed to work together. Until DCAM/CAP issues a CM edition of the general Conditions or a standard Supplemental Conditions, along with a Subcontractor agreement, the following shall apply:

- Any supplemental conditions proposed by the CM shall be reviewed and approved by DCAM/CAP. This process should start early in the project.
- The Contractor-Subcontractor Contract shall be the AGC 604, either the short form or long form.

7. Bid Forms and Bid Packages

Through collaboration with the Architect, the CM is responsible for 'packaging' the work for bid to the various subcontractors. Each package should be scrutinized for clarity – both language and content – ensuring that the entire scope of work is accounted for without duplication. DCAM/CAP will supply the standard bid form language. The CM is responsible for editing the bid items for clear 'basis of award'.

The bid packages and bid form should be drafted to correspond with the Architect's completion of Design Development, and updated at 50% and 95% Construction Documents. (The CM's cost estimates should reflect the same format of packages). The Project Team will scrutinize the packages and bid forms at each milestone and agree on the final language prior to issuing the documents for bid.

8. Subcontractor Bonding Requirements

Pursuant to State law, Subcontractors are required to furnish a Bid Bond if their total bid, on a package-by-package basis exceeds \$50,000. However, once the bids are assigned to the CM, there is no statutory requirement for the subcontractor to bond to the CM.

DCAM/CAP expects the CM to handle bonds much the same way as a General Contractor would on bid day: some bonds are required while others are not. Because the subcontractors bid in good faith to the State, they deserve clarity on this requirement. Therefore, it is the policy of DCAM/CAP that:

- Subcontractors will not bond any subcontract \$50,000 or less, as that would not be required for any contract the State holds. DCAM/CAP expects the CM to cover that contract in their bond, as part of their risk.
- For large subcontracts contracts, such as mechanical or electrical, the CM is allowed to require bonds. The requirement shall be made clear in the bid documents. Alternatively, a separate line item on the bid form could designate the bond cost, if required. If Owner/CM agree not to require the bond, the bond price is not awarded to the CM.
- For all other bid packages, the CM shall present their plan for bonding to DCAM/CAP for approval. The requirements shall be made clear in the bid documents.

9. Small Acquisitions – Building Specialties and Items Normally Installed by the GC

Pursuant to State law, contracts less than \$50,000 may be initiated following receipt of written bids.

CM shall review small purchases with DCAM/CAP for approval of such acquisitions. CM then prepares bid packets and solicits minimum of three quotations; Bid quotes are to be submitted directly to CAP by time and day due. DCAM/CAP reviews with CM for award decision and contract amendment.

10. Bid Notices and Distribution of Bid Documents

The Public Competitive Bidding Act requires public bid notices to clearly state the location where documents may be obtained and the related cost to the bidder. Additionally, the notice must indicate that the documents are available for examination at the offices of the awarding public agency.

It is the intention of DCAM/CAP that documents should be readily available for a reasonable cost. CAP will retain the appropriate number of copies for public inspection and distribution to plan rooms. Project funds may be used for printing sets for distribution by the CM, and sets or partial sets may be obtained from a public reprographer. The CM may provide services under their

contract to manage the bid document distribution process in lieu of CAP, but the public advertisement will be placed by the CAP Bid Manager. The CM should work with CAP to develop a comprehensive plan for document distribution, and have the plan in place well before bid day.