Rider B - Scope of Work (*Percentage Fee*)

**1.0 Task Order-Construction Agreement for Multiple Projects—Master Enabling Agreement**

* 1. General

The Task Order-Construction Agreement for Multiple Projects—Master Enabling Agreement (TO-CA MEA) uses both a Design-Build project delivery method, under which the Design-Builder contracts directly with the design professional, and/or as required, a Construction Manager project delivery method, under which the Trustees contract directly with the design professionals (AE). The University will specify in each Task Order whether the Project delivery method is Design-Build or Construction Manager.

* 1. Contract Documents by Delivery Method

The Contract General Conditions differ based on the delivery method; following are the two project delivery methods and the respective versions of the Contract General Conditions and Supplementary General Conditions.

* 1. Design-Build Projects:

1. Contract General Conditions for Collaborative Design-Build Major Projects
2. Supplementary General Conditions to Contract General Conditions for Collaborative Design-Build Major Projects (for use with TO-CA MEA only)
3. If the University specifies in a Task Order that a Project’s delivery shall be Design-Build, delete and replace all references to “Service Provider”, or “Contractor” in all task orders and construction agreements with “Design-Builder”.
4. Construction Manager Projects:
5. Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects
6. Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects (for use with TO-CA MEA only)
7. For Construction Manager projects, the preconstruction and construction contract documents shall be further modified as follows:

a. The Architect and/or Design Consultants (AE) under contract to the Service Provider shall not be used for that project, except as specified in the Task Order. The Architect or specialty consultants under contract to the Trustees will be responsible for the design of the project, as specified in the Task Order.

* + - * 1. Where specified in the Contract Documents for the Service Provider to:
  1. Collaborate and work with the Trustees on design, constructability, schedule, estimates, and incorporation of Trustees’ input, the Service Provider shall do so, collaborating with the Trustees and the Trustees’ AE.
  2. Manage the Services Provider’s team; it shall be understood that the CM shall manage the preconstruction and construction process and collaborate with the Trustees and the Trustees’ AE to deliver a successful project.
  3. Develop the design and construction documents; or perform the technical design of the Project, and correct design errors, i.e. elements shown and/or designed incorrectly; or shall be responsible for interpretation of design issues, it shall be understood that these responsibilities shall be performed by the AE under contract to the Trustees with collaboration by the Service Provider to provide all other specified functions.
  4. Revise the Service Provider and Contractor Warranty and Eligible Uses of Contingency in all places to a Construction Manager Warranty by eliminating the following provision and its associated responsibilities: “Design Errors, work elements or components shown and/or designed incorrectly” which shall become the responsibility of the Trustees and the Trustees’ AE.
     + - 1. If the University specifies in a Task Order that a Project’ delivery shall be Construction Manager, delete and replace all references to “Service Provider”, or “Contractor” or “Design-Builder” in all task orders and construction agreements and replace with “Construction Manager”.

All Task Order services not specifically identified herein will vary based on delivery method and shall remain the responsibility of the Service Provider and Contractor.

* 1. Post TO-CA MEA Award Requirements

After Trustees award the TO-CA MEA, and prior to bidding the first Project, the Service Provider shall assemble a team of subcontractors as follows:

1. The Service Provider shall advertise each Project, or type of projects the trades required for each Project, and the prequalification and bonding requirements for each trade.
2. Service Provider shall prequalify all potential subcontractors for all required trades based on a point system, and include the highest scoring subcontractors in the bidding pool for subsequent projects, as agreed upon by the Service Provider and Trustees*.* Minimum subcontractor prequalification criteria are contained in the Trustees’ trade prequalification documents at <http://www.calstate.edu/cpdc/cm/task-order-construction-agreement-for-multiple-projects.shtml>.
3. Service Provider may advertise and prequalify additional subcontractors and add them to the bidding pool as required for subsequent projects.
4. If Service Provider desires to self-perform any portion(s) of the work, it must competitively bid against the other selected subcontractor(s) during the project bid phase.
5. Once Service Provider lists trade contractors for a Project, the provisions of the Subletting and Subcontracting Fair Practices Act contained in Public Contract Code sections 4100 *et seq.* would apply to any proposed substitution of trade contractors/subcontractors.

1.4 Task Order Documents

1. Task Order Proposal.

After meeting with the Trustees to further define Project Scope, the Service Provider shall submit a Task Order Proposal to the Trustees, which shall contain:

* 1. Service Provider’s proposed design phase fees, based on the RFP proposed rates.
  2. Service Provider’s proposed preconstruction services fees, based on proposed rates.
  3. Proposed milestone project schedule including preconstruction and construction phases.
  4. Service Provider’s description of project scope if there is any variance from the Project Scope as presented by the Trustees in the aforementioned Project Scope meeting.
  5. Proposed project budget updated to reflect proposed scope and the Service Provider’s opinion of cost.
  6. Service Provider shall not receive added mark-up on its consulting AE fees.

If the Trustees find the Service Provider’s Task Order Proposal acceptable, a Task Order will be executed for design and preconstruction services for that project.

1. Task Order.

Service Provider will perform the design and preconstruction services as detailed by the Trustees in the Task Order. Service Provider shall:

* + 1. Meet with Trustees to collaborate on design and to document project scope as the design develops.
  1. Provide estimates as required during the design phase to update the budget and keep the Trustees informed about expected construction costs.
  2. Meet with the Trustees to assure budget and schedule parameters are met.
  3. Provide constructability input as required to conform to the TO-CA MEA requirements. Manage the Service Provider team to assure that all appropriate input, including that from the Trustees, is incorporated into the Construction Documents.
  4. Assess the site to assure that all necessary site surveys and investigations have been performed to mitigate potential unforeseen site conditions.
  5. Perform pursuant to Contract warranty requirements.

a. For a Design-Build Task Order, the Construction Agreements will be Design-Build to the extent that change orders will be limited to unforeseen site conditions, Trustees or Regulatory Agency changes, or change in scope, as specified in the Contract General Conditions.

b. For a Construction Manager Task Order, the warranty requirement, “Design Errors, work elements or components shown and/or designed incorrectly”, will be removed from the warranty, and all costs related to design errors shall be the Trustees, as it is the AE’s responsibility.

* 1. Upon completion of the Construction Documents and regulatory plan checks, coordinate and obtain the building permit from the Trustees, and from other agencies as required.
  2. Bidding Trades—Lump Sum Construction Proposal/Construction Agreement/Project Completion

1. Bidding Trades—Lump Sum Price Construction Proposal

After the Trustees provide the Service Provider a Project approval to bid, the Service Provider will bid the Project to the previously prequalified pool of subcontractors and award to the lowest bidders, as agreed upon by the Trustees. Following the determination of low bid subcontractors, the Service Provider will submit a Lump Sum Price Construction Proposal, and if acceptable, the Trustees will issue a Construction Agreement for the work and proceed to construction. If the Design-Build Agreement is based on a GMP, a contract change order shall convert the contract to a lump sum. If the final trade bids result in a project savings the change order will adjust the GMP to that final Lump Sum amount. The Design-Builder / General Contractor shall be responsible for any GMP cost overruns. The Lump Sum Price or GMP Construction Proposal is based on the following, and these shall be detailed in the subsequent Construction Agreement:

1. Low bid lump sum prices for all trade contractor bids.
2. Service Provider Lump Sum Price site management fee based on proposed percentage and as proposed.
3. Service Provider’s proposed level of DVBE participation.
4. Service Provider Lump Sum Price OH&P based on the proposed percentage of Direct Construction Cost as proposed in the RFP.
5. Service Provider and/or Trustees’ Allowances as required, and as approved by the Trustees.
6. Contingency as specified in the Contingency Schedule, and as negotiated and approved by the Trustees.
7. Project specific, 100% payment and performance bonds based on percentage proposed.

In the event that the Trustees elect not to proceed with the Construction Agreement for the Project, the Service Provider will still earn preconstruction fees for that Project.

JH, This seems to be duplicative of, or should be placed in previous section.

1. Construction Agreement

The Service Provider shall sign the Project Construction Agreement and return it, along with the required insurance and bonds, to the Trustees within ten (10) calendar days of written intent to accept the Lump Sum Price or GMP Construction Proposal. No agreement shall be binding upon the Trustees until it has been executed by the Service Provider and the Trustees and approved by the Trustees’ attorney appointed according to law and authorized to represent the Trustees (Public Contract Code section 10820).

If the Trustees and the Service Provider do not agree upon a Lump Sum Price or GMP, the Trustees will not award the Project Construction Agreement to the Service Provider. In that event, the Trustees may award the construction phase through other means which could include going out to public bidding or may take other recourse which could include canceling the Project or a portion of it.

1. Project Completion.

When each Project is completed the Trustees will certify completion and file a Notice of Completion with the County Recorder.

**2.0 GENERAL REQUIREMENTS**

During the term of the TO-CA MEA, the Trustees may issue individual Task Orders for the provision of preconstruction and/or professional services, and Construction Agreements for the construction of various projects on campus per the scope of services as described herein.

2.1 General Scope of Work

<Insert: general scope of work for Minor projects, and specific scope of work for any Major Projects.>

2.2 Task Orders

The University shall develop a Task Order in consultation with the Service Provider, and in response to the Task Order Proposal. Once the University and Service Provider agree to scope and fee, the University shall present a Task Order to the Service Provider for signature.

Service Provider shall not commence performance of services prior to receipt of a fully executed Task Order and Notice to Proceed.

2.3 Standard Forms

Standard forms and documents provided by the Trustees shall be used in providing services required by this Agreement including, but not limited to invoices for services, and various construction management forms as may be required. Reference the Request for Proposals and CSU’s website, [Sample Forms.](http://www.calstate.edu/cpdc/cm/forms/#construction)

2.4 Extra Services

Extra services require preauthorization, in writing, by the Trustees. When extra services are preauthorized, they shall be provided by Service Provider and paid for by the Trustees as provided in Riders A and B, and the individual Task Order. Although the TO-CA MEA allows for the provision of extra services, the Trustees will usually issue additional Task Orders or Task Order Amendments for extra services.

2.5 Compensation

1. The TO-CA MEA identifies the maximum cumulative amount that may be authorized for Preconstruction Services. Individual Task Orders may be issued for any amount up to the balance available under this Agreement. Each Task Order shall identify the Service Provider’s fee for professional or preconstruction services to be rendered to the University. The University shall authorize work for each Task Order either on a lump sum or progress payment basis.
2. When hourly charges are to be used, they shall be as specified in the hourly rate schedule as proposed in response to the RFP. Provide a schedule of all proposed staff billable rates for use as needed for additional services. Reasonableness of the rates shall be part of the evaluation criteria. The Trustees will incorporate the proposed Hourly Rate Schedule into the MEA agreement as Exhibit B.

2.6 Reimbursable Expenses

Unless otherwise stated in the Task Order, in addition to the Service Provider’s fees for services, the Trustees will reimburse certain Project-related expenditures. Service Provider’s claims for reimbursable expenses shall reflect actual expenditures without a mark-up made by Service Provider, its employees, or its consultants working on the Project. The Service Provider shall document claims by providing appropriate billing and supporting receipts. Unless otherwise stated within an individual Task Order, the Trustees will pay reimbursable expenses as follows:

1. Travel and Mileage:

Service Provider’s travel from its office to the Project site or to the CSU Chancellor's Office are not reimbursable. When pre-authorized in writing by the Trustees, other travel expenses in connection with the services provided in the Task Order shall be reimbursable. Travel reimbursement shall be limited to the amounts that would be authorized for employees of the California State University at the time of travel as specified in the CSU Travel Procedures and Regulations. University will provide Service Provider this document upon request.

1. Reprographics as Deliverables:

Reproduction of drawings, specifications, calculations, cost estimates, program analysis, photos, renderings, plots or similar reproductive instruments presented by the Service Provider and preapproved by the Trustees as a deliverable to the Trustees is reimbursable.

1. Reprographics for Development of Deliverables:

Reproduction for internal use by Service Provider and its consultants is not reimbursable.

1. Incidental Items:

Incidental office supplies, letter postage, telephone calls, facsimile transmissions, computer use charges and similar attendant expenses are not reimbursable.

1. Reprographics for Plan Check Review:

Reproduction of documents for submittals to review agencies (Division of the State Architect, plan checking firm, State Fire Marshal, etc.) is reimbursable.

1. Reprographics for Bidding:

Reproduction of construction documents for bidding when pre-approved in writing by the campus project administrator is reimbursable. The Trustees encourage Service Provider to distribute bid documents electronically.

1. Package Delivery/Courier Services:

Express package deliveries (USPS, FedEx, UPS or similar carriers) and judicious use of courier services for design deliverables to campus, plan review agencies, clarifications to Contractor inquiries (shop drawings, RFI responses), or similar actions to facilitate timely responses during the construction phase are reimbursable when pre-approved by the campus project administrator.

2.7 Construction Documents/Plans and Specifications

Construction Documents/Plans and Specifications provided under this agreement for construction projects shall be complete and accurate and shall give such direction as will enable any competent builder to carry them out (Public Contract Code section 10720).

2.8 Ownership and Use of Documents

1. Service Provider agrees that designs, drawings, specifications, electronic equivalents and other technical data produced in the performance of this Agreement shall become the property of the Trustees. The Trustees grant Service Provider the right to reuse aspects (i.e. details and design elements) of the design developed for this Project in other designs for other future projects including those with other clients.
2. Service Provider agrees that the Trustees shall have access at reasonable times to inspect and make copies of notes, designs, drawings, specifications, electronic files, calculations and other technical data pertaining to the work performed under this Agreement.
3. Use of Documents

The Trustees retain the right to utilize documents prepared under this Agreement regardless of whether the Agreement is terminated or the project is suspended or abandoned. The Trustees may use these documents in the future for the same project, a modified version of it, or for one that is similar.

1. Reuse of Documents

The Trustees’ reuse of the documents on another project without the approval of Service Provider relieves the Service Provider of liability resulting from their use.

**3.0 PRECONSTRUCTION PHASE SERVICES**

3.1 A. Services during Preconstruction Phase

During the preconstruction phase the Service Provider shall:

1. Perform the services that are required by the Task Order.
2. Work closely with the Trustees to bring best value to the Project, as defined by the Trustees.

All preconstruction phase services are more fully described in the following sections. Service Provider shall only provide services required by each Task Order.

B. Preconstruction Agreement

The Service Provider will be required to sign a Task Order with the Trustees to perform design and/or preconstruction services. The University will identify the amount of the Task Order agreement. A sample preconstruction services Task Order is included in the RFP [Appendices](http://www.calstate.edu/cpdc/cm/task-order-construction-agreement-for-multiple-projects.shtml). The Service Provider will sign and return the Task Order, along with the required submittals, to the Trustees within fourteen (14) calendar days of Trustees’ issuance of Task Order for signature. No Task Order shall be binding upon the Trustees until it has been executed by the Service Provider and the Trustees. The Service Provider shall provide Preconstruction Phase insurance coverage in accordance with the Agreement General Provisions, Rider A.

3.2 Design

A. Life Cycle Cost.

Service Provider shall develop and review the design and construction documents, taking into account the quality of the materials and equipment, to ensure the most efficient design and minimum life cycle cost. The Service Provider shall evaluate Life Cycle Cost and Value options including, but not limited to: building envelope, HVAC, and lighting. Service Provider shall develop/update and submit a Life Cycle Cost Analysis as a part of each design submittal if required by the Service Order.

1. Quality Building.

Service Provider shall provide information, estimates, schemes, and make recommendations regarding construction materials, methods, systems, phasing, schedules, and costs, and shall participate in design decisions to provide the highest quality building within the budget and schedule.

1. Regulatory Approvals.

Service Provider shall monitor all regulatory approvals required during the design phase.

1. Technical Design.

The Service Provider shall perform the technical design of the Project, and correct design errors, i.e. elements shown and/or designed incorrectly. The Service Provider shall be responsible for the technical design, and for interpretation of design issues. These responsibilities shall be performed by the AE under contract to the Service Provider, unless specified to be a CM project when the AE will be under contract to the Trustees. The Service Provider shall coordinate and cooperate with the AE to assure that the drawings are coordinated, constructible, complete, and on budget, and shall be responsible for the work as indicated in the Construction Agreement Warranty.

1. Document Development.

The Service Provider shall develop documents in accordance with the scope description in the Task Order and the [Procedure Manual for CSU Capital Projects](http://www.calstate.edu/cpdc/ae/pro-serv-agree/documents/Procedure_Manual.pdf), found online at the following URL: <http://www.calstate.edu/cpdc/ae/pro-serv-agree/documents/Procedure_Manual.pdf>.

3.3 Cost Monitoring

The Trustees require that the Service Provider monitor costs incurred for the Preconstruction Phase separately. At the request of the Trustees, the Service Provider may be required to provide a cost report supporting Preconstruction Phase costs incurred by the Service Provider. Should the Trustees determine that the Service Provider did not staff the Preconstruction Phase as represented by the Service Provider’s proposal the Trustees will be entitled to recover unsupported payments to the Service Provider.

3.4 Subcontractor Procurement — Design-Assist and Design-Build Trades

The Service Provider shall recommend to the Trustees the most beneficial and appropriate method to procure the trade contractors required to construct the Project(s). All trade contractors must be procured through competitive means, either competitive bid or best value selection. Recommendations for trade contractor participation may include design-assist, design-build, competitive bids to prequalified bidders on complete construction documents, or a combination of methods. Once the Trustees approve the recommended procurement methodology, the Service Provider shall prepare the necessary bid packages and procure the trade contractors. Service Provider may structure trade contractor bid proposals to allow for independent design phase participation, and subsequent construction phase participation if a Construction Agreement is awarded to the Service Provider. Service Provider shall include in their proposals suggestions for all design-assist and/or design-build trade participation, but shall not include specific contractors as part of the Task Order Proposal. The Task Order Proposals and proposed percentage fees shall include all preconstruction costs for the proposed design-assist or design-build trades.

3.5 Project Phasing

The Trustees may benefit from dividing the Project(s) construction into phasing components. Examples of possible phasing components are: demolition, hazardous material abatement, relocation of underground utilities, site preparation, separated buildings, interior finishes of shelled space, parking lots, and landscape. During design phase, the Service Provider shall identify and propose phasing components to the Trustees. The Trustees are not obligated to accept proposed phasing components or revise specified Project phases.

3.6 Project Phasing Documents

Upon Trustees’ acceptance of the Service Provider-recommended construction phasing components, the Trustees will direct the Service Provider to provide documents to facilitate construction of the Project in accordance with the accepted phases, and the Service Provider will include the phases in the Lump Sum Construction Proposal submission to the Trustees indicating separate pricing, schedule, liquidated damages, and other conditions for each phase to allow each phase to be initiated, completed, and accepted in accordance with the Contract General Conditions. The Trustees may adjust the Service Provider Construction Phase Services-Site Management Fee based on the impact of accepted construction phases.

3.7 Proposed Project Schedule

The Trustees may change the Proposed Project Schedule for construction during the design phase. The Service Provider is encouraged to suggest ways to save time or cost by phasing, re-sequencing the construction phase, or changing the construction durations. The Trustees will identify the schedule commitments in the Task Orders and Construction Agreements (if awarded). The Trustees may authorize construction components prior to acceptance of the Lump Sum Construction Proposal for construction of the entire Project.

3.8 Scheduling

Service Provider shall develop the initial Project Schedule. Service Provider shall provide a Project Schedule during the Preconstruction Phase at each of the design milestones representing all tasks necessary to complete the Project within the Project durations as indicated in the Task Order. The Service Provider shall include the following in the schedule as appropriate: tasks by all parties, regulatory and Trustees’ approvals, Board of Trustees meeting dates (if required), sufficient periods of time for document review, campus activities affecting the Project, significant milestones, training, consultant selection, phasing, bidding, Notice to Proceed, construction duration and activities, occupancy milestone, commissioning, and an allowance for weather losses. The Service Provider shall update the schedule as necessary to reflect the current schedule and recent Project developments. Service Provider shall monitor all regulatory approvals required during the design and construction phase. The Service Provider shall develop the construction portion of the Project Schedule in sufficient detail to be used in trade contractor bidding. This schedule shall be reviewed with the University at all project meetings and updated by Service Provider at each submittal.

3.9 Identify Potential Risk Factors

The Service Provider shall identify schedule or other Project risks, which are conditions or events that could negatively affect the Project scope, quality, schedule or cost. The Service Provider shall present the risk analysis in a risk matrix format when significant risks become apparent. Service Provider shall evaluate the risk to include severity of impact, probability of occurrence, and other factors as Service Provider deems appropriate and recommend ways to manage or mitigate each risk.

3.10 Schedule Risks Review

The Service Provider shall review the Proposed Project Schedule, and notify the Trustees of potential schedule risks in the risk matrix. If warranted, Service Provider shall recommend modifications to the schedule that would expedite the Project Schedule based on normal production rates.

3.11 CEQA Mitigation Monitoring

Mitigation Monitoring and Reporting Programs (MMRP), which are included in CEQA documentation if required in the RFP Appendices, provide a description of required mitigation measures associated with the Project(s). The Service Provider shall implement mitigation measures identified in the MMRP and/or in the Task Order. In addition, during the design phase of project(s), the Service Provider shall identify in the Project Schedule the specific timing related to the planning and implementing of these mitigation measures.

3.12 Constructability Review

The Service Provider shall check the construction documents for design errors, completeness, coordination, ambiguities, and ability to bid, and make recommendations to the Trustees’ Representative. Service Provider shall perform constructability reviews continuously and issue constructability reports and comments at: 100% Schematic; 100% Design Development; and 95% Construction Documents, or as documented in the Task Order. Service Provider shall perform during the design and preconstruction services phases cognizant of the design-build warranty requirements in the Construction Agreement.

3.13 Cost Control Management

As an initial task, the Service Provider shall review the Budgeted Direct Construction Cost and determine if it is sufficient to construct the Project. The Service Provider shall prepare a cost estimate and evaluate the estimate against the construction budget and recommend, if necessary, the appropriate action to avoid potential cost overruns. The Service Provider shall establish target values for the cost of each Project element to be used as a basis of design and cost monitoring. The Service Provider shall monitor the budget as compared to the Project scope through the preconstruction phase. If changes are suggested to the Project scope that may cause Project cost overruns Service Provider shall notify the Trustees in writing as part of the regular Project development meetings. If the estimate is above the Project budget, the Service Provider shall participate in value engineering to lower the Project cost to within the budget, and recommend the appropriate action to avoid potential cost overruns.

3.14 Construction Cost Estimates

1. Form and Timing

The Service Provider shall provide full and complete estimates of the total construction cost of the Project, and summarize cost information in a CPDC form 2-7 format, as detailed in the Task Order. These estimates may occur at:

* 1. 100% Schematic Design.
  2. 100% Preliminary Design.
  3. 50% and 95% Construction Documents.

1. Contents

Each cost estimate shall:

Be in a format acceptable to the Trustees (Uniformat, CSI or similar) as detailed in the Task Order.

Reflect the best professional estimate of actual costs anticipated.

Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate. Do not include a discrete line-item allowance for ‘contingency.’

Provide a line item adjustment for inflation to the bid date as appropriate to the project delivery schedule.

Trustees’ authorization for Service Provider to proceed with the next step in the design process is contingent on the acceptance of the building cost estimates as compared to the Trustees’ Construction Budget. Refer to the design “Procedure Manual for CSU Capital Projects” (RFP–Appendices) for a description of the design documents at each phase.

3.15 Project Savings

Project savings identified during design as part of the Service Provider value engineering process are owned by the Trustees. It is one of the collaborative responsibilities of the Service Provider to look for ways of reducing Project construction costs. Proposed cost reductions shall not reduce the Project program requirements, reduce quality of materials or craftsmanship, increase life-cycle costs, negatively affect the architectural aesthetics or design intent, or adversely affect the Project completion.

3.16 Design Phase Investigation Work

Service Provider shall access the type, quantity, and quality of the available information describing existing site conditions. If Service Provider requires additional information in order to develop complete Project scopes, the Service Provider shall make recommendations to the Trustees regarding supplemental site surveys. If the Trustees deem it necessary to investigate conditions at the Project site or have Project incidental construction work performed during the design phase of the Project, the Trustees will issue a limited scope Construction Agreement to the Service Provider, per the Contract General Conditions.

3.17 Develop Trade Contractor Bid Packages

The Service Provider shall determine the number and make-up of the trade contractor bid packages, produce the Bid Packages, and obtain Trustees’ review and approval of the proposed trade contractor bid documents and trade contractor agreements. Reference section 3.4 of this Rider B.

* 1. The Bid Packages shall incorporate the Service Provider’s subcontract agreement requirements, any Project specific requirements such as site access and phasing, and the relevant sections of the Trustees’ bidding requirements and Contract General Conditions requirements such as DVBE, Small Business, assignment clauses, the Subletting and Subcontracting Fair Practices Act (PCC section 4100 *et seq.*), and Division One.
  2. The Service Provider shall develop the most logical, competitive, seamless and distinct trade contractor bid packages with all scopes of work included in the packages. Include bid alternatives, as appropriate, (deductive or additive) in each trade contractor bid package to enable full utilization of the Project budget. Include the current Trustees’ Service Provider MEA Contract General Conditions in trade contractor bid packages. If required by the Task Order, the Service Provider shall develop Supplementary General Conditions (with the Trustees’ participation and subsequent approval) and include any special conditions in Division One, that address the trade contracts, schedule for trade contracts, and the responsibilities of all parties under the TO‑CA MEA procurement method, where the Service Provider bids the Project elements and enters into contracts with the trade contractors. Include in the trade contractor bid packages that portion or subset of the initial Project Schedule that applies to that trade.

3.18 Contract General Conditions

For the Construction Agreement, the Trustees will require the Service Provider to use the current, appropriate version of the Contract General Conditions in effect at the time the Service Provider solicits trade bids, or in effect at the time the Construction Agreement is issued.

3.19 Prequalify Trade Contractors

The Service Provider shall prequalify its trade contractors (mechanical, electrical, plumbing and trades where the estimated cost of the trade work is greater than five percent (5%) of the Construction Budget) utilizing the CSU Trade Contractor Prequalification document (RFP-Appendices) or similar, and include any additional prequalification processes required by the Service Provider. Service Provider shall prequalify subcontractors using a point system for scoring the prequalification questionnaires, making the highest scoring subcontractors eligible to bid the subsequent TO-CA MEA projects. Once this process is completed, the Service Provider shall provide a list of prequalified trade contractors to the Trustees.

3.20 Minimum Bidding Pools

The Service Provider shall obtain a minimum of three qualified trade contractor bids for each trade bid package, and solicit bids from the all of the members of each trade bid pool for the projects under the TO-CA MEA. If after soliciting bids from the trade bid pool for a specific project, Service Provider receives less than three bids, the Trustees may agree to the bids, or require Service Provider to obtain additional bids. The Service Provider may solicit bids only from trade bid pools, and in a manner most appropriate to obtain competitive trade bids.

3.21 DVBE Participation and Prevailing Wage Requirement

The Trustees require the Service Provider to achieve a minimum of three percent (3%) DVBE participation for each individual Construction Agreement awarded under the TO-CA MEA. If Service Provider has elected to implement the DVBE incentive then Service Provider is required to achieve the incentive amount of DVBE participation in addition to the three percent required DVBE participation for each Construction Agreement awarded under the TO-CA MEA. Final determination of DVBE participation attainment by the Service Provider shall be at the Trustees’ sole discretion.

If the Service Provider meets or exceeds the proposed DVBE participation percentage amount for the entire   
TO‑CA MEA at any time before the expiration of the initial Contract term, the Trustees may waive the DVBE participation requirement for subsequent Construction Agreements awarded. Service Provider shall continue to satisfy the DVBE participation requirement until the Trustees waive this requirement in writing.

If the Service Provider does not realize the DVBE participation percentage identified for the incentive in its technical proposal for each Construction Agreement awarded under the TO-CA MEA, the Trustees shall assess a penalty of $50,000 per one percent shortfall, prorated, and deduct it from the Contract Amount due.

The Service Provider shall include prevailing wage rates that are current when the Notice to Bidders is first distributed to the trade subcontractors for bidding each Project. Apprenticeship ratios shall be tracked for the entire TO-CA MEA contract, not for each individual Construction Agreement. Prevailing wage rates are available for downloading on DIR website at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

3.22 Contractor Contingency

The Service Provider shall include Project construction contingency in its Task Order fee proposal as indicated in the contingency schedule and as negotiated with the Trustees as part of the Task Order process. Uses of contingency shall be as approved by the Trustees, and as described in this document. Any unused portion of the contingency shall be returned to the Trustees. Service Provider shall be responsible for any contingency overruns. The Service Provider shall not cause, or allow, the trade contractors to include any construction contingency or allowances in their bids, unless it is itemized as a Service Provider Allowance.

3.23 Bid Phase Services

Once the Trustees have approved individual or multiple trade contractor bid packages, the Service Provider shall bid these packages competitively, complying with the applicable state statutes, using the current, appropriate Supplementary General Conditions and current, appropriate Contract General Conditions as agreed upon and approved by the Trustees. Bids may be in the form of lump sum, or best value for Design-Assist or Design-Build trades, as approved by the Trustees. If the Trustees and Service Provider mutually agree bid package bidding and award may be phased to accommodate project schedule.

3.24 Bid Advertisement

When advertising to prequalify, assemble, and add to the TO-CA MEA bidding teams, the Service Provider shall issue a notice to bidders for the required trade bids, and in that notice provide that the Project is a public works Project, and as such is subject to prevailing rate wages in addition to Service Provider prequalification requirements. This notice may be placed electronically by the campus on the CSU CPDC website on the “[PlanetBids CSU Public Solicitation Portal](http://psp.planetbids.com/g/81563/)”.

However, if Service Provider wishes to place the advertisement for the trade bids using the “[PlanetBids Subcontractor Solicitation Portal](http://psp.planetbids.com/g/22198/)”, please contact Alan Zavian (by email: [alan@planetbids.com](mailto:alan@planetbids.com) or by telephone: (818) 992-1771, ext. 112). Regardless of the PlanetBids platform used for advertising the trade bids, the trades will need to register on PlanetBids, and once registered, they will be able to search for projects bidding.

3.25 Receive bids

The Service Provider shall receive bids from trade contractors, or work with Trustees on best value selections, and review the bids and proposals with the Trustees towards identifying the lowest responsible bidder for each trade, including alternatives for that trade. Trade bids may be normalized, and Service Provider shall review and confirm scope of work with trade contractors before the Lump Sum is submitted to the Trustees. Service Provider shall invite the Trustees’ representative to the bid openings and to participate in bid normalization.

* 1. Submittal of Project Lump Sum Price or GMP

A. The project Budgeted Direct Construction Cost is provided in the Task Order project description. The Trustees may revise the project Budgeted Direct Construction Cost during the design phase. Upon bidding the Project and receiving all trade contractors’ bids, or prior to receiving all bids as approved by the Trustees, the Service Provider shall submit to the Trustees a Lump Sum or GMP Construction Proposal for the construction of the Project.

The Service Provider shall submit the Lump Sum or GMP based on the Design-Build or Construction Documents submitted to the Trustees during Design Development, and as indicated in the Schedule. The Service Provider shall include in its submittal:

* + 1. a line item breakdown showing each subcontract amount;
    2. the number of bidders to date for each trade and a bid breakdown summary sheet for each trade,
    3. detailing bid amounts for all bidders and all normalization;
    4. all allowances, which may include allowances for trades which have not yet been competitively bid;
    5. all other items included in the Direct Construction Cost;
    6. Design Fees, as applicable;
    7. the Service Provider’s site management fee;
    8. the Service Provider’s contingency;
    9. the Service Provider’s Overhead and Profit; and
    10. the Service Provider’s bonding costs.

B. If the Agreement is based on a GMP, a contract change order shall convert the contract to a lump sum price. If the final trade bids result in a project savings the change order will adjust the GMP to that final Lump Sum price amount. The Design-Builder / General Contractor shall be responsible for any GMP cost overruns.

C. If the Trustees accept the Service Provider’s Lump Sum Price or GMP Construction Proposal, the Trustees shall award a Construction Agreement to the Service Provider to construct the Project for the aggregate of the direct cost of the work, plus the Service Provider’s fee for Construction Phase Services and Overhead and Profit, as proposed in the RFP phase. Payment and performance bonds shall be written for the full amount of the Lump Sum Price or GMP Construction Proposal. The Service Provider’s overhead and profit shall be the proposed percentage for overhead and profit applied to the Actual Direct Construction Cost.

3.27 Service Provider Allowances

For minor trades where the Service Provider may not have received a bid, when the Service Provider is self-performing work that was not competitively bid, or when bid normalization reveals necessary work that is not included in trade bids, the Service Provider may include allowances for the work per the Contract General Conditions. Allowances should not exceed 15% of the contract amount, except as necessary for scopes of work included in a GMP that will be bid during Phase 2 prior to conversion to Lump Sum, and shall be approved by the Trustees.

3.28 Trustees’ Allowances

The Trustees may insert a Trustees’ Allowance into the Lump Sum or GMP agreement, or may keep it outside of the Lump Sum, whenever they have a scope of work that is indeterminate at the time of bidding. An example of a Trustees’ Allowance would be for the Service Provider or the Trustees to purchase an unspecified quantity of an item. The Trustees are responsible for the estimate on a Trustees’ Allowance. If included in the Lump Sum agreement, the Service Provider shall return unused portions of the Trustees Allowance to the Trustees with a credit change order.

3.29 Allowance Process

The Service Provider shall carry both its allowances and Trustees’ allowances as directed by the Trustees, in its Schedule of Values as part of the Direct Construction Cost, and the Service Provider will apply its fees 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 change order. The charges against either allowance shall consist of either time-and-material or Trustees-approved lump sum direct costs from trade contractors. These cost items shall have direct costs and trade contractor mark-up in accordance with the Contract General Conditions; however, Service Provider will not be awarded additional fees on allowances. 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 Service Provider’s overhead and profit, site management fee, and Service Provider and subcontractors’ payment and performance bonds on the remaining balance. If a Trustees’ Allowance is exceeded the Trustees shall process a change order to the Construction Agreement in accordance with the Contract General Conditions to compensate the Service Provider for the overrun.

3.30 Service Provider’s Contingency

The Service Provider shall be allowed a Project contingency as negotiated with the Trustees based on Project size, type and complexity, and, as suggested in the contingency schedule below, the contingency may vary from the schedule below based on the risks inherent in the Project. The schedule does not dictate minimum contingencies. This contingency shall be used to pay costs as detailed herein. The use of the Service Provider’s contingency shall require approval by the Trustees, but no reasonable use shall be disallowed. When contingency use is approved, the Service Provider shall pay the trade contractors in accordance with the Contract General Conditions for the additional work, and the Service Provider shall receive proposed percentages for site management fee and payment and performance bonds, but shall not receive overhead and profit for the added work. The Service Provider shall itemize the use of the contingency and account for the contingency balance on a separate accounting accompanying the monthly payment request. Service Provider shall return to the Trustees the Trustees’ share of the unused portion of the contingency, plus proposed percentages for site management fee and payment and performance bonds. Contingency-eligible costs in excess of the contingency amount shall be borne by the Service Provider. Unused contingency shall be split: Trustees, 80%, Service Provider, 20%.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Contingency Schedule** | | | | | |
| **Project Size** | **<$250,000** | **<$500,000** | **<$1,000,000** | **<$4,000,000** | **≤$7,000,000** |
| DB Projects | 8% | 7.5% | 7% | 6.5% | 6% |
| CM Projects | 5% | 4.5% | 4% | 3.5% | 3% |

* 1. Eligible uses of Contingency:

The following are examples of eligible and ineligible uses of contingency and owner paid change orders:

* + 1. Design Errors, work elements or components shown and/or designed incorrectly. (DB only)
    2. Re-work due to ambiguities or conflict in construction documents. (DB and CM)
    3. Constructability, and coordination of construction tolerances between trade contractors. (DB and CM)
    4. Work shown or inferred on construction documents but missing from bid packages. (DB and CM)
    5. Work shown or inferred in the construction documents, but not described to the extent that it is sufficient to obtain competitive bids. (DB and CM)
    6. Overages on Service Provider allowances. (DB and CM)
    7. Security personnel to control unexpected union picketing. (DB and CM)

F. Expenditures suggested by Service Provider and agreed upon by Trustees for the benefit of the Project. (DB and CM)

3.32 Ineligible uses of Contingency:

1. Additional Project management staff.
2. Weather protection of work or materials for the benefit of subcontractors.
3. Insurance co-pay (BRIP deductible co-pay) costs.
4. Any item listed in Classification of Project Costs RFP Table A as Overhead & Profit or Construction Phase Services.

3.33 Trustees’ responsibility for Change Order:

1. Cost of work not shown or inferred in the construction documents.
2. Trustees requested changes or additional work.
3. Unforeseen site conditions if not able to be discovered with a reasonable preconstruction site investigations.

3.34 Warrant Documents

The Service Provider shall warrant the construction and bid documents that the items described in Rider B-3.31 shall be paid from and will not exceed the Service Provider construction contingency.

3.35 Liquidated Damages

Liquidated Damages, as described in the Contract General Conditions, shall be a part of each Construction Agreement. Liquidated Damages shall be as proposed by the Trustees in the Task Order for Services, agreed to between the Trustees and Service Provider in the Task Order, and as documented in the Construction Agreement.

3.36 Fees and Mark-ups

A. Design/Builder Contingency: Lump Sum Allowance, based on agreed upon percentage of proposed Direct Construction Cost.

B. Overhead and Profit: Lump sum based on proposed percentage of Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1, per RFP 10.03.

C. Site Management Fee: Lump sum based on proposed percentage of Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1. Includes overhead and profit per RFP 10.03.

D. Subcontractor Payment and Performance Bonds: Lump sum allowance based on proposed percentage of Direct Construction Cost as proposed in Phase 1 per RFP 10.03.

E. Contractor Payment and Performance Bonds: Lump Sum Allowance based on proposed percentage of Proposed Direct Construction Cost as proposed in Phase 1 per RFP 10.03. Amount of each bond shall equal 100% of the awarded contract price per Contract General Conditions.

F. Collaborative Design-Build only — Design Fees: Lump sum, based on proposed percentage of Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1. 65% of the proposed Design Fee shall be allocated to the Preconstruction Phase 1 service agreement, 35% of Proposed Design Fee, 10% of which is allotted to Construction Administration shall be allocated to the Phase 2 Design-Build agreement. Includes overhead and profit per the RFP. Lump sum amount unless adjusted for change in scope.

G. Preconstruction Services Fee: Lump Sum based on proposed percentage of Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1.

3.37 Failure to Agree on Lump Sum Contract

If Trustees and Service Provider cannot agree on a Lump Sum Contract amount, or other conditions, the Trustees may terminate the preconstruction agreement and proceed with the construction phase through other means.

-End of Rider B, Scope of Work-