



Lexington-Fayette Urban County Government  
DEPARTMENT OF FINANCE & ADMINISTRATION

Jim Gray  
Mayor

William O'Mara  
Commissioner

**TO:** Mayor Jim Gray  
Urban County Council

**FROM:** Todd Slatin, Director, Division of Central Purchasing

**DATE:** September 12, 2013

**SUBJECT: Procurement Regulations Source Selection: Professional Services**

The purpose of this memorandum is to request Council approval of the proposed modification to the Purchasing Procurement Regulation Source Section: Personal/Professional Services regarding the procurement of construction services, which is highlighted on page 2 of the attached regulations.

The traditional method of procuring construction services used by the LFUCG is commonly known as the design-bid build method. In this process, an engineer or architect is selected using a Request for Proposal process to design the project and create a specification and drawing package. This specification/drawing package is then advertised as a competitive bid and a contractor is selected to provide the construction services for the project. In this scenario the engineer/architect helps to support the bid process and assists in overseeing the construction phase of the project. The owner(LFUCG) would have a separate contract with the engineer/architect providing design services and the contractor providing construction services.

However, there are three additional methods of construction services procurement - Design-Build, Construction Manager-at-Risk, and Construction Manager Agency - that are used by the state and other entities. LFCUG would like to modify its regulations to clearly include these other methods, which are further described below, in its procurement regulations.

Design-Build:

A method of procuring construction services known as design-build has been used in the private sector for many years and has gradually become accepted for public sector projects. With the design-build method, one entity is chosen to provide both engineering/architectural services as well as construction services. Key advantages of the design-build method are:

- Total accountability – one contract, one responsible entity
- Continuity – one entity involved from start to finish
- Reduced delivery timeframe – one entity increases process efficiency, reduces procurement processes from one to two
- Value engineering – construction personnel are involved during design phase to help drive cost savings, including the early resolution of constructability issues that can lead to costly change orders in the design-bid-build delivery method.

### Construction Manager-at-Risk:

With CM at Risk, the agency engages a construction manager (CM) to act as the agency's consultant during the pre-construction phase and as the general contractor (GC) during construction.

During the design phase, the CM acts in an advisory role, providing constructability reviews, value engineering suggestions, construction estimates, and other construction-related recommendations. At a mutually agreed upon point during the design process, the CM and the agency will negotiate a Guaranteed Maximum Price (GMP). The GMP is typically based on a partially completed design and includes the CM's estimated cost for the remaining design features, general conditions, a CM fee, and construction contingency.

The construction contingency can be split into CM and agency components. The CM contingency will cover increased costs due to unavoidable circumstances, for example material escalation. The agency contingency would cover cost increases from agency-directed or agency-caused changes. The construction contingency can be handled in different ways under the contract. Unused CM contingency can be returned to the agency, shared by the agency and CM, or given to the CM.

Agencies are increasingly experimenting with sharing the contingency pool with the CM to provide the CM with an incentive to control cost growth associated with change orders to meet the GMP. The agency may elect to remove pricing of some material or work items as part of the GMP if pricing of these items results in an excessively high CM contingency or GMP. For example, if the price of steel were too volatile to achieve an acceptable GMP, the agency could establish a separate bid item and pre-pay or pay for the steel directly under this item at actual cost.

After the GMP is established, the CM can begin construction, allowing for the overlap of the design and construction phases to accelerate the schedule. Once construction starts, the CM assumes the role of a GC for the duration of the construction phase. The CM holds the construction contracts and the risk for construction costs exceeding the GMP.

Key advantages of the Construction Manager-at-Risk method are:

- CM holds construction contracts, transferring performance risk to GC
- Reduces agency's general management and oversight responsibilities
- Use of a GMP with a fixed-fee and opportunity for shared savings provides an incentive for CM to control costs and work within funding limits
- Potential to fast-track early components of construction prior to complete design

### Construction Manager-Agency:

Construction Manger-Agency (also known as Program Management for multiple contracts or programs) is a fee-based service in which the construction manager (CM) is exclusively responsible to the agency and acts as the agency's representative at every stage of the project. The CM is selected based on qualifications and experience, similar to the selection process for design services. CM responsibilities may include providing advice during the design phase, evaluating bids from prime contractors, overseeing construction, and managing project cost, schedule, and quality. The CM may work with the designer or contractor to reduce the cost, but does not guarantee price or take on the contractual responsibility for design and construction.

Key advantages of the Construction Manager-Agency method are:

- Provides the opportunity for "fast-tracking" or overlapping design and construction phases – faster than traditional design-bid-build system
- Furnishes construction expertise to designer
- Augments the agency's own resources to help manage cost, time, and quality

- Reduces the agency's general management and oversight responsibilities

The Division of Central Purchasing believes that the recommend modifications are consistent with state statues and will provide the LFUCG with the best value possible in implementing future capital projects.

If you have any questions or need additional information, please contact me at extension 3328.