

**REQUEST FOR PROPOSALS: MODEL AND GUIDELINES FOR  
CONSTRUCTION MANAGER SERVICES AT RISK WITH  
GUARANTEED MAXIMUM PRICE  
(FOR MAJOR CAPITAL OUTLAY PROJECTS ONLY)**

**CHAPTER I – OVERVIEW**

**Article B – Information for Universities**

**1.1 Authority**

The California State University has authority to procure its major capital outlay projects using the Construction Manager at Risk with Guaranteed Maximum Price (CM at Risk) method of procurement under Public Contract Code Section Code Section 10708, which states:

*“(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).”*

In order to provide a standard for the Universities to use when selecting this type of procurement, the Trustees, specifically CPDC, has created the documents herein for the Universities’ use. Staff from the Office of General Counsel has reviewed and approved these documents. Universities shall modify the Contract General Conditions only through the Supplementary General Conditions.

**1.2 What is Construction Manager @ Risk with Guaranteed Maximum Price?**

Construction Manager at Risk with Guaranteed Maximum Price (CM at Risk with GMAX) is a method of procuring construction of a public works project, and within the CSU, it is utilized on major capital outlay projects. The Request for Proposal (RFP) for CM at Risk projects will ask contractors to submit a price on two levels: 1) to perform design, prebid services, and bid services, including agreeing to a GMAX for all construction work, and 2) to contract for construction management services at risk with a GMAX.

### **1.3 Design Architect Services in CM at Risk with GMAX Projects**

It is required that the University hire the CM at Risk firm at the beginning of the project schematic design phase, but only after the program is 100% complete. The CM at Risk must be under contract and performing before the design moves significantly into the schematic design phase. The standard Architect agreement has been modified to reflect the inclusion of the CM at Risk as part of the project team. The Architect, through the Modifications to the CSU Project Architect/Engineer Agreement for CM at Risk/GMAX Projects, has a reduced fee due to the CM at Risk performing significant portions of the design and construction administrative services.

### **1.4 Benefits of CM at Risk with GMAX**

Universities use the CM at Risk with GMAX procurement when they want to obtain delivery of a large and complicated project within a fixed budget and timeline. CPDC recommends its use on large projects with any of the following elements: site constraints, phasing, renovation work, or streamlined funding.

Additionally, CPDC recommends that the Universities utilize the CM at Risk with GMAX method of procurement in lieu of the Multiple Prime or CM Not at Risk methods. The liability for the success in completing the project on time and in budget lies with the CM, and not with the University.

In the CM at Risk with GMAX procurement, the CM at Risk is responsible for cost estimates, systems value engineering, systems life cycle cost analysis, design-build elements of the contract, and coordination and constructability reviews; CPDC considers that a qualified CM at Risk is more able than the Architect to address these items. The CM at Risk assumes the responsibility for the completeness of the design documents, eliminating any claims that may arise from ambiguities or conflicts in the design. The Architect is still responsible for the correctness or design completeness of the technical design of the project, and the technical interpretation of design issues.

In the CM at Risk procurement, both the CM at Risk and the Architect can make errors and/or omissions in the documents. The CM at Risk error or omission results when the CM at Risk does not produce complete and seamless trade contractor bid packages in order that a complete project is bid. The Architect error or omission is the standard design error or omission by which the design professional fails to provide a technically correct, complete, and code compliant design.

The CM at Risk warrants the completeness of the construction documents. It is very important that the University gives the CM at Risk a final opportunity, after all the plan check is complete and incorporated, to perform the constructability check. The comments must then be incorporated into the construction documents by the Architect before the project is bid to the trade contractors. It is desirable to

obtain a letter from the CM at Risk at this time wherein he/she states that the CM at Risk has completed the constructability check and warrants the completeness of the construction documents.

Because the CM at Risk bids and enters into agreements with the trade contractors, the CM at Risk assumes liability for the administration of the trade contracts. Therefore, the University has less administrative costs since the need is less for the University to “staff up” for the project. The University will still be responsible for the inspection and testing for the project, and for generally administering the project, but services such as project management, scheduling review, and change order analysis, are minimized, if not eliminated entirely. Because of the fee structure, the Trustees do not recommend the CM at Risk procurement method for small projects (less than \$10,000,000). It is particularly recommended for large, complicated projects.

### **1.5 CM Not at Risk / Multiple Prime Contract**

This method of procurement involves the University hiring the Architect to complete the design in conjunction with the CM Not at Risk splitting the bid documents into individual trade bid packages. The process includes a detailed master schedule with which the various trade contractors must comply. The Trustees would then enter into trade contracts for each of the trades that were bid, and the CM Not at Risk manages the construction. Potential problems encountered when using this method are described in the following sections.

#### **1.5.01 Workload increase**

The University’s workload increases to administer the individual trade contracts.

#### **1.5.02 Schedule**

The CM Not at Risk is responsible for the schedule updates. The University is liable, and therefore, responsible to resolve disputes or claims by trade contractors arising from scheduling.

#### **1.5.03 Coordination set of documents**

The CM Not at Risk assigns priority and stipulates the area available to each trade contractor. Problems may arise if trade contractor takes exception to the sequence or location of his work. Trustees are liable for disputes or claims arising from these disagreements.

#### **1.5.04 Impacts, delays and damages caused by poor performance by a trade contractor**

The CM Not at Risk will usually include sufficient performance language and penalty provisions in the trade bid contract documents with the University to either force the trade contractors to perform or to sufficiently recover the damage costs sustained by the other trade contractors due to the poor

performance or nonperformance of one or more trade contractors. The lack of a contract (privity) between trade contractors may disallow a damaged trade contractor from pursuing recovery from the offending trade contractor. The damaged trade contractor may have to claim against the University, and the University may then cross-claim against the offending trade contractor. Trustees shall try to recoup from offending trade contractor or bonding company, but they may not succeed. Additionally, the inclusion of high liquidated damages in the trade bid documents may adversely affect the trade bids.

**1.5.05 Cost**

The CM Not at Risk will charge between six to ten percent depending upon the exact scope of work. Additionally the University will incur a cost of at least five percent to administer the project, including testing and inspection of the project. The combination of the University's and the CM Not at Risk costs for administration, testing, inspection and profit and overhead is at least eleven percent, and may be as high as fifteen percent with no reduction in liability. These costs are offset by not having the costs of a general contractor.

***The Office of General Counsel and CPDC staff do not recommend the CM Not at Risk/ Multiple Prime Contract method of procuring construction, as the liabilities outweigh any benefits.***

**1.6 Calculating the Construction Budget**

Adjustments to the construction cost as identified in the CPDC 2-7 form for streamlined projects to reflect CM at Risk and a construction budget:

<b><i>Design-Bid-Build</i></b>	<b>CPDC 2-7</b>	
	<b>Non-Renovation</b>	<b>Renovation</b>
Construction Cost (includes general contractor's general conditions plus overhead and profit)	98.8% C (Basis of A/E fee in CM @ Risk)	
University Administrative Fee (includes Contract Admin, inspection & testing)	5.5%	
Architect's Fee (\$25 million project)	6.5%	
CPDC Fee	1.5%	
Construction Claims Program (Risk Pool-- only on streamlined projects)	1.0%	
Builders Risk Ins. (\$25 million project, 18 months)	0.1%	
Contingency	5.1%*	6.6%*
<b>Total Project Budget</b>	<b>118% C</b>	<b>120% C</b>

<b>CM at Risk with GMAX</b>	<b>CPDC 2-7</b>	
	<b>Non-Renovation</b>	<b>Renovation</b>
Total Project Budget	118% C	120% C
University Administrative Fee (includes Contract Admin, inspection & testing)	5.5%	
Architect's Fee	6.0%	
CPDC Fee	1.5%	
Construction Claims Program (Risk Pool-- only on streamlined projects)	1.0%	
Builders Risk Ins. (\$25 million project, 18 months)	0.1%	
CM at Risk Fee**	12 % avg (approx range 10-14%)	
University Contingency	3.1% *	5.1%*
Total Project Budget	118% C	120% C

\*If not a Risk Pool/Streamlined Project – add 1% fee to Contingency.

\*\*Average CM at Risk Bid Breakdown:

- 1% max. preconstruction,
- 5-7% construction phase services,
- not less than 1% and not more than 3% max. contingency, and
- 3-4% OH&P.

Therefore, the Construction Budget for CM at Risk	88.8% C (90.8%, renovation)
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## **1.7 Model Request For Proposal (RFP) Documents**

### **1.7.01 General**

As CM at Risk with GMAX on CSU projects is a new construction procurement method to the California State University, if a University proposes to use this procurement method, the Executive Dean shall contact the CPDC Chief of Construction Management (Chief of CM) to see if the project is appropriate for CM at Risk. If appropriate, the University shall submit a written request to the CPDC Assistant Vice Chancellor (AVC), and the Chief of CM shall recommend the project to the AVC, and the AVC will notify the University. CPDC shall work closely with the University on the initial project, though it is the University's responsibility to think through all the aspects of the RFP for CM at Risk and the ramifications on the project, both in regards to timing and language.

The model RFP contains two different types of documents: (1) standard documents are recommended by the Chancellor's Office, and that are standard inclusions in any RFP for CM at Risk, and (2) amendable documents, while also a standard part of the RFP for CM at Risk, they can be changed by the University.

1.7.01.01 Document Usage

Standard	Amendable
Contract General Conditions	Architect's Agreement
Uniform Table of Contents	Schedule
Prevailing Wage Rates	Cost Limits
Forms	Advertisement
Submittal Requirements & Procedure Guide for CSU Capital Projects	Liquidated Damages
Clarification regarding the RFP	CM at Risk Project Team
Prequalification Requirements	Evaluation Criteria
Proposal Opening Procedures	Division One

It is suggested that the final RFP for CM at Risk projects have color-coded sections. This will help to locate different items for reference, as well as give a better appearance to the manual.

1.7.01.02 Advertisement

The Request for Proposals advertisement must be included in the RFP. The proposal process shall be open to all prequalified contractors. Campuses shall not include an additional layer of technical prequalification for potential proposers. The RFP process is the technical prequalification process.

1.7.01.03 Prequalification of Trade Bids

CM at Risk trade bidder prequalification (mechanical, electrical, plumbing trades and trades with an estimated value of greater than five percent of the Construction Budget) is mandatory, and shall include the following criteria.

Currently used criteria	Proposed criteria
Project specific	Project specific
Campuses create criteria for prequal	Campuses create criteria for prequal
Trustees or campus evaluate prequal	General Contractor evaluate prequal
Safety requirements	Safety requirements
License requirements	License requirements
Project experience	Project experience
	Specific company information (i.e. owned by or affiliated with another firm)
	How much work is subcontracted out?
	Insurance information
	Bonding information
	Litigation?
	References from three suppliers
	References from three general contractors

Note: the CM is required to ask for this information from the trades, so the burden of the work is on the CM to prequalify its trade contractors. CSU staff involvement will occur during the bidding phase for

trade contractors to ensure the CM is conducting the prequalification. Staff will provide the sample prequalification forms to the CM and later obtain lists of prequalified trade contractors for the project. Reference Section 1.9.02.01 in Chapter I, Article B, Information for Universities.

1.7.01.04 Prevailing Wage Rates

The prevailing wage rates that are in effect on the date of the first advertisement shall be bound within the RFP. Reference section 1.9.01.02.

1.7.01.05 Project Schedule

The sample tentative schedule in the Request for Proposal, Chapter II, Article B, Section 1.5, shows typical time sequences for various activities. The University must work out the proper schedule for the project. Start with the Board of Trustees meeting dates and work both ways (before and after) those dates to ensure enough time is allowed. A sample of “Key Action Dates and Proposed Construction Schedule” with realistic timelines is as follows:

Key Action Dates and Proposed Construction Schedule

RFP release date to prequalified firms.....	Day 1
Project Review / Pre-bid Job Walk:.....	Day 14
Last date to submit questions regarding RFP: .....	Day 28
Last date to issue RFP addendum: .....	Day 35
Last date to turn in Prequalification: .....	Day 35
Date and time proposals due: .....	Day 42
Technical Proposals evaluated by:.....	Day 49
Interview of the proposers (if required): .....	Day 48-49
Posting of Technical Proposal Scores:.....	Day 50
Public Opening of Fee Proposals:.....	Day 50
Award of preconstruction service agreement: .....	Day 56
Notice to Proceed preconstruction services: .....	Day 77
Complete preconstruction services agreement (function of Design timeline): .....	Day 740
[Assuming 17 months of Design, Design Review, Estimating, and Initial Coordination and Constructability Review (a project specific function of the terms and conditions of the Architect agreement and the requirements of the CM’s Preconstruction Agreement), and at least five months of Plan Check, Final Coordination and Constructability Review, Bidding and obtaining the GMAX– see below]	
Award CM at Risk (GMAX) agreement: .....	Day 741
Notice to Proceed construction phase: .....	Day 770
Construction begins: .....	Day 775
Construction complete: .....	Day 775 + Construction Duration

It is very important that the University give the CM at Risk adequate time to perform all the required coordination and constructability checks, especially the final coordination and constructability review. Time elapsed from the point where the Architect submits the Construction Documents to plan check, and the plan check and back-check are complete, is usually ten weeks. The University must now issue these fully plan checked Construction Documents to the CM at Risk and give the CM adequate time to perform their final coordination and constructability review; usually it takes four weeks. This final review is essential to enable the CM at Risk to warrant the completeness of the Construction Documents and is a major benefit of the CM at Risk process. Once the CM at Risk submits the final set of coordination and constructability comments/corrections to the Architect, the Architect must expeditiously incorporate these comments/corrections; usually it takes two weeks. Therefore, from production of 95% Construction Documents to a completely plan checked and constructability reviewed and corrected set of 100% Construction Documents is approximately 16 weeks. The CM at Risk will then need approximately five weeks to bid, normalize, and submit a GMAX for the project, and then there will be approximately five weeks of award and contract processing. Therefore any project schedule must include at least 22 weeks from 95% Construction Documents, through plan check, through constructability check, through bidding and submitting of the GMAX, and then another four weeks of contract award and processing. This six month period needs to be included in the project schedule.

It is recommended that the contract for the CM at Risk be executed first, so that the CM at Risk can assist in the selection process for the Architect. The Architect should be experienced in the CM at Risk process. There is no prohibition to hiring the Architect first, so they can participate in the selection of CM at Risk. The contract for the Architect should be initiated within weeks of the CM at Risk, but only after the project's program is 100% complete. In any case, CM at Risk shall be brought on board before 50% Schematic Design, as a major portion of the CM at Risk's participation and benefit is realized in the Schematic Design.

#### 1.7.01.06 Proposal Requirements

The proposal submitted by the proposer will contain two parts: the fee proposal and the technical proposal. The proposer must submit its fee proposal on the fee proposal form issued by the University, a sample of which is in the Forms section. The Trustees' Facilitator will review the fee proposal to verify compliance and responsiveness and then reseal it at the first opening. The Trustees' Facilitator will retain all other parts of the fee proposal package for further evaluation. The technical proposal must contain all of the information needed by the evaluation committee to consider a proposal, as outlined in the program requirements.

#### 1.7.01.07 General and Special Conditions

The Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price projects (Appendix B-1) shall serve as a “boilerplate,” in that it has been reviewed and approved by General Counsel and is intended to protect the Trustees with solid code and statute-compliant standards. All statements in the Contract General Conditions are items that pertain to every situation.

Should you have information that is unique to a particular project, it can be included in the Special Conditions and/or Division One Specifications. The Special Conditions should include a detailed description of the project. Using Appendix D, the University’s RFP authors shall further identify the project and include any design work product to date. The Special Conditions section could also be called the “guideline” section. The Special Conditions clarify or complement the Contract General Conditions, but do not overrule them. The University’s RFP authors must read over each item and edit it to suit their project. The University’s RFP authors can modify the Contract General Conditions by using a Supplementary General Conditions. However, the Office of General Counsel and CPDC Chief of Construction Management shall review all Supplementary General Conditions, as Supplementary General Conditions overrule Contract General Conditions.

#### 1.7.01.08 Forms

The fee proposal form and the technical proposal summary statement (qualifications score sheet) must be customized for each project by the University’s RFP author. Prior to printing, the fee proposal form shall have “sample” overlaid.

#### 1.7.01.09 Submittal Requirements & Procedure Guide for CSU Capital Projects

This manual must be included in the RFP.

#### 1.7.01.10 Maps

The campus should include all maps that will explain the layout of the project to the proposers.

#### 1.7.01.11 Geotechnical Report

It is important to include a site-specific geotechnical report that provides design recommendations. This will assure the site is buildable, and provide information for bidding without every proposer bringing their own geotechnical consultant to the site to drill holes.

#### 1.7.01.12 Uniform Table of Contents

The campus shall use the uniform Table of Contents to set up the body of the RFP.

## 1.7.02 Modifications Universities Should Consider for Contract Documents

The construction administrator should consider the following issues when crafting the contract documents for the project. All of these items can be discussed in detail in the Request for Proposals.

### 1.7.02.01 Project Team Guideline (at minimum)

Half-time Project Manager (manage trade contracts, project oversight)

Full-time Project Engineer (RFIs, shop drawings, schedule monitoring)

Full-time Superintendent (organize and supervise trade contractors)

Full-time Clerical Assistant

Note: Scheduling is a home office overhead function. The above project team guidelines fit a \$25 million project. Larger and more complicated projects will require a full-time Project Manager and an Assistant Superintendent.

### 1.7.02.02 Construction Trailers and Equipment

Identify the minimum trailers and equipment that the CM at Risk shall supply for its forces and also for the Architect, Inspector, and testing entities.

### 1.7.02.03 Liquidated Damages Guideline

For projects with a Construction Budget of \$10,000,000, use a minimum of \$2,000 per calendar day. Add \$1,000 per calendar day for each \$5,000,000 increment in Construction Budget above \$10,000,000. For example, a \$25,000,000 project would have \$5,000 in liquidated damages. The liquidated damages should be capped at about \$8,000 per calendar day, as with any amount above this, you may start to lose bidders due to possible liability exceeding potential profit.

### 1.7.02.04 Phased Funding

For projects that have multi-phase funding, it is important that the Contract Documents carefully describe the phases. For example, if the project is only funded for preliminary working drawings, then the Contract Documents would include a sample service agreement that has two parts for preconstruction services: Phase 1A—CM preconstruction services through the end of preliminary working drawings (through schematics and design development) and Phase 1B—CM preconstruction services through construction documents and bidding services. The Contract Documents should also notify the bidders that it is possible that a subsequent funding phase could be postponed or even cancelled by the Legislature.

#### 1.7.02.05 Evaluation Criteria and Scoring – Assignment of Bonus Points for DVBE Participation

It is recommended that the RFP include a provision in the evaluation criteria and scoring section to award bonus points for DVBE participation. These bonus points shall be limited to no more than three points. If the CM at Risk does not realize the percent DVBE participation identified in its technical proposal, then a penalty shall be assessed. Optional language has been inserted into the RFP, section 5.3.04.06.

Note: If the CM proposes to obtain less than 3% DVBE participation or a good faith effort in the Technical Submittal, then the CM must still comply with all of the DVBE requirements per Contract General Conditions Article 2.09.

### **1.8 Trustees' Review and Approval of Trade Contract Documents**

The construction administrator shall coordinate with the CM at Risk to produce the Combined Trade Contract Documents (CTCD). The CTCD shall incorporate the CM at Risk'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, construction documents hierarchy clauses, the Subletting and Subcontracting Fair Practices Act (PCC section 4100 *et seq.*), Division 1, etc. The CTCD must include the CSU's mandatory prequalification for major trades. Major trades are identified as at least mechanical, electrical, and plumbing, and any other trade with an estimated trade contract value greater than five percent of the Construction Budget.

Due to potential assignment of the trade contracts to the Trustees, pay particular attention to the following:

- assignment clause,
- whether documents are tied to Contract General Conditions
- no conflicts with Contract General Conditions
- no conflicts with our ability to take over trade contract agreements
- no conflict with law.

### **1.9 Proposed Procedure for CM at Risk Trade Bids**

#### 1.9.01 Pre-Bid

##### 1.9.01.01 Front-end Documents

CM works with CSU and utilizes CSU-supplied documents: prevailing wage rates, the CSU mandatory prequalification for major trades, DVBE listings, Contract General Conditions, Supplementary General Conditions, Public Contract Code section 3400, Public Contract Code section 4100 *et seq.*, sample forms

in compiling/merging front-end document for trade bid packages, and a Division One Specification that identifies the requirements for testing, shop drawing submittals, operation and maintenance manuals, etc.

#### 1.9.01.02 Prevailing Wage Rates

The prevailing wage rates that are in effect on the date of the first advertisement shall be bound within the RFP. Prevailing wage determinations with a single asterisk (\*) after the expiration date remain in effect for the life of the project. Prevailing wage determinations with double asterisks (\*\*) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payments to be paid for work performed after this date have been predetermined. If work is to extend past this expiration date, the predetermined rate must be paid and should be incorporated into contracts when the predetermined rate is in effect. The CM at Risk should contact the Prevailing Wage Unit, DLSR, or the construction administrator to obtain predetermined wage changes.

#### 1.9.01.03 Sole Sourcing

CM is not to sole source. List A or B or Equal. Only exception: energy management controls systems or fire alarms controls or keyway systems. By Supplementary General Conditions, CM may require submissions of Equals by trade contractors and suppliers at least ten days prior to bid opening. Whether the Equals are accepted or rejected by the Architect shall be issued by addendum.

#### 1.9.01.04 Bidder Preferences

Compliance with DVBE regulations shall occur during trade bid process; Small Business bid preference shall also be given. Reference Article 2, Contract General Conditions.

#### 1.9.01.05 Trade Bids

Go to bid only after documents have been plan checked, and the final constructability check has been performed by CM at Risk and addressed by the Architect. Obtain a letter from the CM at Risk stating that they have completed their constructability and coordination review and that they warrant the completeness of the Construction Documents.

#### 1.9.01.06 Trade Contract Budgets

Publishing trade contract budgets/estimates in bid documents is optional, as this is not always favored by CM, but is essential if CM uses alternatives.

1.9.01.07 Project Phasing

For a state-funded project, CM must bid all trades, and GMAX must be attained to ensure that project is within budget before awarding the contract for any phase. With Systemwide Revenue Bond-funded projects, there is a little flexibility, and the CM may, for example, award the site work construction while bidding trades for construction of the building – but only if everyone is confident that the GMAX is obtainable.

1.9.01.08 Alternatives in Trade Bids

Develop additive alternatives to maximize construction budget, especially for late-bidding trades. Develop deductive alternatives to be able to reduce the construction budget; these deductive alternatives must reduce quality, not scope.

1.9.01.09 Allowances

Allowances should only be used where a scope of work is indeterminate at the time of bidding trades and obtaining the GMAX. Refer to Section 1.9.04.02, Allowances, under 1.9.04, GMAX.

1.9.01.10 Trade Bid Scope of Work

The trade bid packages shall include very specific directions to the bidders as to the scope of work that is to be included in their proposals. This shall be identified in a section of the Additional Provisions. These “scopes” shall confirm the work required per the plans and specifications, and may also include scope in addition to the plans/specifications that is required to complete the work. Any required and desired alternate and unit prices shall be requested in the Additional Provisions. The bidders shall also be encouraged to suggest cost savings ideas with their proposals, but separate from their bid.

1.9.01.11 Trade Bid Packages

Upon receipt of the complete bid documents from the consultants, CM shall prepare trade specific bid packages. All of the bid packages shall include the standard bid documents.

1.9.02 Bid

1.9.02.01 Trade Prequalification

CM shall solicit at least three bidders for each trade. When the bid time frame approaches, CM shall contact the bidders (usually by fax) to inform them of the coming bid period and to solicit and

confirm their interest in the project. CM is responsible for prequalifying its major trade contractors (mechanical, electrical, plumbing, and any trade that is greater than five percent of the overall construction budget).

The CSU Trade Prequalification document shall be included in the Request for Proposal document. Campuses shall ensure that the CM is performing this process, and submit a report to the CPDC Chief of Construction Management that includes:

- A report on the prequalification process for the project identifying how the subcontractor prequalification was implemented in the contract documents, confirm that the CM at Risk incorporated the CSU trade prequalification format into their own prequalification documents, and provide results, i.e. how many contractors in each trade were prequalified, etc.
- A copy of the Supplementary General Conditions or RFP wherein the campus required that the CM perform the prequalification using the CSU Trade Prequalification document.
- A copy of the CM at Risk prequalification document.
- A copy of each contractor's submitted prequalification document.

#### 1.9.02.02 Proposed Trade Contractor Bid List

CM to provide CSU (for review and comment) with a list of those trade contractors that the CM at Risk has prequalified and shall be given an invitation to bid. CSU should review this list against debarred contractors list on DIR website: <http://www.dir.ca.gov/dlse/debar.html>. CSU may reject a proposed subcontractor, but only if CSU has a documented case for not accepting that contractor that will stand up in a responsibility hearing.

#### 1.9.02.03 CM Solicits Bids.

If only one or two of the at least three bids solicited are submitted, that is okay, as long as the bid is in line with the CM's estimate for that trade.

#### 1.9.02.04 DVBE Participation

CM shall solicit the participation of DVBE qualified bidders and shall endeavor to meet the established award goal, but at a minimum shall meet the good faith effort requirements. Interested DVBE firms shall be invited to submit prequalification to become approved to bid the project (per section 2.2.3 of the RFP and article 2.09 of the Contract General Conditions). Campus may assign bonus points in the RFP evaluation criteria for CMs that propose to meet a certain participation requirement. If the CM later

fails to achieve the percent participation promised, a penalty shall be assessed against the CM. If the CM proposes a percentage less than three percent in the Technical Submittal, then the CM shall comply with all the DVBE requirements.

1.9.02.05 Request for Bid to Trades

A Request for Bid (RFB) shall be sent to the trade bidders, which shall include the Additional Provisions for their scope of work. The RFB shall identify the bid date and time, and shall identify the means for the trade contractors to obtain the plans, specifications and other bid documents. Any requirements for pre-bid meetings or job walks shall also be identified in the RFB.

1.9.02.06 Questions during Trade Bidding

During the bid period, CM shall receive and make calls/faxes/emails from the bidders to discuss the scope of work and any questions related to the work. If required, questions shall be submitted to the design consultants formally, usually in the form of a RFI, and answers shall be distributed to all bidders by formal addendum produced by Architect and CM, approved by the Trustees, and issued by CM.

1.9.02.07 RFIs for Addendum

As the scopes of work are developed for the bid packages, and during the bidding process, CM shall analyze the plans and specifications and shall report any omissions, discrepancies or errors that are discovered in this review. These issues shall be documented in the form of a RFI, and CM shall distribute answers to all bidders by issuing a formal addendum produced by Architect and CM, approved by the Trustees, and issued by the CM.

1.9.02.08 Bid Spreadsheets

Prior to the receipt of the bids, CM shall begin preparing the bid spreadsheets. These spreadsheets shall identify the scope of work that shall be taken into consideration in the review of the proposals.

1.9.02.09 Trade Bid Openings

Trade bid openings shall be on Tuesday, Wednesday or Thursday. Avoid the day after holidays. Multiple bid opening dates are allowed.

1.9.02.10 Receipt of Bids

CM may receive the bids at the campus or at their office, on or before the bid date/time. Representatives of CSU shall participate. Bids shall be received by fax and/or hard copy. All bids received prior to or on the bid date shall be stamped in and placed in a specific bid folder for each trade.

Late bids shall be rejected unless they are the only bid for that trade in which case they may be used, especially if the bid is consistent with the CM's budget/estimate for this trade. The CM and the Trustees' Representative shall jointly open the bids. The University needs to participate in the bidding process sufficient to be satisfied that the process was fair, and no favoritism or bid shopping occurred.

#### 1.9.02.11 Normalizing of Trade Bids

As much as possible, the trade bids must be on an apples-to-apples basis, and award must be made to the lowest responsible trade contractor. Normalizing of the trade bids may take the CM some time, allow two weeks. The University Representative shall participate with the CM at Risk in any normalizing to verify that the process was fair, and that no favoritism or bid shopping occurred.

#### 1.9.02.12 Rebidding of Trade Bids

Trade bids where there were irregularities, insufficient bids, or inadequate competition, etc. may be quickly rebid. The CM may not negotiate. The CM issues a notice to the bidders for that trade (and any new bidders that may be found) rejecting all bids and notifying them that the Trade Bid Package has been adjusted, and what adjustments were made, if any. This notice shall also provide the new bid opening location, along with the date and time of opening. If more trade bidders are added, more time will be required to allow them to review the construction drawings.

#### 1.9.02.13 Bid Protests

If the University receives a bid protest from a trade contractor, they should notify and forward the protest to the Chief of Construction Management in CPDC, who shall assist the University in its response. In the majority of cases, the response shall be that the trade contractor needs to present his protest to the CM at Risk, as the trade bidding process is the CM at Risk's process, and the University satisfied the public bidding process with its selection of the CM at Risk. This is a part of the reason that the University needs to participate in the trade bidding process sufficient to be able to state that the process was fair, and that no favoritism or bid shopping occurred.

#### 1.9.03 Post Bid / Award

##### 1.9.03.01 Preparation for Award

CM and Representative of CSU shall read and analyze each of the bidder's proposals and CM shall complete the spreadsheets for each of the trades. Several different types of entries shall be made onto the spreadsheets.

- *Scope included as requested* – this shall be confirmed and checked off (check mark)

- *Scope included, not requested* – CM shall confirm that this is scope that is definitely not required from this trade, and shall ask for a credit to delete the scope from their proposal. An estimate for this deductive cost may be carried on the spreadsheet until the final number is received from the trade contractor.

Many times the bidder points out scope that is required for their trade, but was not included in CM's RFB/scope of work, or is not clearly shown on the documents. If CM determines that the scope is required/desired, CM shall add a line item to the spreadsheet for this item, note it to be included by the bidder, then get pricing from the other bidders for this item.

- *Scope excluded as requested* – this shall be confirmed and noted on the spreadsheet.
- *Scope excluded, requested to be included* – CM shall confirm that this is scope that is definitely required from this trade, and shall ask for an added cost to add the scope to their proposal. An estimate for this additive cost may be carried on the spreadsheet until the final number is received from the trade contractor.
- *Scope not requested and not included in the bids, but required for the GMAX.*

Many times the bidder points out scope that is not required for their trade, but was included in CM's RFB/scope of work. If CM determines that the scope is not required, CM shall add a line item to the spreadsheet of this item, and note it to be excluded by the bidder. See also Article 1.9.02.11 above.

#### 1.9.03.02 Bidder Disqualification

Generally, the bidders are not disqualified for not submitting a proposal that does not exactly match the requested scope in the bid documents. Through the bid recording process noted above under section 1.93.01, CM shall normalize the scope and dollars of all of the bidders for each trade to enable as equal a comparison of the bids as possible. When complete, each spreadsheet shall have the complete scope required in the GMAX for that specific trade. After any normalization process, the low bidding trade contractor shall be awarded the trade contract and take on all the rights under PCC 4100 as a listed subcontractor of the CM.

It is of the utmost importance that this process is followed. The CM at Risk shall not be allowed to disqualify a low bidder without clear cause. The CM at Risk has the ability to solicit from only those trade contractors that he/she deems competent and capable (and many of whom he/she has technically prequalified). There needs to be a clear and compelling reason for the CM at Risk not to award to the low bidder.

#### 1.9.03.03 Basis of Award for Trade Bids

The award of trade bids is based solely on low bid, unless alternatives are utilized in which case the trade budget estimate and the basis of award shall be as published on the bid form. For example: “We reserve the right to award the contract on the basis of base bid alone, or if the budget allows, on the basis of base bid plus (or minus) any or all alternatives taken in the order of precedence as the construction budget dictates.” Reference SUAM Section 9721.07.03. If alternatives are included in a Trade Contractor bid form, the CM’s budget/estimate must be included and used in the basis of award.

#### 1.9.03.04 Expanded Trade Contractor Listing

CM shall publish the List of Expanded Trade Contractors at the end of each bid opening day or as soon thereafter as possible. PCC section 4100 shall be strictly enforced at this time; the listed trade contractors shall have all the rights due it under PCC section 4100 *et seq.* The CSU Representative must make sure that the trade contractor bidding process is fair and that no favoritism or bid shopping takes place.

#### 1.9.04 GMAX

##### 1.9.04.01 Preparation of GMAX

CM shall prepare and submit a spreadsheet identifying each trade contractor and their bid (or adjusted bid reflecting alternates and/or substitutions), along with CM’s fee mark-up.

##### 1.9.04.02 Allowances

Allowances should only be used where a scope of work is indeterminate at the time of bidding trades and obtaining the GMAX. One example of an allowance for indeterminate scope: the University wants the CM at Risk to maintain and/or improve an access road to the site, but has not fully determined how much work will be involved in maintaining and/or improving an access road to the site in terms of amount of sweeping, watering, signage, and amount of flagmen, etc. Another example of an allowance for indeterminate scope may involve the Storm Water Protection Plan (SWPP). The cost of setting up and permitting the SWPP may be biddable, but the cost to reinstate and maintain after varying intensities and amounts of rainfall and wind is indeterminate.

In both the above examples, if the CM at Risk were to give the University a lump sum price for each, that price would be very conservative, as the CM at Risk has to cover most of the possible occurrences. This could add hundreds of thousands to the GMAX and may cause project quality to have

to be reduced. A better solution is that the University and the CM at Risk estimate a reasonable value for the work and include this in the Contract as an allowance. If all the allowance is not used, then the balance is returned to the University. If more work than the allowance covers is directed by the University, then the University will process a change order using the University's contingency. This is the most prudent way to avoid overpaying on indeterminate scope of work.

The CM shall carry any allowance as an item in the Schedule of Values as part of the Construction Budget, and the CM will apply its fee for Construction Services, Contingency, and Overhead and Profit to it. The charges against the allowance shall consist of either time-and-material or approved lump sum direct costs from trade contractors. These direct costs shall have mark-up on accordance with Article 6 of the Contract General Conditions. Upon completion of the allowance item, and if the allowance has not been fully expended, then the CM shall bill the allowance at 100%, and the University shall process a credit change order for the unused balance of the allowance plus the CM's fee. If the allowance is exceeded, then the CM shall bill the allowance item at 100% and the University shall process a change order in accordance with Article 6 of the Contract General Conditions.

1.9.04.03 Bids Above the Guaranteed Maximum Price (GMAX)

If the project bids above the GMAX, the CM at Risk is obligated to value engineer the project back to the GMAX and at its cost. If the project bids at greater than five percent above the GMAX, the CM at Risk shall also pay for the Architect's cost in assisting to bring the project back to the GMAX.

The University may choose to proceed with a bid in excess of the GMAX. In this case, the CM at Risk's fee shall be based on the original Construction Budget, except that the fee for the Construction Manager's overhead and profit shall be applied to the actual as-bid Construction Cost. Refer to the following example.

a) that the original Construction BUDGET for this project is:	\$ <u>25,000,000</u>
b) that the total Construction COST for this project is:	\$ <u>27,000,000</u>
c) that the following fees are included in the Guaranteed Maximum Price (GMAX):	
<u>6</u> % of the Construction BUDGET for Construction Phase Services	= \$ <u>1,500,000</u>
<u>2</u> % of the Construction BUDGET for CM's Contingency	= \$ <u>500,000</u>
<u>4</u> % of the Construction COST for CM's Overhead & Profit	= \$ <u>1,080,000</u>
d) to receive and accept total GMAX Not-to-Exceed Contract Amount:	\$ <u>30,080,000</u>

1.9.04.04 Bids Under the Guaranteed Maximum Price (GMAX)

The original Construction Budget for this project is \$25,000,000. If the project bids less than the GMAX, but by no more than five percent, then all of the fee percentages shall apply to actual as-bid

Construction Cost. If the project bids less than the GMAX, but by more than five percent, then the fee percentages for Construction Phase Services and Construction Manager’s overhead and profit shall be applied to the Construction Budget Floor (the original Construction Budget less five percent), except that the fee for Construction Manager’s contingency shall apply to the actual Construction Cost. Refer to the following example.

a) that the total Construction Cost for this project is:	\$ <u>25,000,000</u>
b) that the Construction Budget Floor (95% of the original Construction Budget of \$25,000,000) is:	\$ <u>23,750,000</u>
c) that the following fees are included in the Guaranteed Maximum Price (GMAX):	
<u>6</u> % of the AMOUNT IN LINE B for Construction Phase Services	= \$ <u>1,425,000</u>
<u>2</u> % of the Construction Cost for CM’s Contingency	= \$ <u>460,000</u>
<u>4</u> % of the AMOUNT IN LINE B for CM’s Overhead & Profit	= \$ <u>950,000</u>
c) to receive and accept total GMAX Not-to-Exceed Contract Amount:	<u>\$ 25,835,000</u>

1.9.04.05 Guaranteed Maximum Price (GMAX)

A complete GMAX shall be submitted to CSU for approval, containing all of the trade contractor costs as well as the General Requirements, Construction Contingency, Overhead and Profit, and any other costs required to be in the GMAX. Once the GMAX is approved, a construction agreement will be executed, and a Notice to Proceed is provided. Only then shall the CM begin to make subcontract awards and execute the subcontract agreements.

End of Chapter 1, Article B – Information for Universities