

CONTRACT MANUAL
FOR
SSHE-COMM-2021
CENTRALLY-HELD, OPEN-END CONTRACTS
FOR
COMMISSIONING SERVICES

**Construction Support Office
State System of Higher Education
2986 North Second Street
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Part 1 - General Information

Purpose

This Manual has been prepared for the utilization of the SSHE-COMM-2021 Centrally-Held Open-End Contracts for Commissioning Services. The Manual is to be used both by System universities and by the firms under contract.

This Manual is written in “lay” terms and is not all inclusive. Any terms and conditions in the actual contracts are binding.

This Manual will be posted on the Construction Support Office public web site, where it will be easily accessible for both universities and firms.

Information in this Manual will be updated periodically. Most updates will involve the Tables. Updates will be provided to all parties; or, at least, parties will be notified that updates were posted.

Key Terms and Abbreviations

System: State System of Higher Education. The System comprises 14 universities and the Office of the Chancellor. In this Manual, when discussing the administration of the contracts and the policies for utilizing them, the term System refers to the Construction Support Office and/or the System's Contracting Officer for the contracts, as opposed to individual universities, or to a group of universities.

CSO: Construction Support Office. CSO, located at the Office of the Chancellor, is the System office which procured and is administering these contracts.

IWO: Individual Work Order. IWOs are what are used to procure specific services under these contracts.

Commissioning Contracts: Throughout this Manual, the SSHE-COMM-2021 contracts will be simply referred to as the COMM contracts, or these COMM contracts.

The terms “contract” and “agreement” may be used interchangeably throughout this Manual.

Universities and Points of Contact

The System's Contracting Officer for the contracts is Steven R. Dupes, Assistant Vice Chancellor for Facilities. CSO is part of his organization.

Either the university will have its own contracting officer(s) who will sign IWOs for their own universities, or else the Regional Procurement Office (RPO) will sign IWOs for the universities. The Universities' primary points of contact for utilization of these contracts as well as the RPO points of contact are at Table 1.

Related Contracts

For firms which hold the existing PASSHE-COMM-2015 contracts, any IWO currently in place under their COMM-2015 contract will continue to be in place. Plus, the IWO may be amended as needed to complete work being done under it. However, out-of-scope work cannot be added to it. Otherwise, new IWOs will be issued under the new COMM contracts as soon as they are in place.

CSO also holds four other sets of professional contracts. The SSHE-ARCH-2016 and SSHE-ENGR-2016 contracts are for architectural services and engineering services, respectively. There are 27 firms, and 28 firms, respectively, currently holding these contracts. The PASSHE-CM-2019 contracts are for construction management services, with 23 firms currently under contract. The SSHE-RMP-2019

contracts are for roof management program services, with 6 firms currently under contract. All related contracts operate similar to the way these COMM contracts operate.

Part 2 - Basics of the Contracts

Firms Under Contract

The System has entered into COMM contracts with 13 firms. The contract numbers are ordered alphabetically by the firms' names. Firms' main points of contact are provided in Table 2, Firms and Points of Contact.

Legal Approvals

The base contracts have received the required Commonwealth legal approvals. IWOs do not require legal approvals.

Contract Execution, Duration, and Renewals

Each contract has an Effective Date, or what is also called its Execution Date. The Execution Date is the date of the Office of Attorney General's signature. The Dates are also shown in Tables 3, Contract Dates.

The contracts are two-year contracts, and the plan is to renew each contract twice. Each renewal would provide another two years, for a total possible duration of six years. When contracts are renewed, their Renewal Execution Dates will be entered into Table 3.

Renewals may not be executed for a variety of reasons, including poor performance by the firm, legal or similar problems encountered by the firm, corporate or ownership changes for the firm, etc. The decision to not offer a Renewal is at the discretion of the System. Also, a firm may decide to not renew.

Assignments, Novations, Etc.

Corporate, ownership, or other legal-entity changes usually require the execution of an assignment, novation, or other contract action. These actions usually require all Commonwealth legal approvals. The System has the discretion to not approve assignments or similar changes, but this rarely occurs.

The firm should notify CSO whenever such changes occur, and they should be timely in doing so. Depending on the nature of the corporate change and the contract action required, the lack of a proper contract action having been executed may affect a Renewal, and may prevent the Renewal from being offered and executed.

While the legal approvals of an assignment or novation are taking place, the System may suspend the approval of new IWOs for that firm.

Simple name changes for the firm, without involving corporate changes, are simpler to handle, contract-wise. Nonetheless, firms should notify CSO if a name change is taking place.

University Coverage

The contracts allow all firms to work at all universities. This simplifies things. In practice, firms generally are not going to seek work outside of the regions in which they generally work, and universities generally are not going to seek out firms that are located too far away.

Scope of Services

The scope of services envisioned under these contracts is generally described in Article 5 of the General Conditions. However, IWOs under these contracts are not limited to those services and tasks; nor are all

the services and tasks outlined in Article 5 relevant to all IWOs. The scope of services and tasks for any IWO should be negotiated and then identified and described in the IWO.

Use of Subconsultants

Subconsultants are typically not as important with Commissioning contracts as they are with professional design contracts, such as the SSHE-ARCH-2016 contracts. Only a few firms with COMM-2021 contracts even have subconsultants.

For those firms who listed a subconsultant in their proposal, if the firm is terminating a relationship with that subconsultant and desires to permanently replace that subconsultant on its team, the firm should inform CSO. The notification to CSO (e-mail with attachments) should state the circumstances of the change, and should include all information that would normally have been provided about that new subconsultant in an original proposal. Additionally, if the new subconsultant is to have billable rates included in the contract, rate information for the new subconsultant should be provided. Rates are subject to the same negotiations that took place at the time of formation of these contracts. Permanent changes of subconsultants will typically be approved; CSO simply needs to document the change and track the information.

Situations sometimes occur where a firm wants or needs to utilize for an IWO a subconsultant not on its team. Or, in some cases, a university may request the use of a particular subconsultant for an IWO. For these instances, the university and/or the firm should request approval from CSO for utilization of that new subconsultant. The request (e-mail with attachments) should include information as to the need for the subconsultant, the subconsultant's qualifications, and the approximate cost involved. Again, CSO will typically approve such requests. However, in these cases, the approval is a one-IWO approval only.

Small Diverse Businesses (SDB) and Veteran Business Enterprises (VBE)

The System supports the inclusion of, and participation by, small, minority-owned, women-owned, veteran-owned, service-disabled veteran-owned, disability-owned, LGBT-owned, and other diverse and disadvantaged business enterprises in these contracts. Table 4, Small Diverse Business and Veteran Business Enterprise List, identifies prime firms and subconsultants which are SDBs and VBEs.

If a firm wishes to correct information in, or add information to, this table, that firm should send a request to CSO. The request (email, with attachments) should identify what is incorrect or missing, and should provide some documentation supporting the requested change or addition.

Thresholds and Limits

There are no limiting thresholds for the dollar value of an IWO. Nor are there any thresholds for total dollar value of work that a firm can be issued for a calendar year, for a contract or renewal period, or for the life of the contract.

Although there are no such thresholds or limitations, CSO will evaluate the utilization of firms, and will encourage equitable distribution of work. CSO does understand that for high-priority IWOs, universities will most likely select a firm who they know. However, for more routine work, CSO encourages selection of other firms, when possible and appropriate.

Part 3 - Billable Rates and Fees

Negotiated Rates

All rates incorporated into the contracts were negotiated by CSO. Emphasis was placed almost solely on final or billable rates. Rates are included with each contract. A compilation of all the rates for all contracts is being made available to universities on the System's intranet site. Universities should maintain proper control over the rate information.

If a firm desires to permanently add additional rates to their rates in their contract (i.e., for additional disciplines not previously included), they should submit such information through CSO, and the addition of those rates will be subject to the same negotiation process as was used for the rates already in the contract.

Professional Fee Cost Principles

The Professional Fee Cost Principles that were used for the negotiation of rates for these contracts may be slightly different from what has been used with past contracts or by individual universities. The Principles is provided as a reference document to this manual.

Several sections of the Principles need to be highlighted.

Standard Work Classifications. Section 4. talks about the use of standard employee classifications, and the use of two specific rates for most classifications. These specific rates included in the contract are the actual rates expected to be used in IWOs. A firm and a university may, however, agree on a different rate for an IWO. But such additional or different rates negotiated for an IWO are not necessarily binding for another IWO. And more importantly, they would not be binding for another university.

Use of Partners and Principals. Section 4. also talks about the use of partners and principals to work on projects. This also applies to other titled positions which are high level and/or have very high rates.

Markup on Subconsultants. Section 4. and Section 11. both address the application of a prime firm's markup on subconsultants' fees. To clarify, the bottom line essentially is as follows:

- For subconsultants on the team in the original proposal, no markup is allowed on those subconsultants' fees.
- For subconsultants not on the team in the original proposal but acquired for a specific IWO, a markup will usually be allowed.

In relation to the second point above, the markup is envisioned to cover the administrative costs of procuring that subconsultant and for administering that subcontract. It is envisioned that much of this is already accomplished for subconsultants already on the proposed team. In lieu of a markup, it is envisioned that the project manager may spend some chargeable hours doing required administration and coordination.

In any case, to be fair and reasonable, the amount of the markup should be inversely proportional to the primacy of that subconsultant's services on that IWO. In other words, if the subconsultant is providing a small-dollar-value service as part of a larger IWO, then a 10 percent markup is fine. On the other hand, if the IWO primarily consists of this subconsultant's services, then the markup should be no more than 5 percent, and maybe less.

Reimbursable Expenses. Section 4. covers reimbursable expenses. Four items are of interest here.

- The mileage reimbursement is for round trips of greater than 200 miles. This is intended to be a

general guideline. Universities have different preferred approaches to this. Some desire to use a 100-mile-round-trip basis. Some pay no mileage for routine meetings and visits, but only for special trips. Because these are state-wide contracts, in many cases universities may be located much farther than the 200-mile round trip. Firms who are seeking to work at universities farther than 100 miles away need to be sensitive to this reimbursable expense. The bottom line is that while this item is addressed in the Fee Cost Principles, it is envisioned that it is subject to negotiation in each IWO, as appropriate.

- The mileage reimbursement is for only marginal miles (miles in excess of the 200-mile non-reimbursable standard). However, as in the first point, this is subject to negotiation in each IWO, as appropriate.
- Detailed receipts and/or documentation may be required to support reimbursable expenses. In particular, for projects for which a university is seeking funding reimbursement from the Commonwealth, or as part of a Commonwealth or Federal grant, documentation and/or receipts may be subject to audit and close scrutiny.
- A change from the previous version of the Fee Cost Principles is that copying/printing/reproduction for use by the System is no longer reimbursable. It is expected that all documents will be electronic and therefore no reproduction expenses should be incurred.

Profit. Section 6. addresses profit. The rates in the contract include 10 percent profit. Additional or less profit is negotiable for an IWO. But it is not anticipated that any university would really be interested in paying more profit, just as it is not anticipated that any firm is interested in accepting less profit.

Negotiations for an IWO. Section 11. provides a process for preparing and negotiating the fee for an IWO. In reality, the firm and the university may negotiate and agree on an IWO fee in different ways. What is provided is simply one method.

Escalation of Rates

Rates in the contracts will be automatically escalated with contract Renewals. CSO will calculate the escalation and that percentage figure will be included in the Renewal itself.

CSO will not be publishing new rates with Renewals. Universities and firms should remember to apply the escalation factor to the original rates when negotiating an IWO.

The question sometimes arises as to how escalated rates are applied to ongoing IWOs. While there is no prescribed method, CSO recommends taking a common-sense approach to each situation. A lump sum IWO put in place well before the Renewal probably should be left as is. A lump sum IWO being put in place closer to the approaching renewal date, and which will extend well into the renewal period, should take escalation into consideration, and the parties should agree on what that consideration will be when the IWO is negotiated. On the other hand, an IWO with a not-to-exceed fee should probably use the escalated rates for payment when they become effective, but in doing so the not-to-exceed amount may have to be increased correspondingly. In all cases, however, the university will have the option to address this situation as they please, within reason. Lastly, rates will not be escalated at the end of the Second Renewal for any IWOs continuing after the final contract expiration date (at the end of six years).

Part 4 - Utilization of the Contracts

Uses of the Contracts

The scope of work for the services envisioned under these contracts is generally described in Article 5 of the General Conditions. However, the services under these contracts is not limited to those specific tasks in the General Conditions. The intent of the contracts is to provide as wide a range of commissioning-related services as reasonably allowed, without violating the Commonwealth Procurement Code or any statute.

Deviations from, or additions to, the scope(s) of work in the General Conditions for any IWO should be negotiated and then identified and described in the IWO.

Selection of Firms for IWOs

Universities will almost always be the ones who select firms for IWOs. In some cases, the university may ask CSO to make recommendations for a firm, or firms, for an IWO. Additionally, universities will sometimes contact other universities to see what their experiences have been with firms.

There are two methods for selection of a firm. These two methods, direct selection and limited competition, are discussed in the contract, but they are summarized here.

Direct Selection. Under Direct Selection, the university will simply select a firm. This is the preferred method for smaller, simpler IWOs.

Limited Competition. Under Limited Competition, the university will select three or more firms and issue to them a Request for Letters of Interest (RLOI), or similar invitation. The RLOI should describe the services requested. Firms receiving a RLOI may respond with a Letter of Interest (LOI) in accordance with the submission requirements called for in the RLOI. Based on the review of the LOIs, the university will select one firm to provide a proposal describing the services and the fee. Limited Competition is the preferred method for higher-dollar-value and/or complex IWOs, such as the full range of building commissioning services, or a large-scale retro-commissioning effort.

When using the limited competition method, the guidance in the following items should be considered.

- Universities are expected to solicit firms who would normally be expected to respond (i.e., they should not send a request to a firm from the other side of the state in order to avoid real competition).
- Firms are not required to respond; firms may decline the offer.
- Review, evaluation, and selection processes used by the university should always follow best practices for the procurement of professional services, but the processes can be relatively informal.
- Fee and/or rates should not be a factor in the selection. However, fee and/or rates may be requested, but only to have it on hand to expedite the process.
- Oral interviews or discussions may be a component of the evaluation and selection process, since interpersonal relations and communications are often keys to the success of an IWO and project.
- CSO will normally approve a firm selected via limited competition, regardless of how many other IWOs that firm may have received.
- Selection of firms via limited competition is final. There is no appeal process. However, if a firm believes that a selection was arbitrary or capricious, they should notify CSO. If requested, universities should provide feedback, even if limited, to firms not selected.

Requests for Approval of IWOs

The IWO Request Form is provided as a reference document to this manual.

The general process of initiating an IWO is as follows:

- 1) University selects a firm;
- 2) University negotiates the scope of services and fee with the firm;
- 3) University submits an IWO Request Form to CSO to get approval to use the firm for the specific project and services, and at the final agreed-upon fee;
- 4) CSO approves the request for the IWO and assigns an IWO number;
- 5) University issues the IWO.

While this process works fine 99 percent of the time, occasionally something comes up which CSO questions, and the IWO might not be able to be approved. In such cases, if the university has already negotiated a scope of work and fee with the firm, time and effort will have been wasted. If the university has any concerns about what they might be doing and/or how their proposed IWO might look to CSO, the university may want to check with CSO, informally, to get their IWO "pre-approved" before going too far.

Negotiations for an IWO

Section 11. of the Professional Fee Cost Principles describes a process by which the fee for an IWO is developed and negotiated. However, in reality, universities have a lot of leeway on how they want to go about arriving at a fair and reasonable fee for an IWO. The university may request that the firm provide a breakout of man-hours for each discipline to be used for each phase of service. Or, the university may simply choose to negotiate a bottom-line price, without worrying about how that fee is constructed. The process used may in all likelihood depend on the scope of work and services involved.

Universities may prefer to have the fee included under the IWO in several ways: a lump sum amount or a not-to-exceed amount, or a combination of those ways. All are acceptable. The lump sum amount would be paid as the work is completed, usually as percentages each month. The not-to-exceed amount would require itemized invoices listing hours and rates for the various disciplines that worked on the IWO. A university may prefer different methods for different IWOs. This should be agreed upon during IWO negotiations, and written into the IWO itself.

Work Order Form

A sample/template IWO Form is provided as a reference document to this Manual. The actual form and format for IWOs used by universities may vary, but it should be similar to the standard IWO Form, and/or at least include in it all the contractual entries that are included in the standard IWO Form.

Some specifics of the IWO Form to be noted include the following items.

IWO Number. The IWO number should be the one assigned by CSO. However, universities may incorporate some sort of internal project or contract numbering protocol.

Reference to Base Contract. After renewals are executed, information on the renewals should be included in the first paragraph on Page 1 (the paragraph where the base contract and its execution date are referenced). The same is true for inclusion of information on any Assignment or Novation actions.

Project Scope of Work. In Paragraph 1, the scope of work should be a brief description of the project itself. Contrast this to the scope of work in Paragraph 2, which refers to the scope of services being undertaken by the firm for the IWO.

IWO Scope of Services. An easy way to provide necessary information for the scope in Paragraph 2 is to simply attach the firm's proposal for the IWO, assuming it is detailed enough. Information does not need to be repeated. One caution is that firms' standard letter proposals often contain their own standard terms

and conditions and a line for a signature by the customer. Such standard terms and conditions that are in conflict with those in the contract will not be binding. It is recommended that universities review such terms and conditions, and they should line out any that are in conflict with the contract, or that are not acceptable. When this is done, the firm should be notified that this is going to be done. Similarly, the university should not sign the letter proposal itself; the IWO and its signatures are what is required to bind the IWO.

Signatures. Paragraph 7 refers to signatures. As noted elsewhere, no legal approvals are required for an IWO. This fact is again reflected on the signature page of the IWO Form.

Changes to IWOs

Occasionally a university will have to make changes to an IWO. They might call it an amendment, or they might call it a fiscal adjustment. The change may be to add to or revise the scope of services, and most likely the associated fee and duration, of the IWO. For most such minor changes, CSO does not need to be informed or give approval. However, if the dollar value of the IWO increases by more than approximately 10 percent, CSO needs to know. CSO needs this information primarily for purposes of tracking utilization. E-mail notification is adequate; no form is required. However, the notification should include a brief explanation of what is changing and why, and what the new IWO fee will be.

Closing Out IWOs

The proper process is that universities should inform CSO when an IWO is complete and closed. In reality, though, universities rarely inform CSO of completion, and therefore closing out of IWOs will generally be done on a periodic basis through close-out data calls from CSO.

Part 5 - Miscellaneous Information

System Reference Documents

In the procurement and contracting area, the System must comply with two basic laws: (1) the Commonwealth Procurement Code (62 P.S.), which has its basis in Act 57 of 1998, as amended, and (2) Act 188 of 1982, as amended, which is the System's enabling legislation. Other key laws that must be followed are the Separations Act, the Prevailing Wage Act, the Steel Products Procurement Act, and PA e-Verify. Below the statutory level, there are no regulations that dictate how the System must conduct its contracts business.

Internally, the System has Board of Governors (BOG) policies. The key policy for procurement is BOG Policy 1998-04-A, Procurement of Goods, Services, Supplies, and Construction. BOG policies are fairly general, and are backed up by more detailed Procedures/Standards documents.

For facilities projects, the System has its own contracts and procedures manuals.

Construction Contract. The System revised its construction contract and solicitation documents in 2014, and has made minor revisions to them each Spring. The current documents have the number designation 2018K110. The "2018" portion of the designation may change from year to year, if and when revisions are made.

Construction Manual. The Manual for the Procurement & Administration of Construction Contracts was also totally revised in 2014, and it has also received minor revisions each Summer. With the Manual, each Volume has a date associated with it, indicating the last time it was revised. The correct revision dates for each Volume are listed in the Manual's table of contents.

Professional Agreements. The System has three basic forms of professional agreements: the 2018K120 is for professional services short of full design services, the 2018K130 is for design professional services for complete design of a single project, and the 2018K140 is for open-end contracts for design professional services. For clarification, the 2018K120 version might be used when doing a feasibility study or a master plan. All three of these were totally revised in 2017, and minor revisions were made in 2018. More minor revisions may follow in future years. Like the construction contracts, the "2018" portion of the designation may change from year to year, if and when revisions are made.

Supplemental Instructions. In 2018, the System created a Supplemental Instructions for Design Professional Service document, to accompany the professional agreements. This document, rather than the agreements themselves, contains detailed information on the scope of service through all phases of a project, and detailed requirements for the various design submittals called for throughout the design phase. This document has a date on it (month and year), and may be revised in future years.

Professional Manual. The Manual for the Procurement & Administration of Design Professional Services was totally revised in 2017, and it received minor revisions in 2018. One volume of the Manual still needs to be published in a revised format and with up-to-date content. Similar to the Construction Manual, with this Manual, each Volume has a date associated with it, indicating the last time it was revised. The correct revision dates for each Volume are listed in the Manual's table of contents.

Software Applications/Solutions

Neither the System nor its universities utilizes standard software applications/solutions for project management, construction management, document control, project scheduling, or project control, or similar applications/solutions used in the construction industry. Instead, universities may request that CM firms, as part of an IWO, provide such an application(s) to support a project, and provide to certain staff at the university access to that application. If a firm has an application that they use routinely, the university

should not be asking the firm to acquire a different but similar application. But in some cases, which firm a university selects for an IWO may consider the firm's ability to support the project with an application, and even a specific application.

Evaluations

CSO does not intend to implement any type of performance evaluation process for these COMM contracts. Nonetheless, universities and firms should communicate with each other about expectations and provide feedback about performance. Firms should also recognize that universities may discuss among themselves firms' performance on past or ongoing IWOs.

Ethics

Universities and firms under contract are expected to conduct all business ethically.

Public employment is a public trust. University employees must discharge their duties impartially, and must conduct themselves in a manner that fosters public confidence in the integrity of their university's processes. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. Additionally, employees must avoid any conflict of interest or improper use of confidential information.

It also is essential that firms under contract observe high standards of honesty and integrity. Any effort to influence any employee to breach the standards of ethical conduct is also a breach of ethical standards.

Lastly, both parties must recognize that the appearance of improprieties can be considered the same as actual improprieties. Appearance is in the eye of the beholder, who may be a "watchdog" or a competitor.