



ARKANSAS DEPARTMENT OF TRANSPORTATION

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Alternative Project Delivery Program

# CM-GC Guidelines and Procedures

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## Section 1: Introduction

### 1.1 PURPOSE

The purpose of this document is to define the general ARDOT processes for efficiently and effectively administering an infrastructure/transportation project utilizing the Construction Manager-General Contractor (CM-GC) delivery method. The Procurement, Preconstruction, and Construction phases are described herein.

### 1.2 INTRODUCTION

The CM-GC project delivery method is used to deliver projects efficiently by using a procurement process which identifies the “Best Qualified Team” to deliver the project, and then that team collaborates to develop an optimized project design. The goal of the CM-GC team during the Preconstruction phase is to mitigate project risk, identify and implement project innovations, develop an optimum construction schedule, and agree on a fair-market price for the project. There are numerous other advantages to using CM-GC including:

- Better owner control of project design
- Early contractor involvement helps solve design challenges
- Owner control of risk and associated savings
- Collaborative project team environment vs. low-bid adversarial team relationships
- Negotiated project scope and price delivered at fair market price
- Identification of innovations that drive design optimization early in the process
- Ability to select the best contractor and subcontractors for the project

### 1.3 FEDERAL LAWS AND STATE AUTHORITY

On July 6, 2012, the Moving Ahead for Progress in the 21st Century Act MAP-21 was signed into law. MAP-21 authorized the use of the CM-GC contracting model for delivering federal-aid projects. The passage of MAP-21 also removed the requirement for Special Experimental Project No. 14 (SEP-14) approval for CM-GC projects occurring after October 1, 2012, provided their state statutes allow for it. The FHWA issued a Final Rule for CM-GC that became effective on January 3, 2017. After this date, CM-GC became a more desirable delivery method and more commonly used for the appropriate types of projects.

*\*\*\*A.C.A. 19-11-14 provides The Arkansas Highway Commission with the authority to deliver transportation projects using the CM-GC method of project delivery.*

## Section 2: Project Administration

### 2.1 ROLES AND RESPONSIBILITIES

This section outlines specific administrative activities for CM-GC projects, and the roles and responsibilities of the various parties involved in managing and staffing a CM-GC project.

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#### ALTERNATIVE PROJECT DELIVERY ADMINISTRATOR (APDA)

The primary responsibilities of the APDA on CM-GC projects include:

- **Administrative** - Managing and overseeing the procurement process for selecting the CM-GC and the Independent Cost Estimator (ICE). The ICE is selected from the On-Call Independent Cost Estimating list of prequalified ICE consultants.
- **Contract Management** – Verifying that CM-GC procurements are conducted in accordance with state and federal laws.
- **Risk Mitigation/Design Innovation** - Overseeing the interim pricing milestones and price proposal processes.
- **Administrative** – Managing ARDOT’s oversight of the bidding process and making award recommendations.
- **Contract Management** - Ensuring that preconstruction commitments are carried over and implemented in the construction phase.
- **Supervision** – Providing training and guidance to ARDOT’s Project Manager.

*\*\*\*The above list is not an all-inclusive list. Specific tasks and responsibilities of the APDA are listed throughout this manual.*

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## PROJECT MANAGER (PM)

The PM is an Alternative Project Delivery employee responsible for managing the preconstruction and construction phases of a CM-GC project. The PM's role typically requires more active team coordination and direct involvement than other project delivery methods.

The primary responsibility of the PM is to guide design decisions while overseeing the collaborative effort between the Designer and CM-GC Contractor. The PM facilitates this collaborative process through active communication and project team meetings. The PM will focus on risk mitigation, alternate design, and design innovation. The ARDOT PM is responsible for:

- **CM-GC Oversight** – Overseeing the implementation of CM-GC processes and commitments.
- **Partnering/Team Building** – Participating in partnering workshops and follows through with continuing partnering efforts.
- **Project Scope** - Developing the scope of the project within the project budget.
- **Design** - Managing design and environmental approvals.
- **Schedule** – Oversees the contract delivery schedule/preconstruction schedule.
- **Alternate Design/Innovative Design** – Organizing task force groups and workshops. Oversees development of Innovations log and implementation of vetted innovations.
- **Risk Mitigation** – Managing and coordinating risk mitigation efforts. Oversees development of Risk Register.
- **Cost Models (OPCC Cycle)** - Facilitating price reconciliation meetings and workshops.

*\*\*\*The above list is not an all-inclusive list. Specific tasks and responsibilities of the PM are listed throughout this manual.*

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## RESIDENT ENGINEER (RE)

The Resident Engineer (may be ARDOT employee or a consultant) is responsible for providing contract administration and project oversight once a construction contract is awarded on a CM-GC project. The RE is an active member of the Preconstruction Team. The RE will work with the Project Manager to ensure that all CM-GC processes and commitments are fully implemented during the construction phase of the contract. The RE has additional responsibilities in CM-GC that are critical to the smooth transition from Preconstruction to the execution of the construction contract:

- **Construction Administration** - Meeting attendance (Risk Workshops, Design Review, OPCC, Task Force, and GMP meetings).
- **Constructability** - Reviewing plans during preconstruction phase.
- **Risk Mitigation** – Championing risk mitigation efforts.
- **Construction Scheduling** - Reviewing construction schedule and project constraints/limitations.

*\*\*\*The above list is not an all-inclusive list. Specific tasks and responsibilities of the RE are listed throughout this manual.*

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## DESIGNER

The Designer (Engineer-of-Record) works with the PM to manage the design and produce plan sets, specifications, and project quantities. The Designer's role in CM-GC is like its role in design-bid-build (DBB) contracting, with the following differences:

- **Alternate Design/Innovation** - Collaborate with the team to continually optimize the design.
- **Quantity Reconciliation** – Provide engineer's estimate of quantities. Participates in quantity reconciliation workshops. Provides summary of agreed project quantities.
- **Risk Mitigation** - Champion risks, participate in task force meetings, and work to mitigate risks through design and project specifications.
- **Contract Management/Multiple Work Packages** – Develop multiple work packages, as required. Early work packages will require additional efforts from the designer.

*\*\*\*The role of the Designer on a CM-GC project can be filled by ARDOT's in-house staff or by outsourcing it to a consulting firm through standard ARDOT design procurement.*

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## CM-GC CONTRACTOR

The CM-GC Contractor performs two distinct roles on the project: Construction Manager and General Contractor.

**Construction Manager:** Initially, the CM-GC Contractor is hired under a Preconstruction services agreement during the design phase to perform a Construction Manager role on the project. The following tasks are standard scope items on a CM-GC Preconstruction agreement:



## PROJECT ADMINISTRATION

- **Constructability** – Full engagement in the preconstruction phase, focusing on risk management and design optimization.
- **Meetings** – Participates in design review workshops, risk workshops, quantity reconciliation, task force meetings, and price reconciliation meetings at each interim pricing milestone.
- **Innovations Log** – Manages the innovation log and helps to vet potential innovations.
- **Construction Cost Estimates** - Provide continuously refined, open-book Opinions of Probable Construction Cost (OPCC) estimates at pricing milestones.
- **CPM Schedule** – Develop and optimize critical path construction schedule.
- **Risk Mitigation** - Evaluate project risks and develop comprehensive risk mitigation strategies.
- **NEPA** – Assist, as required, to expedite the completion of the NEPA (National Environmental Policy Act) process. *The CM-GC Contractor cannot have decision-making responsibilities to the NEPA process.*
- **Subcontracting** - Develop and update the subcontracting plan for the construction phase that integrates subcontractors/suppliers, including those proposed to meet DBE, OJT and EEO requirements.
  - Contractor must make a good faith effort to meet the stated ARDOT DBE project goals.
- **Multiple Work Packages** - Assist with identifying and developing work packages that optimize the schedule, mitigate project risks, and/or result in cost savings.

**General Contractor:** Once the design is complete for the project or a work package, then the CM-GC Contractor is given an opportunity to reach agreement with ARDOT on a proposed GMP (Guaranteed Maximum Price) to construct the project or work package. If ARDOT and the CM-GC contractor reach agreement, the CM-GC contractor becomes the general contractor (GC) for construction of the project or the work package. The CM-GC contractor's role as the GC on a CM-GC project is a traditional role like that of a GC on a DBB project.

*\*\*\*The CM-GC Contractor is required to self-perform (Reference to legislation 19-11-1407 A4) at least 30% of the project construction (see Arkansas code § 19-11-1407 A4).*

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## INDEPENDENT COST ESTIMATOR (ICE)

The ICE is a consultant hired by ARDOT with considerable experience producing production-based, contractor-style estimates using contractor-style estimating software. The purpose of the ICE is to provide another perspective to the CM-GC Contractor's estimate that helps ensure a fair and reasonable price for construction. They must have hands-on construction experience and expertise in CPM schedule optimization, risk mitigation, and innovative

construction practices. The ICE must be able to bid the project as though they are the Contractor.

The Independent Cost Estimator is responsible for the following:

- **Construction Cost Estimates** – Prepare a production-based (bottoms up) independent cost estimate at each interim design pricing milestone and at the time of the GMP Price Proposal. These cost estimates are comprised of direct costs, indirect costs, contractor markup and time related overhead components.
- **Constructability** – Review plans and specifications and participate in design review workshops at interim milestones.
- **Meetings** – Participates in design review workshops, risk workshops, quantity reconciliation, task force meetings, and price reconciliation meetings at each interim pricing milestone.
- **Innovation** - Using construction/design best practices, evaluate potential innovations that would save costs and/or optimize project duration.
- **Scheduling** – The ICE provides an independent construction CPM schedule that is correlated with their estimate and used to produce resource availability, overhead costs, and other time-related expenses at each OPCC.
- **Fair Market** - ICE is expected to know the local markets, suppliers, subcontractors, and DBEs.
- **Risk Management** – Lead risk workshops, develop and maintain a risk register, identify risk mitigation strategies, evaluate cost and time impacts, evaluate risk probabilities and risk triggers.

#### **Federal Highway Administration (FHWA)**

Federal involvement is required on projects with federal funding. The FHWA's Final Rule for CM-GC outlines requirements, including FHWA approvals, specific to federally funded CM-GC projects. The FHWA and ARDOT also have a Stewardship and Oversight Agreement and a Memorandum of Understanding (MOU) that outlines the roles and responsibilities between the agencies on stewardship and oversight of federal-aid projects.

## 2.2 PROCUREMENT

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### PROCUREMENT OF THE CM-GC AND ICE

The ICE should be procured at the same time as the CM-GC. The CM-GC and ICE should be procured as early as possible to add the maximum value to the project. The CM-GC and ICE are selected in accordance with the following:

**ICE Procurement:** The ICE is selected from ARDOT's On-Call Independent Cost Estimating list of prequalified ICE consultants.

**CM-GC Procurement:** The CM-GC is selected from the On-Call Construction Manager – General Contractor list of prequalified CM-GC firms. If ARDOT can't select one of the on-call CM-GC firms, then ARDOT can use an Request for Proposal (RFP) to select the CM-GC.

The On-Call CM-GC Program selects CM-GC contractors using a two-phase procurement process. The first phase of procurement includes issuance of a Request for Qualifications (RFQ). The RFQ includes clear submittal and evaluation requirements for the Statement of Qualifications (SOQ) that the Department will follow to evaluate the general experience and capability of respondents to the RFQ. Upon conclusion of the evaluation process, the Department will shortlist respondents. After shortlisted respondents have been identified, the Department will issue Request for Proposals (RFP) to the shortlisted respondents as projects are identified. The issuance of each RFP to the shortlist will be the second phase of the two-phase procurement process. Each RFP includes clear, project specific submittal and evaluation requirements for Proposals that the Department will follow to evaluate the capability of Proposers to deliver the project described in the RFP. The RFQ includes both the form of the RFP and the Department's CM-GC Agreement (CM-GCA). Each RFP also includes the CM-GCA.

**RFP (Project Specific):** Use a qualifications-based one-step procurement process consisting of a request for proposals (RFP) advertisement. A request for Letters of Interest (LOI) may be beneficial prior to advertisement of an RFP to gauge interest in the project. On more complicated projects, an interview of the most qualified respondents to a CM-GC RFP could be included as part of the procurement. The interview process should be outlined in the RFP if it is anticipated to be a part of the procurement process.

The specific needs of a project should be considered when developing an RFP. If the project is driven by schedule, then the RFP should inquire about the proposer's resources and examples of their company successfully delivering projects with schedule constraints. If the project is budget

## PROJECT ADMINISTRATION

driven, then the RFP should inquire about examples where the proposer has implemented cost savings innovations on previous projects. A sample CM-GC RFP is included in the Appendix. The general format provided in this example should be followed whenever possible.

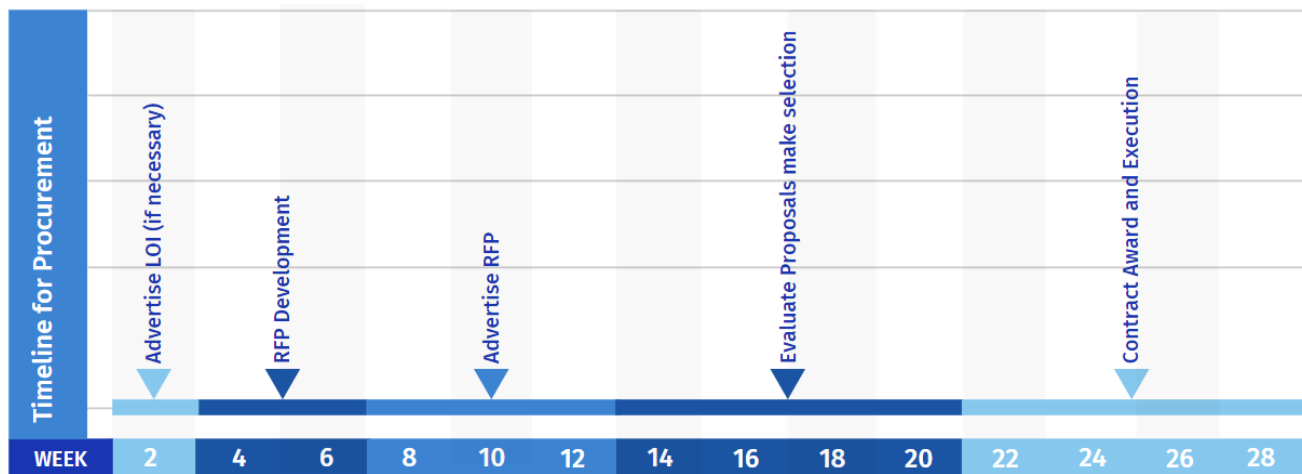
Scoring criteria for the selection should be clearly described in the RFP. When drafting the requirements of an RFP, consideration should be given to how those requirements will be scored. Although subjectivity will always be part of the scoring process, requirements should be drafted in such a way as to allow for as much objectivity as possible. Experience requirements for Key Personnel and Firms should include a requirement for clear and confirmable evidence that the respondents meet or exceed the stated requirements.

\*\*\* *Arkansas Highway Commission approval is needed prior to beginning procurement.*

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### TYPICAL PROCUREMENT TIMELINE

Listed below are typical timeframes needed to perform each procurement item. These timeframes will vary based on project complexity and procurement type and are provided for planning purposes only. The timeframes below assume a one-step (RFP only) process. If shortlisting and interviewing, add approximately eight weeks to the overall procurement timeline. The timeline assumes approval to begin procurement has been received from the Arkansas Highway Commission.



*Appendix XII, CM-GC RFP Template/Sample*

## 2.3 SELECTION

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### Submittal Review Team

The Submittal Review Team (SRT) is responsible for performing a pass/fail review of all procurement submittals and for assigning a qualitative score to each section of a submittal that requires a score. The SRT will be selected by the Project Manager and APDA. The SRT should consist of ARDOT staff who are familiar with the project and with the areas of expertise that are being emphasized in the procurement documents.

*\*\*\*The Submittal Review Team will follow the standard ARDOT process for proposal evaluation, Steering Committee and Award Recommendations.*

*Appendix XX: Procurement Award Memo*

## 2.4 CONTRACT NEGOTIATIONS

After final approval of the selection by the Arkansas Highway Commission, the PM shall begin negotiations with the selected firm. Typical fees for ICE services on a CM-GC project range between 2% - 3% depending on the scope of work and project complexity. Typical fees for the preconstruction services for the CM-GC Contractor on a CM-GC project range between 3% - 5%, depending on the scope of work and project complexity. A sample Task Order and a sample CM-GC Agreement are provided in the Appendix. The Consultant Contracts Section should be consulted to determine the most up to date requirements for Task Orders. The Program Management Division should be consulted for details related to funding for the Task Order.

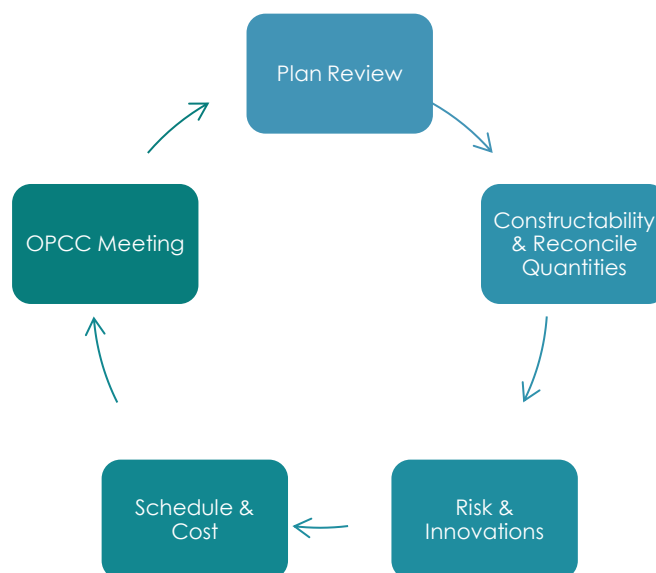
## 2.5 PAYMENT OF PRECONSTRUCTION SERVICES

Invoices should be submitted to ARDOT monthly. All expenses submitted for reimbursement must be in accordance with state and federal regulations and law and consistent with the Master Agreement and Task Order in which they are related. To expedite the processing of invoices, contractors and consultants should utilize invoicing forms provided by ARDOT Consultant Services. Expense reports created by a contractor's or consultant's accounting software may be used as supporting documentation, however the information contained in these reports should be translated to standard forms.

## Section 3: Preconstruction

### 3.1 CM-GC PRECONSTRUCTION CONCEPTS

The process outlined below is derived from best practices and lessons learned. Following these processes and remaining open-minded to innovations will lead to getting the most out of your CM-GC project team. These concepts and meetings with the associated goals keep the team focused on successful project delivery.



**Partnering** – The CM-GC process is a very collaborative project delivery method. Accordingly, it is essential that each member of the CM-GC team work together toward the same goal(s). Formal partnering is a good tool to make sure everyone is aligned and working together. Partnering typically starts at the kick-off meeting and continues throughout the preconstruction phase.

**Initial Approach to Cost** – Soon after the kick-off meeting (or sometimes incorporated into the kick-off meeting), the PM should schedule the Initial Approach to Cost meeting. This meeting is typically lead by the ICE team and the purpose is to make certain that the estimators and schedulers are aligned on the CM-GC processes. Also, roles, responsibilities and expectations are defined in this meeting. Fair Pricing Approach, Open Book Estimating and Allowable Base Construction Costs should be discussed at this meeting.

**Design Constructability Review** - Constructability reviews should focus on identifying potential problems, such as vague requirements that may impact the construction or administration of the project. It should verify that the bid documents are clear, concise, and coordinated with all design disciplines. It should also include verification that existing conditions are accurately reflected on the plans along with contractor access, staging areas and limitations of the work environment. In addition to ARDOT, the CM-GC and ICE should review the design strategies to ensure that construction layout, functional relationships, space allocations, accessibility and circulation, security and safety are properly addressed in the construction documents.

During the design review meetings, the project team should collaborate to:

- Ensure a constructible and cost-effective design that meets the project goals.
- Confirm that all work has been included and described in sufficient detail to ensure complete pricing of work.
- Allow for all parties involved to provide feedback on the constructability of the design.
- Facilitate discussion on assumptions for means and methods, construction staging, and sequencing of work.
- Reconcile quantity differences between the designer and estimators.
- Identification of any errors, omissions, ambiguities, or other items that need to be corrected.

**Critical Path Method Scheduling (CPM)** - Often, the longer it takes to build a project, the more it costs, mostly due to time-related overhead costs. Developing an optimized construction schedule can lead to significant project savings. For that reason, both the CM-GC and the ICE will develop independent construction schedules using the Primavera P6 scheduling software (or similar). These independent schedules give ARDOT two looks at how the project can be built, and it often reveals innovations that can save time and money. The differences between the ICE and CM-GC schedules are then compared and reconciled at the first Opinion of Probable Construction Cost (OPCC) meeting. Typically, around the 60%

design level the CM-GC and ICE agree on the best approach (and schedule) for the project. From that point forward, the CM-GC and ICE collaborate on optimizing the construction schedule.

**Risk Management** - Project risk can have a huge impact on price. The CM-GC delivery method puts the control of project risk in the hands of the Owner. The Owner has the final say in how project risks will be mitigated. Accordingly, a formal risk management process should be employed on CM-GC projects. If the ICE consultant is experienced with risk management, they are the preferred consultant to lead the risk management process and to manage the development of the risk register. If not, ARDOT should procure a 3<sup>rd</sup> party risk management consultant to lead the risk process. A sample risk register is included in the Appendix.

**Innovation Development & Tracking** – Great value can be added to CM-GC projects through innovative designs and construction innovations. An innovation log should be kept to track the identification, vetting and implementation of project innovations. The CM-GC contractor is typically the best party to manage the development of the innovation log. A sample innovation log is included in the Appendix.

**Quantity Reconciliation** – To successfully negotiate a fair-market price for a CM-GC project, both the ICE and the CM-GC must start with the same quantities. Accordingly, prior to beginning cost estimating at each milestone, the CM-GC team needs to agree on quantities. For quantity reconciliation, the CM-GC team will use a spreadsheet similar to a bid tab (without prices included) provided by the design team. This spreadsheet has a column for engineer quantities and a column for the ICE and CM-GC takeoff quantities. The spreadsheet also includes a fourth column for agreed upon quantities. A sample quantity reconciliation sheet is included in the Appendix. The agreed upon quantities column is filled out at the quantity reconciliation meeting. At quantity reconciliation meetings, the project team discuss the quantity difference and agree to quantities that will be used for the subsequent cost estimating task.

**Opinions of Probable Construction Costs (OPCC)** - The cost estimate models developed by the CM-GC and ICE are called an Opinion of Probable Construction Cost (OPCC). An OPCC cycle is completed at each design milestone (30%, 60%, and 90%).

The CM-GC and ICE will provide production-based (contractor style) independent cost estimates at each design milestone and at the Final GMP bid. The cost estimators will develop their estimates using construction estimating software. Once the estimates are complete, the resultant unit prices will be transferred to an OPCC Price Comparison spreadsheet. A sample OPCC Price Comparison spreadsheet is included in the Appendix.



Members of the CM-GC, Designer, ICE, ARDOT and design team will attend cost reconciliation meetings at each milestone of the project.

**Multiple Work Packages** - During the development of design, it may become evident that portions of the project design can be finalized earlier than others, or it may become advantageous to advance a portion of the project ahead of the rest. The CM-GC delivery method provides an opportunity for construction activities to commence on these portions of the project prior to the completion of the full design for the entire project. Construction work that can be started in advance of the completion of final design can be developed as an early work package.

Criteria for early work packages

- Early work packages must be severable from the rest of the project.
- Prior to developing early work packages, it is best practice to have “price certainty” that the overall construction project will be within budget.
- Separating out early work packages should not add cost to the overall project.

Before moving forward with the development of an early work package, the project team should contemplate the following circumstances and special considerations:

Beneficial Circumstances

- Work that can help with the relocation of utilities.
- Early purchase of materials that have long lead times.
- Work that will improve maintenance of traffic.
- Work that will improve the production rates of major portions of the final design.
- Work that will reduce project risk or improve the project schedule.
- Early start on Public Involvement work.

Special Considerations

- Will the early work package result in longer disruptions to traffic?
- Will the early work package result in additional impacts to stakeholders?
- Will the early work package result in a situation that will be problematic if the CM-GC is not awarded the construction work on the full final design (severability)?
- Will the timing of the early work package result in the CM-GC having to mobilize multiple times?

## PRECONSTRUCTION

### Developing an early work package

Once the project team has decided it is in the best interest of the project to utilize an early work package, the Designer should begin to break this work out from the full project design, making sure to comply with 23 CFR 635.506(d)(2) and 635.507.

1. The Project Manager should work with the Program Management Division to establish a new project number for the early work package.
2. A new proposal will need to be established in ARDOT's preconstruction software and a draft construction contract will need to be developed.
3. The project team should decide on whether an OPCC should be developed for the work prior to moving to the Price Proposal phase for the early work package.

*An early work package includes plans/ specifications for the scope of work, a risk register, agreed upon quantities, price, and schedule.*

*The OPCC for an early work package should follow the process detailed in Section 3.3 and the Price Proposal should follow the process detailed in Section 4 of these guidelines and procedures.*

**Negotiated GMP** - The CM-GC's GMP Price Proposal (including agreed upon quantities, bid items, unit prices and risk/provisional sums) will become the construction contract price if the CM-GC is selected as the General Contractor.

### 3.2 CM-GC PRECONSTRUCTION – BUILDING THE TEAM

The following is a series of meetings that occur at the onset of a CM-GC project. These meetings will help build a collaborative team focused on meeting the project goals.

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#### **PROJECT KICKOFF MEETING**

**PURPOSE** - The CM-GC Preconstruction Phase begins with a "Project Kickoff Meeting". This meeting is used to review the team's roles and responsibilities, develop a preliminary preconstruction schedule, review the project goals, and review the scope of work.

**TIMING** – Set aside one to two days for this Project Kickoff Meeting as soon as the whole team is procured.

**ATTENDEES** - CM-GC key personnel, ICE key personnel, design discipline leads, ARDOT Project Manager, FHWA Division Representatives, Resident Engineer, and representatives from every Division that will be involved in the project. It is also beneficial to have executive

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## **PRECONSTRUCTION**

level involvement from the CM-GC and ARDOT at the beginning of the meeting to ensure a strong commitment to partnering and the project goals. A kickoff meeting moderator from FHWA or private consultant may be used for the Project Kickoff Meeting.

### **MEETING GOALS**

- Establish a collaborative team culture
- Understand the project goals
- Establish expectations
- Establish lines of communication
- File Sharing
- Initial Risk Workshop is included in the Project Kickoff Meeting agenda

*Appendix: XVII, Project Kickoff Meeting agenda*

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### **APPROACH TO COST MEETING**

**PURPOSE** - To establish agreed upon assumptions and approaches to the open-book, production-based estimating process during the design development phase. These assumptions and approach include alignment amongst the CM-GC project team on the definition and assignment of direct and indirect costs, overhead, and profit to items of work.

**TIMING** – Assume 2-hours for this meeting. This meeting can be incorporated into the project kick-off meeting if desired.

**ATTENDEES** - CM-GC key personnel, ICE key personnel, ARDOT Project Manager, FHWA Division Representatives, and Resident Engineer.

### **MEETING GOALS**

- Establish expectations of open-book negotiation practices
- Define team members roles
- Create team culture for resolving cost and schedule differences
- Establish risk management process
- Discuss subcontracting plan
- Establish an understanding of cost estimating and scheduling parameters

*Appendix: Approach to Cost agenda*

*Appendix: Definition of Open Book Pricing*

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## INITIAL RISK WORKSHOP

**PURPOSE** - An important component of the CM-GC delivery method is the identification and mitigation of project risk. For this reason, formal risk workshops should be a part of the preconstruction activities. The risk register is a living document that should be continuously updated throughout project development and should include cost and schedule impacts for risks whenever possible. The cost and schedule impacts of a risk that is being tracked on the risk register shall not be included in the unit prices of an OPCC or GMP Price Proposal.

**TIMING** – The initial risk workshop is included in the project kickoff meeting agenda.

**ATTENDEES** - CM-GC key personnel, ICE key personnel, design discipline leads, ARDOT Project Manager, FHWA Division Representatives, Resident Engineer, and representatives from every Division that will be involved in the project.

**MEETING GOALS** – Identify/quantify project risks, assign risk champions, assign task force responsibilities, and identify initial risk mitigation strategies.

*Appendix: Sample Risk Register*

*Appendix: Sample Risk Management Plan*

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## PARTNERING WORKSHOP

**PURPOSE** – The CM-GC delivery method encourages collaborative teamwork by the entire CM-GC team. Formal partnering establishes the ground rules that enable the team to quickly address project challenges and to establish clear lines of communication.

**TIMING** – Typically included as part of the project kickoff meeting agenda. Plan for 4-8 hours depending on the complexity of the project.

**ATTENDEES** - Attendees should include the CM-GC key personnel, ICE key personnel, design discipline leads, ARDOT Project Manager, FHWA Division Representatives, Resident Engineer, and representatives from every Division that will be involved in the project.

**MEETING GOALS** – Create a team culture that involves mutual trust and respect.

\*\*\*Partnering can be facilitated by a 3<sup>rd</sup> party or ARDOT personnel.

### 3.3 CM-GC PRECONSTRUCTION – DESIGN DEVELOPMENT/OPCC CYCLE

The CM-GC process of design development must be an intentional, collaborative effort between the Designer, CM-GC, and ICE. The following series of meetings provide guidance and best practices to get the most out of the CM-GC process. The cycle applies to severable work packages and the overall project GMP.

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## TASK FORCE MEETINGS

PURPOSE – Task force meetings put all the right people in the same room to develop creative solutions for risk mitigation, design challenges, public involvement, and innovation vetting.

TIMING – As often as necessary to facilitate project goals – typically bi-weekly.

ATTENDEES – Attendees should include, at a minimum, the CM-GC key personnel, ICE key personnel, appropriate design discipline leads, ARDOT Project Manager, FHWA Division Representatives, and Resident Engineer.

MEETING GOALS – Mitigate project risks, analyze design alternates, coordinate efforts to improve project quality, and optimizing the project delivery schedule.

*Appendix: Task Force meeting agenda*

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## DESIGN MILESTONE REVIEW MEETINGS

PURPOSE – The purpose of design review meetings is to allow all parties involved in the project to engage the design process, which is one of the benefits of the CM-GC process. These meetings are part of quality control best practices. Review comments are reviewed and clarified. Constructability and risk issues are discussed.

TIMING – At design milestones – assume 2-8 hours depending on complexity.

ATTENDEES - Attendees should include, at a minimum, the CM-GC key personnel, ICE key personnel, design discipline leads, ARDOT Project Manager, FHWA Division Representatives, Resident Engineer, and representatives from every Division that will be involved in the project.

MEETING GOALS – Team coordination and collaboration with a clear path forward for design progression.

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## QUANTITY RECONCILIATION MEETING

PURPOSE - To review the quantity differences of the project design after the estimating teams have performed their independent quantity takeoffs. These meetings result in agreement on OPCC quantities.

TIMING – Meetings are held at design milestones prior to OPCC meetings and should last 4-8 hours depending on project complexity. Any quantities that haven't been reconciled can be assigned to the estimators and reconciled at separate task force meeting(s).

## **PRECONSTRUCTION**

ATTENDEES - Attendees should include, at a minimum, the CM-GC key personnel, ICE key personnel, design discipline leads, ARDOT Project Manager, FHWA Division Representatives, and Resident Engineer.

MEETING GOALS – Agree on quantities to estimate for the upcoming OPCC.

*Appendix: VII, Sample Quantity Reconciliation form*

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### **OPCC RECONCILIATION MEETING**

PURPOSE - To review the differences of the project cost estimates and schedules. These meetings should be focused on differences in assumptions to the approach, cost factors, schedules, and risk.

TIMING – Meetings are held at design milestones and should last 1 to 2 days depending on complexity. Any costs that haven't been reconciled can be assigned to the estimators and reconciled at separate task force meeting(s).

ATTENDEES - Attendees should include, the CM-GC key personnel, ICE key personnel, design discipline leads, ARDOT Project Manager, FHWA Division Representatives, and Resident Engineer.

#### MEETING GOALS

1. CM-GC and ICE are within acceptable price range on overall project costs.
2. Both ICE and CM-GC are within the project budget.

*Appendix: OPCC Reconciliation forms*

## Section 4: Construction Price Proposal

This section outlines the activities involved in the development, review, and approval of the Price Proposal to be submitted by the CM-GC for consideration of a construction contract.

### 4.1 GMP AGREEMENT (BASE CONTRACT AND EARLY WORK PACKAGES)

The Price Proposal is the CM-GC's submitted price for construction of the project or an early work package. This price is based on final design and the contents of the construction contract. The ICE develops a final cost estimate in conjunction with the CM-GC's Price Proposal. If the Price Proposal is within 10% of the independent cost estimate, ARDOT may award the construction contract to the CM-GC. If the Price Proposal is not within 10% of the independent cost estimate, ARDOT may conduct a price reconciliation review of the Price Proposal and independent cost estimate, or ARDOT can repackage the project and put it out to bid.

### 4.2 FINAL DESIGN

All parties of the project team should concur on the design, quantities, special details, special provisions, and all other aspects of final design prior to declaring the design as final. In addition, all risk items from the risk register must be *retired or mitigated (with triggers and resolutions defined)* prior to declaring the design as final.

### 4.3 CONSTRUCTION CONTRACT

A draft construction contract should be finalized prior to CM-GC beginning work on the Price Proposal. This draft construction contract, along with the final design, should be considered as the basis of the GMP price proposal for the CM-GC and the ICE.

*The Construction Contract should be in the format of ARDOT's standard construction contract for design-bid-build projects with any special considerations for the CM-GC delivery method being included by Special Provision.*

#### **4.4 FHWA APPROVAL**

On a federal aid project, a Plans, Specifications, and Estimate (PS&E) assembly must be prepared and submitted to FHWA for approval.

After approval of the PS&E assembly has been received from FHWA, a request for authorization of federal funds for construction may be submitted if applicable. Prior to the request for authorization of federal funds, the Project Manager must ensure that NEPA is finalized, and that Right-of-Way has been certified. Development of the Price Proposal shall not begin on a federal aid project until after authorization of federal funds for construction has been received.

#### **4.5 CONSTRUCTION PRICE PROPOSAL SUBMITTAL**

After all approvals of the final design have been received, a deadline for submittal of the final OPCCs and GMP Amendment Proposal should be agreed to by all parties. The CM-GC Contractor should submit its construction price proposal through ARDOT's electronic bid submittal system. The ICE should use an updated version of the spreadsheet used for previous cost estimating to submit its final OPCCs to the Project Manager. The Project Manager shall verify that this spreadsheet matches exactly with ARDOT's electronic bid submittal system to pay items and quantities.

#### **4.6 DETERMINATION OF AWARD**

After completion of the Price Proposal Review, the Project Manager shall develop an interoffice memorandum to the ARDOT Director through the Alternative Project Delivery Administrator. This memorandum shall include a recommendation to accept or reject the proposed GMP and to award the construction contract to the CM-GC. In addition, the memorandum should include succinct detail on the following:

1. Recommendation is to award a construction contract to the CM-GC:
  - a. Information on the final project price.
  - b. Information on the percent variance between the CM-GC and the ICE.
2. Recommendation is to **not** award a construction contract to the CM-GC:
  - a. Information on the final project price and its variance with the ICE.



## PRICE PROPOSAL

- b. Information on the steps taken by the Project Manager to attempt to reconcile the price variance.
- c. Details on why the decision was made to not move forward with the award of a construction contract to the CM-GC Contractor.
- d. Information detailing the proposed next steps for delivering the project.

*\*\*\*The Alternative Project Delivery Administrator shall notify the CM-GC in writing of ARDOT's decision.*

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### FHWA APPROVAL OF AWARD

Upon concurrence of award by the ARDOT Director, the concurrence memo shall be submitted to FHWA for their concurrence.

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### EXECUTION OF THE GMP AMENDMENT

Upon the final approval of award, the Project Manager shall coordinate with the Program Management Division to finalize the GMP Amendment for execution.

## Section 5: Construction

This section outlines special considerations for CM-GC projects during the construction phase.

### 5.1 PROJECT TEAM CONTINUATION

Once a construction contract is executed on a CM-GC project, it is important that the collaborative relationships developed during the Preconstruction activities continue into the construction phase of the project. Prior to the start of construction, ARDOT and the CM-GC should develop a project partnering plan for continued collaboration throughout the construction phase. The purpose of this partnering is to identify and resolve any risks, constructability issues, facilitate innovations, and resolve any other issues as efficiently as possible.

This teaming continues with early work packages and base contract alike.

### 5.2 PROJECT MANAGEMENT ROLES AND RESPONSIBILITIES

Project Manager - should be invited to all project meetings and should be involved in change and dispute processes as discussed below.

Resident Engineer (RE) - Upon the execution of a construction contract, the primary responsibilities for project management should be administered by the RE and include like responsibilities to standard ARDOT construction contract administration:

**Risk Register** - The Risk Register contains mitigation plans and strategies for all risks identified during the preconstruction phase. It is used to monitor project risks during construction. If a project risk is encountered, the CM-GC contractor must immediately notify the RE. The RE will then review the details and advise the Project Manager if the risk should be paid from the Risk Register. If approved, the work will be completed and paid in accordance with the risk resolution stated on the Risk Register. This approach to mitigating risk improves a project's cost certainty, protects the CM-GC in the event of unanticipated changes in the scope of work, and assures ARDOT that the awarded GMP is not inflated to include unidentified risks.

## CONSTRUCTION

Upon final completion and acceptance of the project by ARDOT, any balance of the risk reserve is either retained by ARDOT, or additional work is added to the project. The final decision is made by ARDOT. The Project Manager shall coordinate with the Program Management Division for approval to use the balance of the risk reserve.

**Change Orders** - If an event occurs that was not anticipated on the Risk Register, the RE and CM-GC negotiate a formal change order. The RE shall be responsible for the administration of change orders in accordance with the Standard Specifications and the Resident Engineer's Manual. The Project Manager shall be responsible for tracking and coordinating all change orders. The RE shall coordinate with the Project Manager during the development of a change order and shall notify the Project Manager immediately upon evidence that a change situation may exist so that tracking can begin.

**Project Disputes** - All project disputes and claims should be managed at the lowest level possible, and if necessary, they are appealed to ADPA. The RE shall coordinate with the Project Manager during the development of all written correspondence related to project disputes and claims.

**QA/QC for CM-GC** - This responsibility is performed as it would be for a Design Bid Build (DBB) project and in accordance with Construction Contract and Standard Specifications.

**Measurement and Payment** – Execution of contract pay items is administered like a DBB project and shall be defined in the respective Construction Contract and in accordance with Standard Specifications.

# I: Sample Scope of Work for CM-GC Contractors



**Arkansas Department of Transportation  
Construction Manager/General Contractor (CM-GC) Services  
EXHIBIT [XX]  
SCOPE OF WORK FOR PRECONSTRUCTION SERVICES**

**GENERAL PRECONSTRUCTION SERVICES**

*[Note to Draft: Services identified in brackets below are optional and at the discretion of the Department. If the Department elects to include any or all of these services as part of the CM-GC Agreement, the relevant sections may be included with appropriate adjustments for the project.]*

[PRECONSTRUCTION PHASE UTILITY SERVICES]

[PRECONSTRUCTION PHASE RIGHT OF WAY SERVICES]

## SECTION 1. GENERAL PRECONSTRUCTION SERVICES

### I. INFORMATION AND SERVICES TO BE PROVIDED BY THE CM-GC

The CM-GC shall collaborate with the Department and others contracted by the Department for the Project during the Preconstruction Phase. The CM-GC shall perform the services generally described in the following table.

DESIGN RELATED	ADMINISTRATION RELATED
Validate design	Coordinate with 3rd party stakeholders
Provide input on design	Attend public meetings
Perform constructability reviews	Perform subcontractor bid packaging
Perform operability reviews	Prequalify subcontractors
Perform regulatory reviews	Assist in right-of-way acquisition
Conduct market surveys related to design decisions	Assist and advise with permitting actions
Verify/take-off quantities	Study labor availability/conditions
Assist in shaping scope of work	Prepare sustainability certification application
COST RELATED	SCHEDULE RELATED
Validate consultant estimates	Validate existing project schedules
Prepare project estimates	Prepare and manage project schedules
Perform cost engineering reviews	Develop sequence of design work
Identify long-lead bid packages that may impact schedule	Develop construction phasing
Perform life cycle cost analysis	Provide schedule risk analysis/control
Participate in value engineering analysis	PRECONSTRUCTION RELATED FIELD WORK
Perform material cost forecasting	Advise and coordinate utility relocation
Provide cost risk analysis	Perform subsurface utility exploration, including potholing
Provide cash flow projections/cost control	Perform right of way demolition
Advise on project affordability/budget and potential scope refinements to mitigate	Perform preliminary surveying

The CM-GC shall:

1. Provide Key Personnel and associated staff to consult with, advise, assist, and provide recommendations to the Department and the design team on

- all aspects of the planning, design, and proposed construction, as requested by the Department.
2. Participate in an initial Project workshop.
  3. Participate in design coordination meetings with the Department and others contracted by the Department for the Project. Design coordination meetings are anticipated to be held bi-weekly but may be held more frequently at the Department's preference.
  4. Provide written comments and recommendations to the Department through the use of oversight and constructability reviews related to various elements of the Project, including:
    - a) input on staging, sequencing, equipment storage, detour routes, traffic control, storm water management, permitting, sustainability, accelerated bridge construction techniques, evaluation of bridge and retaining wall types, and materials that may be cost-effectively recycled during construction;
    - b) identification of any long lead items (e.g., equipment, materials, etc.) that may cause delay;
    - c) identification of conflicts and deficiencies in the available design information (e.g., conceptual drawings) being prepared by the Department and others contracted by the Department.
  5. Participate in constructability, material, equipment and labor availability reviews with the Department and others contracted with the Department for the Project. These reviews will focus on identifying revisions to improve clarity for bidding, identifying potential design revisions that would reduce construction costs, and identifying elements to potentially create a more efficient schedule and reduce the overall duration of the Project.
  6. Provide ongoing professional support during reviews and meetings related to right of way elements of the Project. Examine specific design variables and provide professional guidance intended to reduce investment in design time by providing cost benefit analysis for right of way versus construction cost. Services shall include the following:
    - a) Provide feedback regarding right of way risks, including impacts to cost and schedule)
    - b) Identify long acquisition lead times that could impact the project schedule;
    - c) Identify adverse or unnecessary right of way impacts attributable to available design information (e.g., conceptual drawings);
    - d) Identify and document right of way cost savings and schedule impacts attributable to design innovations within the innovation log; and

- e) Attend public involvement meetings to support right of way related issues.
- 7. Provide ongoing professional opinions and support during reviews and meetings relating to utility costs, risk identification, risk mitigation strategies, and schedule impacts during the Preconstruction Phase which include:
  - a) Providing support to the Project Team regarding subsurface utility locations;
  - b) Coordinating the limits of final utility location services to be performed; and
  - c) Providing general technical support regarding management, coordination and execution of utility relocations.
- 8. Support the development and maintenance of the Risk Register, including:
  - a) Participation in risk workshops with the Department, relevant third parties, and others contracted by the Department for the Project to develop and maintain the Risk Register;
  - b) Identification of potential risks and assessment of the probable impact to cost and schedule related to those risks; and
  - c) Development of mitigation strategies related to Risk Register Events.
- 9. Develop a cost model using an open book format. The CM-GC shall allow the Department to examine the cost model. The cost model shall include:
  - a) Unit prices and quantity take-offs;
  - b) Material costs, equipment costs, labor costs, hourly labor rates, crew sizes, shifts per day, hours per shifts (labor rates shall include employee benefits, payroll taxes and other payroll burdens);
  - c) Risk assumptions and assignment of risks;
  - d) Production rates, transportation, and other facilities and services necessary for the proper execution of the work;
  - e) Copies of quotations from subcontractors and suppliers; and
  - f) Field indirect costs, bonds, taxes and insurance.
- 10. Provide the Department with a written narrative regarding the cost model that identifies the means, methods, assumptions, and risks that were used to price the work.
- 11. Participate in design milestone review meetings that will take place at milestones determined by the Department. The design milestone review meetings will generally occur at the following approximate design development milestones: 30%, 60% and 90%.



- a) For the initial design milestone review meeting, the CM-GC shall provide the Department with the initial version of the Opinion of Probable Construction Cost (OPCC) estimates, the cost model, cost model narrative, Project Schedule and recommendations related to the current Risk Register.
  - b) For subsequent design milestone review meetings, the CM-GC shall refine the Opinion of Probable Construction Cost estimates (OPCC), the cost model, cost model narrative, Project Schedule and recommendations related to the current Risk Register.
- 12. Participate in price reconciliation meetings to reconcile components of the price that deviate from the estimate prepared by the ICE by more than a stipulated amount. During price reconciliation meetings, the Department may request that the CM-GC share the cost model in an over-the-shoulder environment to more fully understand how the proposed pricing was derived and to help reconcile differences. The CM-GC is responsible for preparing and updating the cost model in accordance with the Department's requests at these meetings in a manner consistent with this Exhibit.
- 13. Develop, propose, and track innovations identified by the CM-GC to be incorporated during the Construction Phase. The CM-GC shall document and track cost savings and schedule impacts associated with innovations in a written report ("innovation log") to be submitted to the Department.
- 14. Prepare and submit a Critical Path Method (CPM) Project Schedule in accordance with the CM-GC Agreement. The CM-GC shall:
  - a) Develop a preliminary baseline version of the Project Schedule [within 90 days of Notice to Proceed].
  - b) Update the Project Schedule for each design milestone review. With each Project Schedule update, the CM-GC shall identify schedule savings that result from innovations identified in the innovation log and the CM-GC shall include a comparison of the current Project Schedule with the previous version of the Project Schedule.
  - c) prepare updated Project Schedule prior to the development of the GMP to serve as the Project Baseline Schedule, which identifies all activities during the Construction Phase. In addition to the Project Schedule, the CM-GC shall submit a finalized budget and schedule control management plan to ensure completion of construction within budget and in accordance with the Project Baseline Schedule.
- 15. Develop and submit to the Department a Basis of Construction plan prior to the development of the GMP to describe the approach to achieve construction milestones that include:

- a) A subcontracting plan to integrate subcontractors as needed to accomplish all construction work. The CM-GC shall identify the proposed plan to meet DBE contract goals for the overall Project;
- b) A brief narrative with documentation describing:
  - i) the applicable construction standards and specifications;
  - ii) any CM-GC proposed changes to standards and specifications; and
  - iii) the approach to implementing design reports, design plans, and other design related documentation within each phase of construction;
- c) Overall description of the how the CM-GC will approach and sequence each phase of the construction. The description shall illustrate the CM-GC's approach to constructing the Work, including a description of work areas, sequence of Work to be performed during each phase of construction, and the overall order, sequence, and linkages between each phase of construction;
- d) Procedures and processes for installing and maintaining safe ingress and egress of construction vehicles in the work zone;
- e) A description of the anticipated laydown, staging, disposal, and maintenance locations to be used during construction;
- f) A description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the Project; and
- g) A listing of submittals anticipated during the Construction Phase.

## II. SUBMITTALS

Submittal	Review Type
Innovation log	Review and comment
Oversight and constructability reviews	Review and comment
Cost model	Review and comment
Cost model narrative	Review and comment
OPCC estimate @ design milestones	Review and comment
Project Schedule – Preliminary baseline	Approval
Project Schedule – Design Development Milestones	Approval
Project Baseline Schedule (GMP)	Approval
Basis of Construction	Approval
Guaranteed Maximum Price	Approval

## SECTION 2. PRECONSTRUCTION PHASE UTILITY SERVICES

*[Note to Draft: Services identified in this Section are optional and at the discretion of the Department. If the Department elects to include any or all of these services as part of the CM-GC Agreement, the relevant sections may be included with appropriate adjustments for the project.]*

### I. INFORMATION AND SERVICES TO BE PROVIDED BY THE CM-GC

Timely subsurface utility engineering services are needed for the Project in order to proceed with construction. Utility services by the CM-GC shall support the Department's utility location, coordination, and relocation efforts.

#### A. UTILITY – LOCATION AND MAPPING

The CM-GC shall perform utility potholing, Subsurface Utility Engineering (SUE) and associated work. The CM-GC shall identify the location of in-place aerial and underground utilities located within the Project limits, with the exception of storm sewer systems. The CM-GC shall prepare a written utility location work plan to identify the location of in-place aerial and underground utilities located within the Project limits, with the exception of storm sewer systems. The utility location work plan will be jointly reviewed by the Department and the CM-GC prior to determining locations to be potholed. Following the joint review of the utility location work plan, the CM-GC and Department shall agree on specific locations to be potholed. The CM-GC shall reference the below table regarding the various quality levels of SUE.

Quality Level	Description
<b>QL-D</b>	QL-D is the most basic level of information for utility locations. It involves collecting data from existing utility records. Records may include as-built drawings, distribution and service maps, existing geographic information systems databases, construction plans, and utility line locates. QL-D is limited in terms of comprehensiveness and accuracy and used primarily for project planning and route selection.
<b>QL-C</b>	QL-C is commonly used level and involves surveying visible utility facilities such as manholes and valve boxes and correlating this information with existing utility records (QL-D information).
<b>QL-B</b>	QL-B, also known as designating, involves the application of appropriate surface geophysical methods to determine the existence and horizontal position of virtually all utilities within the project limits. The information obtained in this manner is surveyed to project control. It addresses problems caused by inaccurate utility records, abandoned or unrecorded facilities, and lost references.
<b>QL-A</b>	QL-A, also known as locating, is the highest level of accuracy presently available and involves the full use of SUE. It provides information for the precise plan and profile mapping of underground utilities through the nondestructive (potholing or open-cut trenching) exposure of underground utilities. QL-A also provides the type, size,

	condition, material, and other characteristics of underground features.
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The CM-GC shall perform SUE in accordance with the appropriate quality level as follows:

1. QL-B—field designate all non-gravity utilities
1. QL-B—aerial utilities and gravity sanitary sewers
2. QL-A—as directed by the Department
3. The CM-GC shall collect and document the following details for gravity sanitary sewer mains and services:
  - a) Invert elevations
  - b) Number, size, and material type of pipes
4. The CM-GC shall collect and document the following details for aerial utility systems:
  - a) Number of utility attachments on pole
  - b) Number of cables per attachment
  - c) Utility company ownership per attachment
  - d) Bottom attachment sag height at all road crossings
  - e) Utility pole size, height, material type, ownership, and condition
5. Provide traffic control including shoulder closures, lane closures, rolling lane closures, and worker protection including attenuator trucks, traffic drums, and signage. All lane closures requests shall be approved in advance by the Department. The CM-GC shall submit to the Department request for lane and shoulder closures five (5) business days prior to the beginning the work.
6. Pothole to identify utility locations at locations approved by the Department in accordance with the following:
  - a) Excavate areas where utilities are marked using soft-excavation techniques including vacuum truck excavation or hand digging to locate the underground utilities to sufficiently view and identify line and grade. If rock is encountered prior to location or depth is too great to be exposed through conventional pothole methods, the bottom of the hole will be surveyed at a depth, backfilled, and an electronic depth obtained and documented.
  - b) Utilities will generally be potholed along the length of the utility at intervals of 25' on-center. Field adjustments may be made due to risk, alignment changes, tie-ins, elbows, or junctions.
  - c) Utilize a surveyor and appropriate survey equipment to determine the line and grade of the utility within each pothole.

- d) Upon completion, backfill potholes with on-site spoils, aggregates, material determined to be acceptable by the Department. Potholes within driving lanes shall be backfilled with flowable select material and capped with high performance asphalt patch material. Open-cut trenches within limits of existing roadways shall be backfilled with flowable select material and capped with and approved hot mix asphalt concrete matching the existing surface.
- e) When feasible PVC or similar markers will be installed within the backfilled hole above the utility.
- f) Spoils from vacuum excavation shall be transported to and permanently stored on Department right of way as directed by the Department. All waste areas shall be approved by the Department. If re-handling and hauling spoils from the project limits is required, a unit price rate will be agreed to and established for that work. Best Management Practices (BMPs) shall be used for erosion and sediment control and final stabilization of the area.
- g) All survey data collected in the field shall be incorporated into a master as-built utility file and provided to the Department and be under the direction and supervision of a Professional Surveyor.
- h) Prior to field work starting, the Department and the CM-GC shall agree on a public outreach effort to inform local stakeholders of the upcoming work and any temporary access or egress changes needed to facilitate the work.
- i) The CM-GC shall agree in advance to changes in unit price compensation when conditions require open-cut trenching.

## **B. UTILITY – RELOCATION COORDINATION**

The CM-GC shall provide the following services:

1. Utility Easements: Coordinate review of existing easements, joint-use agreements, reimbursable utilities, and right of way design requirements, including phased construction requirements. Assist in determining easement locations.
2. Utility Relocations: Provide design reviews, cost estimates, and permit reviews. Assist with inspection of utility relocation to ensure compatibility with the proposed Project design.
3. Field Management: Coordinate with utility relocation contractors and subcontractors in connection with utility relocation work.

### **SECTION 3. PRECONSTRUCTION PHASE RIGHT OF WAY SERVICES**

*[Note to Draft: Services identified in this Section are optional and at the discretion of the Department. If the Department elects to include any or all of these services as part of the CM-GC Agreement, the relevant sections may be included with appropriate adjustments for the project.]*

#### **I. INFORMATION AND SERVICES TO BE PROVIDED BY THE CM-GC**

##### **A. RIGHT OF WAY COORDINATION DURING PROJECT DESIGN**

The CM-GC shall perform the following services in accordance with Department Right of Way policies and procedures using a subcontractor approved by the Department:

1. Provide right of way cost estimates for 30%, 60% and 90% design development milestones; and
2. Perform title research to determine if overlaps and gaps exist prior to 90% right of way plan submittal.

##### **B. RIGHT OF WAY ACQUISITION**

The CM-GC shall perform professional right of way services for the acquisition of properties and property management for the Project in accordance with Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), Federal and State laws and regulations, and Department Right of Way policies and procedures. CM-GC shall perform acquisition and property management services with a subcontractor approved by the Department.

##### **C. UTILITY RELOCATION EASEMENTS**

The CM-GC shall provide the following services in accordance with Department Right of Way policies and procedures using a subcontractor approved by the Department:

1. Utility Easement Services
  - a) Coordinate between utility owner's engineering/design departments, the Department's Utilities Program, and others contracted by the Department for the Project to meet the requirements for utility easements beyond the limits of the new right of way;
  - b) Determine need for easement acquisition;
  - c) Establish legal descriptions;
  - d) Verify non-conflicts, gaps, and errors; and
  - e) Resolve conflicts in legal descriptions.
2. Utility Easement Acquisition
  - a) See Section 3.I.B (Right of Way Acquisition).

## II: Sample Scope of Work for ICE Consultants



## **General Scope of Work On-Call Independent Cost Estimating Services (2019-2024)**

### **A. CONSTRUCTION COST ESTIMATING AND SCHEDULING**

- 1) Provide independent cost estimates and associated cost and resource loaded schedules during the preconstruction phase, using contractor style (production-based) methodologies and production-based heavy civil estimating software platforms. Cost estimates and the associated schedules are typically expected to occur at three pricing milestones during the design phase (30%, 60%, and 90%). In addition, provide a final estimate and associated cost and resource loaded schedule for construction. The Consultant's final estimate will need to be completed and submitted by the bid/letting date. The bid/letting date will occur when the Department and the CM-GC agree that the Project has been designed to a sufficient level of detail to allow the CM-GC to accurately bid and construct the Project.
- 2) Provide summary and detailed cost breakdowns and translate production-based estimates into the ARDOT unit price estimate format, using ARDOT standards with a demonstrated familiarity of Arkansas labor laws and federal wage rates.
- 3) Attend price reconciliation meetings between the Department and the CM-GC at the 30%, 60%, and 90% pricing milestones. The price reconciliation meetings are expected to take place at the Department's Central Offices in Little Rock and be two days in duration for each pricing milestone. The Consultant's responsibility at these meetings is to gain a common understanding of bidding assumptions (including means and methods, equipment, material costs, and risk assignment) and advise the Project Team (Department staff, Design Engineers, CM-GC) if there are more cost-effective ways of accomplishing the work.
- 4) Provide feedback on risk management which may include risk identification, assessment, cost quantification, and assignment of the probability of occurrence. Formal risk workshops are anticipated to coincide with design/constructability reviews and estimating workshops at each pricing milestone (30%, 60%, and 90% designs). ICE will manage the risk register.
- 5) Provide assistance to the Project Team with respect to determining cost impacts of: project phasing, labor availability, mobilization and site access, sequence of design and construction, and availability and procurement of equipment and materials.
- 6) Review and assess the CM-GC's bid/price proposal for recommendation in award of a construction contract.
- 7) Attend and participate in the following meetings:
  - a. Initial Kickoff Meeting anticipated to take place at the Department's Central Offices in Little Rock.
  - b. Estimate Coordination, Design/Constructability Review, and Risk workshops anticipated to take place at the Department's Central Offices in Little Rock prior to each pricing milestone (30%, 60%, 90% designs,





and as directed by the Department). These workshops are anticipated to occur in conjunction with each other over a 2-3 day period for each pricing milestone.

- 8) Participate remotely in the following meetings:
  - a. Regular Project Team meetings/conference calls to be held every week, or as directed by the Department, during the preconstruction phase of the project to discuss work in progress, work completed, upcoming priorities, issues, risks, schedule review and update, and any budget or contract issues. The Department may request that the Consultant attend these meetings in person if necessary to resolve recurring issues.
  - b. Bid/price proposal analysis and award recommendation meeting.
- 9) Maintain meeting notes, actions items, and decisions made.
- 10) The construction of this project will be state and federally funded. The Consultant will be expected to engage in DBE outreach, including interviewing potential DBEs, to estimate the cost of construction while meeting the specified goal(s).
- 11) Review the CM-GC Contractor's construction schedule at each Opinion of Probable Construction Cost (OPCC) milestone (anticipated to be at 30%, 60%, and 90% designs). Provide written analysis and recommendations to improve its usefulness to the Project Team. Demonstrate practicality in approach and concentrate remarks and discussions on critical path and high-risk activities as identified in the Risk/Opportunity Register that will be developed during the Risk Workshops and maintained by the Department.

## III: Sample Template for Task Orders and CM-GC Contract



**On-Call Independent Cost Estimating Services (2019-2024)**  
**Task Order No. #**

Job No. (#####), (Project Name),  
No. (####)

Date: [See Doc Express Document Signing History]

**WHEREAS**, the Arkansas State Highway Commission and (Company Name) entered into a Master Agreement for On-Call Independent Cost Estimating (ICE) Services on (Date)

**WHEREAS**, the master agreement allows individual task orders to be issued; and

**WHEREAS**, the services to be provided under this individual task order are Title I Services;

**NOW THEREFORE**, the following applies to the task order:

I. THE CONTRACT CEILING PRICE AND TITLE I SERVICES CEILING PRICE FOR THIS INDIVIDUAL TASK ORDER IS

II. THE MULTIPLIER FOR THIS INDIVIDUAL TASK ORDER IS #.### (FY2021).

III. DESCRIPTION OF PROJECT AND SCOPE OF WORK

SEE ATTACHMENT A-1

IV. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY THE ICE CONSULTANT

See Attachment A-1

V. INFORMATION TO BE PROVIDED BY THE OWNER

See Attachment A-1

VI. DELIVERABLES

See Attachment A-1

VII. COMPLETION DATE FOR THIS INDIVIDUAL TASK ORDER IS (DATE).

VIII. SEE ATTACHMENT A-2 FOR JUSTIFICATION OF COST AND FEES.

**IN WITNESS WHEREOF**, the parties execute this Task Order No. #, to be effective upon the date set out above.

ARKANSAS STATE HIGHWAY  
COMMISSION

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Director

Disclaimer:

This Task Order is being electronically signed. The Info Tech DocExpress Document Signing History will be located on the final page of the executed Task Order. This document will have all dates and electronic signatures applicable to the execution and certifications of this Task Order.



**Independent Cost Estimating (ICE)  
Services  
Task Order  
No. #**

Job No. #####, Alternative Project Delivery  
Manual (S) FAP No. #####  
(company  
name)

**I. DESCRIPTION OF THE PROJECT**

The Arkansas Department of Transportation (ARDOT) has determined it is necessary to...

**II. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY THE ICE**

A. (scope of work)

**III. INFORMATION AND SERVICES TO BE PROVIDED BY THE OWNER**

The Department shall provide a copy of...

**IV. SPECIAL CONDITIONS OF THE WORK**

All work performed by the Consultant shall comply with all applicable Federal, State, and local laws, regulations, and ordinances.

Construction specifications shall be the current edition of the Department's Standard Specifications for Highway Construction.



**V. DELIVERABLES**

1) (deliverables)

**VI. COMPLETION DATE FOR TASK ORDER IS (date).**

## IV: Sample Innovations Log

INNOVATION LOG

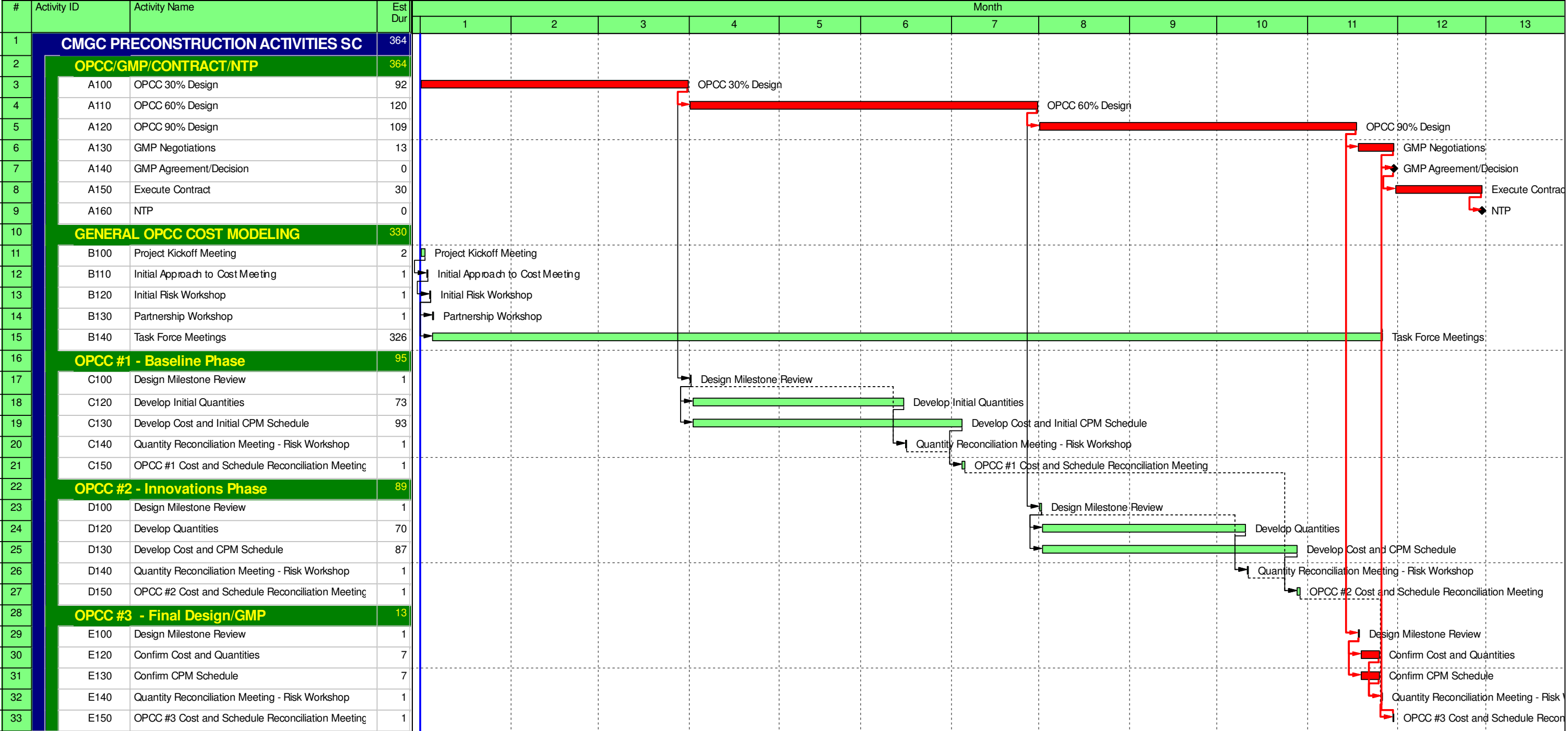
<div><div></div><div>(PROJECT NAME) (PROJECT NUMBER) (DATE)</div></div>										
Innovation #	Discipline(Task Force)	Innovation Description	Background Information (Plan/Detail/Reference)	Designer Response	Const. Cost Savings	Other Cost Savings	Time Savings (Days)	MOT Closure Savings	Review Status	Implemented
1	MOT	Combine Phase 1 & Phase 2 (Phase 1B) to construct Phase 1 & Phase 2 & widening simultaneously safety and quality		Ongoing	\$500,000.00	\$0.00	60	0	Approved	yes
2	Structures/Geotech	Structure Type Bridge 1 andRamp C	There are two innovations to Bridge 1. The first is to move Abutment B on bridge 1 abutment to the north to eliminate the conflict with temporary Ramp A. This takes Ramp A and the temporary ramp off the critical path with Ramp C by allowing contruction to bridge 1 to complete before Ramp A is open.	Ongoing	\$834,711.00	\$800,000 Inspection cost \$2,073,000 Road user fees	120	120	Approved	Yes
3	Structures/Geotech	Slipform Parapet	Slipform results in considerable cost and time savings compared to cast-in-place while maintaining quality. Admixtures and sealers address any concerns over cracking. Colored silicone acrylic sealer can be used to provide any desired architectural features and aesthetics.	Ongoing	\$600,000.00	\$600,000 with Arch Treatment \$1,800,000 with no Arch Treatment	10	0	Under Review	
4										
5										
6	NOTE: The information in this spreadsheet is intendend to provide details on the type(s) of information to track in the innovations log. It does not imply that these innovations would be approved on any specific project. This is an example and for information only.									
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# V: Typical Preconstruction Schedule



CM-GC PRECONSTRUCTION  
ACTIVITIES SCHEDULE

Alternative Delivery Typical Preconstruction Schedule




- Remaining Level of Effort
- Remaining Work
- Critical Remaining Work
- Milestone



# VI: Sample OPCC Price Comparison From

# OPCC COMPARISON FORM

Hide these columns and save as PDF before distributing

<div>  <div> <div>(PROJECT NAME)</div> <div>(PROJECT NUMBER)</div> <div>(DATE)</div> </div> </div>										
Item	Description	UoM	Qty	CM/GC		ICE		% Difference	Price Delta	Divergence (in/out of range)
				Unit Price	Total	Unit Price	Total			
210210	UNCLASSIFIED EXCAVATION	CY	138,017	\$ 16.00	\$ 2,208,272.00	\$ 17.00	\$ 2,346,289.00	-6.25%	\$ (138,017.00)	Outside Range
210433	SELECT GRANULAR BACKFILL	CY	34,722	\$ 74.00	\$ 2,569,428.00	\$ 55.00	\$ 1,909,710.00	25.68%	\$ 659,718.00	Outside Range
210601	COMPACTED EMBANKMENT	CY	175,547	\$ 22.00	\$ 3,862,034.00	\$ 17.00	\$ 2,984,299.00	22.73%	\$ 877,735.00	Outside Range
303107	AGGREGATE BASE COURSE (CLASS 7)	TON	22,969	\$ 42.00	\$ 964,698.00	\$ 35.00	\$ 803,915.00	16.67%	\$ 160,783.00	Outside Range
309005	PORTLAND CEMENT CONCRETE BASE (5" UNIFORM THICKNESS)	SY	440	\$ 88.00	\$ 38,720.00	\$ 73.00	\$ 32,120.00	17.05%	\$ 6,600.00	Outside Range
309008	PORTLAND CEMENT CONCRETE BASE (8" UNIFORM THICKNESS)	SY	5,268	\$ 108.00	\$ 568,944.00	\$ 73.00	\$ 384,564.00	32.41%	\$ 184,380.00	Outside Range
309022	PORTLAND CEMENT CONCRETE BASE (3" UNIFORM THICKNESS)	SY	1,091	\$ 14.00	\$ 15,274.00	\$ 73.00	\$ 79,643.00	-421.43%	\$ (64,369.00)	Outside Range
401011	TACK COAT	GAL	18,105	\$ 4.00	\$ 72,420.00	\$ 4.00	\$ 72,420.00	0.00%	\$ -	Within Range
405161	MINERAL AGGREGATE IN ACHM BASE COURSE (1 1/2")	TON	29,751	\$ 95.00	\$ 2,826,345.00	\$ 93.00	\$ 2,766,843.00	2.11%	\$ 59,502.00	Within Range
405412	ASPHALT BINDER (PG 70-22) IN ACHM BASE COURSE (1 1/2") (MINIMUM BID \$120.00)	TON	1,210	\$ 145.00	\$ 175,450.00	\$ 143.00	\$ 173,030.00	1.38%	\$ 2,420.00	Within Range
406161	MINERAL AGGREGATE IN ACHM BINDER COURSE (1")	TON	14,574	\$ 100.00	\$ 1,457,400.00	\$ 107.00	\$ 1,559,418.00	-7.00%	\$ (102,018.00)	Outside Range
406412	ASPHALT BINDER (PG 70-22) IN ACHM BINDER COURSE (1") (MINIMUM BID \$120.00)	TON	653	\$ 155.00	\$ 101,215.00	\$ 143.00	\$ 93,379.00	7.74%	\$ 7,836.00	Outside Range
407162	MINERAL AGGREGATE IN ACHM SURFACE COURSE (1 1/2")	TON	39,106	\$ 117.00	\$ 4,575,402.00	\$ 107.00	\$ 4,184,342.00	8.55%	\$ 391,060.00	Outside Range
407452	ASPHALT BINDER (PG 76-22) IN ACHM SURFACE COURSE (1 1/2") (MINIMUM BID \$120.00)	TON	2,104	\$ 165.00	\$ 347,160.00	\$ 143.00	\$ 300,872.00	13.33%	\$ 46,288.00	Outside Range
412001	COLD MILLING ASPHALT PAVEMENT	SY	31,158	\$ 5.00	\$ 155,790.00	\$ 6.00	\$ 186,948.00	-20.00%	\$ (31,158.00)	Outside Range
502001	REINFORCING STEEL FOR PAVEMENT (BARS)	LBS	372,970	\$ 2.00	\$ 745,940.00	\$ 2.00	\$ 745,940.00	0.00%	\$ -	Within Range
503013	CONTINUOUSLY REINFORCED CONCRETE PAVEMENT (13" UNIFORM THICKNESS)	SY	9,815	\$ 143.00	\$ 1,403,545.00	\$ 86.00	\$ 844,090.00	39.86%	\$ 559,455.00	Outside Range
504001	APPROACH SLABS	CY	781	\$ 588.00	\$ 459,228.00	\$ 545.00	\$ 425,645.00	7.31%	\$ 33,583.00	Outside Range
504261	APPROACH GUTTERS	CY	81	\$ 1,088.00	\$ 88,128.00	\$ 1,124.00	\$ 91,044.00	-3.31%	\$ (2,916.00)	Within Range
505001	PORTLAND CEMENT CONCRETE DRIVEWAY	SY	1,424	\$ 105.00	\$ 149,520.00	\$ 68.00	\$ 96,832.00	35.24%	\$ 52,688.00	Outside Range
	<b>Subtotal</b>				<b>\$ 22,784,913.00</b>		<b>\$ 20,081,343.00</b>	11.87%	<b>\$2,703,570.00</b>	Outside Range
	Contractor Fee		1%		\$ 227,849.13		\$ 200,813.43	11.87%	\$ 27,035.70	Outside Range
	<b>Total</b>				<b>\$23,012,762.13</b>		<b>\$20,282,156.43</b>	11.87%	<b>\$2,730,605.70</b>	Outside Range
	CMGC Risk Register	LS	1	\$850,000.00	\$ 850,000.00	\$850,000.00	\$ 850,000.00	0.00%	\$ -	Within Range
	<b>Budget Total</b>				<b>\$ 23,862,762.13</b>		<b>\$ 21,132,156.43</b>	11.44%	<b>\$2,730,605.70</b>	Outside Range


NOTE: The information in this spreadsheet is intendend to provide details on the information typically included in the OPCC Comparison Form. It does not imply that these bid items or values would be approved on any specific project. This is an example and for information only.

# VII: Sample Quantity Reconciliation Forms

[illegible]

## VIII: Sample Risk Register

# RISK REGISTER

<div><div></div><div>DAILY OVERHEAD RATE: \$ 10,000.00</div></div> <div><div>RISK RESERVE: \$ 80,000.00</div><div>TIME IMPACTS: 4.5 Days</div></div>												PROJECT NAME: (PROJECT NAME) PROJECT NUMBER: (#####-##) DATE: (DATE)		
RISK #	RISK NAME	DESCRIPTION	STATUS (Active or Retired)	OWNER	CHAMPION(S)	PROBABILITY	COST IMPACT	WEIGHTED COST	TIME IMPACT	WEIGHTED TIME	MITIGATION STRATEGY	RESOLUTION	TRIGGER TO ENGAGE RISK RESERVE	
T1	Adjacent Project Coordination	Adjacent projects could impact MOT and increase cost/time.	Retired	CMGC	(name)	25%	\$ -	\$ -	0	0	Carry projected cost impact in risk register to give us flexibility. Will know more about timing as we approach final design.	Retired: No significant impacts from adjacent projects are anticipated.	N/A	
T2	Escalation - Project Delays	Current market conditions could cause cost increases if the project is delayed	Retired	CMGC	(name)	25%	\$ -	\$ -	0	0	Carry contingency in risk register initially. Risk item will be retired once we receive sub and material bids. Coordinate with Subs to ensure timeframes are understood. Review possibility of early work package for material procurement.	Retired: Contingency has been zeroed out. Final sub and materials bids included any anticipated escalation risks. GMP bid incorporated the final sub and materials bids.	N/A	
T3	Railroad - Flagging	Are we going to need RR flaggers? Are they available?	Retired	Owner	(name)	100%	\$ -	\$ -	0	0	Coordinate duration and quantity of flaggers needed with RR.	Retire risk: ArDOT pays cost for RR flaggers directly. Flaggers are available for project.	N/A	
T4	Unknown Utilities	Unexpected construction conflicts with exisiting utilities	Active	CMGC	(name)	25%	\$ 100,000.00	\$25,000.00	14	3.5	Carry contingency in the risk register. Potentially use force account payment. (3/1/2021 Update) Air bridging or matting over existing utilities could add cost and time.	Contractor will be paid on a force account basis for relocation of the utility in conflict. Time impacts will be awarded only if the utility conflict impacts the project critical path.	Contractor discovers a conflict with an existing underground utility that was not identified during preconstruction phase.	
T5	Unsuitable Soil Disposal	Unknown site conditions - contaminated materials, unsuitable soils that would need to be hauled off and disposed.	Active	CMGC	(name)	10%	\$ 100,000.00	\$10,000.00	10	1	Contaminated material would be a cost for removal and disposal. Provisional sum at \$150 per cubic yard... (updated 3/1/2021).	Use provisional sum. Time impacts will only be awarded if the project critical path is impacted.	Contaminated or unsuitable soils are discovered during construction and ARDOT instructed the CMGC to remove and dispose of material.	
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NOTE: The information in this spreadsheet is intended to provide details about the information typically included in a Risk Register. It does not imply that these risk items or values would be approved on any specific project. This is an example and for information only.

## IX: GMP Cost Template



# GMP COST TEMPLATE

Hide these columns and save as PDF before distributing

<div><div>AR DOT</div><div>(PROJECT NAME) (PROJECT NUMBER) (DATE)</div></div>										
Item	Description	UoM	Qty	CM/GC		ICE		% Difference	Price Delta	Divergence (in/out of range)
210210	UNCLASSIFIED EXCAVATION	CY	138,017	\$ 16.00	\$ 2,208,272.00	\$ 17.00	\$ 2,346,289.00	-6.25%	\$ (138,017.00)	Outside Range
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	Subtotal				\$ 22,784,913.00		\$ 20,081,343.00	11.87%	\$2,703,570.00	Outside Range
	Contractor Fee		1%		\$ 227,849.13		\$ 200,813.43	11.87%	\$ 27,035.70	Outside Range
	Total				\$ 23,012,762.13		#####	11.87%	\$2,730,605.70	Outside Range
	CMGC Risk Register	LS	1	\$850,000.00	\$ 850,000.00	\$850,000.00	\$ 850,000.00	0.00%	\$ -	Within Range
	Budget Total				\$ 23,862,762.13		\$ 21,132,156.43	11.44%	\$2,730,605.70	Outside Range

NOTE: The information in this spreadsheet is intendend to provide details on the information typically included in the GMP Submittal Form. It does not imply that these bid items or values would be approved on any specific project. This is an example and for information only.

# X: Risk Management Plan



# RISK MANAGEMENT PLAN

## Alternative Delivery Project Administration CM-GC

---

**Project Name:** XXXXX

Contact: (name)                      Date:        (date)

Submitted for ARDOT:                      Review and Comment

---

### Key Terms

**Risk** – is the threat or opportunity that can create cost, schedule, or other indirect impacts to a project

**Threat** – is the negative side of a risk that should be identified, analyzed, and managed through design and construction to mitigate the impacts of the risk event.

**Opportunity** - is the positive side of a risk that should be identified, analyzed, and developed through design and construction that optimizes cost, schedule, and overall value impacts.

**Mitigation** – the activities and effort to further research, analyze, and resolve risk through detailed mitigation plans or through retirement.

**Retired** – Retired risks have either been accepted as project cost or mitigated through design

**Special Provisions** – Language that specifically addresses the special conditions of a contract pay item

**Provisional Sums** – Items with a known scope of work with an undefined quantity that can provide mitigation for many project risks

**Risk Contingency Budget** – The bucket of money set aside to pay for risks that are realized in project construction.

**Risk Owner** – The risk owner is typically ARDOT or the CM-GC. If the risk item is going to be priced in the cost estimate, then the CM-GC is typically the owner. If the risk item is going to be mitigated by carrying a risk contingency, then ARDOT is typically the owner.

**Risk Champion** – The champion is a member of the project team who is the most qualified to execute the risk mitigation strategies.

---

### **ARDOT Roles & Responsibilities**

- Identify risk items that affect cost, schedule or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Assign risk champions who are responsible for risk mitigation efforts
- Work through risks and assign ownership of risks
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop early construction packages
- Develop provisional sum items
- Review contract documents that address risk register and implementation of the risk register in construction

### **CM-GC Contractor Roles & Responsibilities**

- Identify risk items that affect cost, schedule or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Assign risk champions who are responsible for risk mitigation efforts
- Generate accurate cost and schedule impacts
- Work through risks and assign ownership of risks
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop early construction packages, if beneficial to the project
- Develop provisional sum items
- Review contract documents that address risk register and implementation of the risk register in construction

---

### **Designer Roles & Responsibilities**

- Identify risk items that affect cost, schedule, or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Assign risk champions who are responsible for risk mitigation efforts
- Work through risks and assign ownership of risks
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop plan sets and special provisions for early construction packages
- Develop provisional sum items

---

## **ICE Roles & Responsibilities**

- Build and maintain Project Risk Register
- Identify risk items that affect cost, schedule, or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Generate accurate cost and schedule impacts
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop early construction packages to maintain severability and to avoid added costs
- Develop provisional sum items
- Review contract documents that address risk register and implementation of the risk register in construction

## **RISK MANAGEMENT Process and Tools**

### ***Workshops and Task Force meetings***

- The initial risk workshop includes an extensive group of team members who assist in the development of the initial risk register. During this meeting, the champions, task force groups, risk descriptions, and risk ownership are identified or assigned.
- Following the initial risk workshop, the risk register will be progressed during task force meetings, via monthly email communications from ICE to the risk champions, and at subsequent risk workshop meetings. A risk workshop meeting is typically held a few weeks prior to each design milestone OPCC meeting.
- During Task Force meetings is when most of the mitigation strategy development and collaboration takes place. We work on prioritizing risk and innovation items and work towards a resolution.

### ***Risk Workshop Process***

- Initial Risk Workshop - A draft initial risk register is compiled by ICE prior to the meeting. The draft register includes a list of risk items and a brief risk description. During the initial risk workshop, the ICE projects the risk register on a screen. The team discusses each risk item and the ICE updates the register in the process. Updates include identifying the risk owner, champion, initial mitigation strategy, and any anticipated cost and time impacts (including the probability of occurrence).
- Risk workshops at each design milestone – A risk workshop is typically held a few weeks prior to each design milestone OPCC meeting. The purpose of these intermittent risk workshops is to make sure the CM-GC and ICE estimators are aligned on risk assumptions relative to the cost estimates. During these intermittent risk workshops, the ICE projects the current risk register on a screen for the team to review. The risk Champions provide updates to the risk items, and the team discusses/updates the mitigation strategies.
- Final Risk Register – At approximately the same time the GMP is submitted to ARDOT, the risk register is finalized. The last step in finalizing the risk register is completing the risk trigger and risk resolution columns. Risk triggers clearly define the event(s) that lead to using the risk register contingency. Risk resolutions define the process that will be used when that risk item occurs during construction.

### ***Risk Tracking (Risk Register)***

- The initial risk register is compiled by ICE using the input of the project team.
- Initial entries are compiled from indirect communication. (emails, proposal information, etc.).
- The risk workshop is where the team reviews the risk register to develop risk descriptions, owners, cost impacts, schedule impacts, and potential mitigation strategies.
- Risks are tracked and updated at the task force meetings.
- A risk item can be retired when the risk has been:
  - Accepted into the estimate
  - Designed out of the project
  - Designated as a provisional sum
- Risk items that are not retired will continue into construction. The risk register is referenced into the contract, and it becomes part of the contract documents. The risk register helps the construction team understand the risk mitigation strategy that should be employed when that risk item is triggered.

### ***Risk Champions and Communication***

- ***Champions*** are assigned specific risk items on the risk register.
  - A Risk Champion is a member of the CM-GC team who is best suited to lead the efforts required to mitigate a particular risk item.
  - A Risk Champion should be actively engaged in following through with the identified risk mitigation strategies.
  - If the mitigation strategy listed is not the best strategy to mitigate the risk item, the Risk Champion should find a new strategy and implement it.
  - The Risk Champions are not on an island by themselves. The CM-GC delivery method encourages collaboration. You have access to the entire design team, contractor, ICE, and ARDOT resources. Use them all, as appropriate.
  - A Risk Champion reports progress on risk mitigation efforts in a monthly email, and they report the status of the risk items assigned to them at each risk workshop.
  - All of the other columns STATUS, PROBABILITY, COST IMPACT, and TIME IMPACT will be updated by the CM-GC team at the risk workshops and Task Force Meetings.
- ***Communication & Prioritization*** - Taskforce meetings take place as needed to mitigate risks and to develop innovations. The risk champions will engage in the task force meetings and keep the team apprised of updates to the mitigation efforts. They will make assignments to the team on individual tasks that assist in the mitigation efforts. Risk mitigation can be prioritized based on a variety of measurements and is addressed specifically in the task force meetings.

### ***Risk Planning and Mitigation Tools***

- ***Preconstruction investigations*** are activities that can further define the scope and probability of a risk and can lead to optimization and refinement. These can include public outreach, traffic studies, environmental studies, geotechnical, seismic, groundwater, local agency/stakeholder outreach.
- ***Early Construction Packages*** can alleviate potential risks of delays for high impact issues such as utility relocation, foundations, site mitigation, soil treatments, work outside of traffic impacts, etc.
- ***Design optimization*** like realignments, asphalt vs. concrete paving analyses, construction phasing, additional geotechnical exploration, etc.
- ***Construction acceleration*** – weekend shutdowns, double shifts, added crews (resources)

### ***Budgeting/Scheduling for Contingency***

- **Estimated cost impacts** – We should involve our construction estimators in the pricing of likely project impacts. This helps to get the guesswork out of the costs. These costs should be based on the best available information and rates and can be mitigated by adding provisional sums and risk contingency budgets.
- **Probability** – If a risk has a 100% probability, it should be included in the base cost estimate and retired status in the risk register. For all other items, there should be a probability of occurrence assigned to the project risk. This probability helps us prioritize our mitigation efforts on high-impact/high probability issues.
- **Critical Path Impacts** – schedule impacts should be carefully considered when analyzing project risk impacts. Many issues can cause delays, however, delay impacts will not be awarded unless the risk item impacted work that is on the critical path.

### ***Risk Resolution (Reporting)***

- **Adopted into Construction Estimate** – costs associated with risk have a high probability and have a high level of certainty for scope and/or quantity. Risk can be moved to a “Retired” status when the costs have been integrated into the base construction estimate.
- **Provisional sums** can be used for certain bid items that qualify for over/underruns. Items with a low level of scope/quantity confidence can be estimated as the most probable quantity and adjusted to actuals in the field.
- **Included in Risk Register** – risk items can continue into construction as an active risk, as long as the risk register identifies appropriate risk triggers and resolutions.
- **Retired Risks** are tracked and archived on the risk register for future reference.

### ***Construction Contract Risk Allocation***

- Risk register is included in the contract documents to assist with design to construction continuity. The contract language should be clear and concise on how the risk triggers will be administered.

### ***Field Management of Risk Register***

- The field management of the risk register is defined in the construction contract. The contract language defines the process of how the risk register is used during construction and it should be clear on timelines and expectations.

# XI: Definition of Open Book Estimating/Fair-Price Approach

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# Sample Fair Price Overview / Open Book Estimating

September 13, 2021

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## Fair Price Overview

CM-GC project goals include working collaboratively as a team to maximize scope, value, and quality within the project budget. This is accomplished by emphasizing collaboration and transparency, while creating value through integrity, fairness, and accountability. The primary deliverable of a successful preconstruction phase on a CM-GC project is an accurate estimate of construction cost that represents a fair market price. This estimate would incorporate risk strategies and innovations that were developed throughout the design process. A clear and effective estimating process gives the Owner confidence that the project is being delivered for the right price while giving the Contractor confidence that the project will be profitable.

With the above in mind, there are several different approaches CM-GC team could take to arrive at a fair market price. Each project is unique, however, some guiding principles and practices that apply to all CM-GC projects to protect the integrity and maximize the value of the process. These include:

1. A collaborative team environment that fosters communication, accountability, and trust
2. An independent construction estimating (ICE) team that is familiar with the scope, schedule, and risks of the project and is involved in key team meetings and aware of decisions
3. Effective risk and opportunity/innovation workshops
4. Interactive design process to incorporate mitigation strategies and innovations into the design
5. Plan and specification reviews and quantity reconciliation meetings at major milestones
6. Pre-estimating meetings to discuss and document assumptions for bid items and M&P
7. Opinions of Probable Construction Cost (OPCC) at various milestones wherein the ICE is blinded and a range established to identify items that are in discrepancy
8. Reconciliation meetings to review differences in the assumptions of those items
9. Protect and maintain the independent estimate of the ICE
10. Minimize the number of formal bids submitted

This document is intended to clearly describe the steps of the fair price approach and to define the pricing instructions so that all members of the CM-GC team understand how the strategy will be implemented.

## Process

### 1. Initial Approach to Cost Meeting

Before any pricing begins, the project team will meet to discuss and agree on how the team will develop and evaluate price. This establishes the “rules” by which the CM-GC estimating process will be conducted. In addition to reviewing the overall fair price strategy, the team will understand how certain elements of price will be handled. The following instructions will be discussed:

- definition of “fair-market” price
- acceptable percentage of difference between the Contractor and ICE (divergence factor)
- expectation of CM-GC cost versus low bid
- overhead and profit margins
- labor and equipment rates
- subcontractor quotes and self-performed work
- number of OPCCs and bid submittals

## **2. Risk and Opportunity Workshop/Constructability Review/Quantity Reconciliation Meeting**

The project team will hold a risk and opportunity workshop to identify and prioritize risks, discuss possible risk mitigation strategies, and explore risk sharing concepts. The workshop will seek to quantify risks and predict probabilities of occurrence in an effort to predict a total project contingency figure. The meeting will focus more on risk mitigation and how the risks would affect bid items.

In addition to the risk and opportunity workshop, the team will also discuss constructability review comments and quantities. The plans will be reviewed to ensure that the risk mitigation strategies and opportunities stemming from the risk/opportunity workshop have been incorporated. This review will also include quantity takeoffs, verification, and reconciliation to ensure all bidding parties have agreed to bid quantities. A key element of these reviews is the limitations of operations specification which will describe the segment and schedule requirements for the project. This will be helpful to the estimating teams as they each prepare their separate construction schedules.

## **3. Blinded OPCC Estimates**

After the Risk/Constructability/Quantity meeting, each estimating team will prepare an OPCC estimate based on a pre-formatted Excel spreadsheet (bid schedule). The Contractor and ICE will each prepare a production-based estimate. Each team will use their own construction schedule in developing its estimate. For this estimate, indirect items, profit and risk will be broken out separately. Once the OPCC estimates are complete, each team will submit their spreadsheet to a designated Price Facilitator. This person will combine the OPCCs in order to compare the costs for each item and highlight any items that vary from any other estimate by more than the divergence factor. The total cost of each OPCC will also be compared to ensure that the OPCCs are within the project budget. The Price Facilitator will then return the spreadsheet to the project team.

## **4. OPCC Meeting**

After the team receives the OPCC comparison report from the Price Facilitator, the team will meet and discuss the pricing approach and assumptions for items where the ICE and Contractor costs are separated by more than the agreed divergence factor (typically 5%). Costs will not be discussed. Rather, the factors that contribute to the costs are shared and discussed. The goal of these meetings is to clarify and resolve differences where possible between estimators. Each estimator determines for themselves if and how they might adjust their estimate. The goal is to have the total project cost from the CM-GC and ICE to be within 5% at the final GMP, and the total project costs including risks to be under the project budget.

## XII: Sample CM-GC RFP

# **Arkansas Department of Transportation**

## **Request for Proposals**

### **Construction Manager/General Contractor Services**



**Job No.**

**January 22, 2021**

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Exhibit A	Required Forms
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	○ Form B
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	○ Form D
	○ Eligible Proposer Certification
	○ Illegal Immigrant Certification
	○ Restriction of Boycott of Israel Certification
	○ Contracts and Grants Disclosure and Certification Form
Exhibit B	CMGC Preconstruction Scope of Work
Exhibit C	Right of Way Acquisition
Exhibit D	Allowable Base Construction Costs
Exhibit E	Fair Pricing Approach
Exhibit F	Preliminary Project Layout

To constitute a valid submission for this Request for Proposals (RFP), the Proposal must:

- Be submitted no later than 4:00 p.m. CST on February 1, 2021
- Address all the requirements set forth herein
- Contain completed forms including:
  - Form A Debarment/Suspension/Financial Certification
  - Form B Conflict of Interest Certification
  - Form C Project Reference Form
  - Form D Key Personnel Project Reference Form
  - Eligible Proposer Certification
  - EEO Policy for Prime Consultant and any Subconsultants
  - Illegal Immigrant Certification for Prime Consultant and any Subconsultants
  - Restriction of Boycott of Israel Certification for Prime Consultant
  - Contract and Grant Disclosure and Certification Form for Prime Consultant and any Subconsultants

For further information regarding this RFP contact:

Arkansas Department of Transportation  
P.O. Box 2261  
Little Rock, AR 72203  
Phone: (501) 569-2358  
Fax: (501) 569-2688  
[alternativedelivery@ardot.gov](mailto:alternativedelivery@ardot.gov)

One (1) paper copy of the Proposal, and one electronic copy on USB drive should be addressed to by mail, courier service delivery, or hand delivery and email:

Alternative Project Delivery Manager  
Arkansas Department of Transportation  
P.O. Box 2261, Little Rock, AR 72203-2261  
or  
10324 Interstate 30, Little Rock, AR 72209  
[alternativedelivery@ardot.gov](mailto:alternativedelivery@ardot.gov)

### **Notice of Nondiscrimination**

The Arkansas Department of Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to Joanna P. McFadden Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P.O. Box 2261, Little Rock, AR 72203, (501)569-2298, (Voice/TTY 711), or the following email address: [joanna.mcfadden@ardot.gov](mailto:joanna.mcfadden@ardot.gov). Free language assistance for Limited English Proficient individuals is available upon request. This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

# **1 GENERAL**

## **1.1 Introduction**

This Request for Proposals (RFP) is issued by the Arkansas Department of Transportation (“Department” or “ARDOT”) to all contractors who are prequalified in accordance with the Department’s Standard Specifications Edition of 2014, Section 102 (“Proposer” or “Proposers”) and are interested in acting as the Construction Manager General Contractor (“CMGC”) for the Hwy. 62 Interchange Improvements (Fayetteville) (F) project located in Washington County, Arkansas (the “Project”). The CMGC will provide pre-construction services pursuant to scope of services set forth in Exhibit B. At the conclusion of the preconstruction services, the CMGC shall have an opportunity to move to the construction phase. Construction of the project shall be in accordance with the Department’s Standard Specifications Edition of 2014.

Information concerning Prequalification may be found on the Department website at:

[http://www.arkansashighways.com/ProgCon/General/Prequalification%20Questionnaire\\_2015.pdf](http://www.arkansashighways.com/ProgCon/General/Prequalification%20Questionnaire_2015.pdf).

Proposers who are not prequalified but intend to seek prequalification should allow a minimum of one (1) week for the Department to process a prequalification application. Information on the Department prequalification process and copies of the prequalification questionnaire are available from the Construction Contract Procurement Section of the Department Program Management Division. Failure by the Proposer to meet the requirements of prequalification shall result in the Proposer being disqualified from the procurement process.

## **1.2 CMGC Contracting Method**

### **CMGC Process Preconstruction Services**

For this Construction Manager General Contractor Project, the CMGC will provide preconstruction services during the design process. The intent is to form a partnership between the Department (the owner and designer) and the CMGC. The focus is on a partnership in which risk is minimized, construction schedule is improved, innovation is introduced, and the project is delivered within budget. An important role of the CMGC is to work with the designer during the design phase to identify risks and propose solutions for mitigating risks. The Department anticipates that CMGC involvement will help improve constructability and help meet budget goals. A major component of the involvement in regards to meeting budget goals will be the CMGC’s development of open and transparent Opinions of Probable Construction Cost (OPCC) for the construction of the Project at pricing milestones as defined by the Department. This process is outlined in more detail in Exhibit E of this RFP. Upon selection, the CMGC will be required to execute a CMGC Preconstruction Services Agreement (“PreCon Agreement”). See Exhibit B for the CMGC Preconstruction Scope Services (“PreCon Scope”).

### **CMGC Process Construction**

Following the design phase, the CMGC shall have an opportunity to move to the construction phase. Once the plans and specifications for the entire project are complete, the CMGC shall be given an opportunity to construct the Project upon reaching agreement with the Department on the Guaranteed Maximum Price. Upon review, negotiation, and approval of the Guaranteed Maximum Price, the Department may award a construction contract for the Project to the CMGC.

### **Independent Cost Estimator**

The Department will assign an Independent Cost Estimator (ICE) for this Project from the ICE Services On-Call list. The ICE will develop independent cost estimates for the project at the same milestones that the CMGC develops OPCCs. The purpose of the ICE will be to validate the costs submitted by the CMGC at each pricing milestone. The CMGC Contractor will coordinate with the ICE throughout the design phase of the Project.



### **1.3 Project Description and Status**

#### **Project Description**

The Project is located in Washington County, Arkansas, within the city of Fayetteville. The Project limits extend a total of 3.53 miles on Interstate 49 from approximately Log Mile 59 to Log Mile 62.53. The following Project scope is provided for informational purposes only to assist the Proposer in responding to this RFP. The final Project scope will not be determined until approval of the environmental document. The preliminary project layout is shown in Exhibit F. At the time of release of this RFP, Project design is at approximately 20%. The Project scope generally includes, but not limited to, the work described below:

- a. Construct the interstate overpass structures on Interstate 49 over Highway 62.
- b. Construct a single point urban interchange (SPUI) at the Highway 62/Interstate 49 interchange.
- c. Construct auxiliary lanes, exit ramps, and convert Shiloh Drive into an access road.
- d. Construct an overpass over Interstate 49, two roundabouts, and connecting roadways to Shiloh Drive.
- e. Widening of the Highway 62/180 main lanes.

#### **Environmental Status**

The environmental clearance document for this project is expected to be a Categorical Exclusion. The document is approved by the Federal Highway Administration (FHWA). Project impacts are currently being determined as the project progresses through design. At the time of release of this RFP, document completion is at approximately 50%. The signature process takes a minimum of 1 to 2 months once 50% design plans are complete and a public involvement meeting is held. The documentation process must be completed prior to soliciting a price proposal/bid for construction (including early material procurement).

It is anticipated that this project will have minimal environmental impacts and that no Department commitments related to impacts outlined in the NEPA documentation will be required, however the document will indicate a commitment by the Department to complete the noise analysis and noise wall design prior to construction. The Department makes no commitment as to any alternative under evaluation in the NEPA process, including the no-build alternative. The Department is required to evaluate a range of alternatives that meet the project's purpose and need and to consider the comparative merits of all alternatives under consideration in the environmental process (including the no-build alternatives) as the alternatives are being evaluated and fairly considered. Although part of the Pre-Construction Scope of Work will include providing technical assistance as alternatives are evaluated in the NEPA process, the CMGC shall not have any role in the preparation of the NEPA document nor will the CMGC have any decision-making responsibility with respect to the NEPA process.

The CMGC will, at the discretion of the Department, assist with design review and activities to be undertaken for the purposes of defining the project alternatives and completing the NEPA alternatives analysis and review process (including new or hybrid alternatives that may be developed through the NEPA process); complying with other environmental laws and regulations; supporting agency coordination, public involvement, permit applications, or development of mitigation plans; or developing the design of the preferred alternative to a higher level of detail when the lead agencies agree that it is warranted. The CMGC may be requested to provide information about the project and possible mitigation actions, and its work product may be considered in the NEPA analysis and included in the Categorical Exclusion document.

### **1.4 Project Funding**

The Department expects that approximately \$50-70 million will be made available for the Project. The Department expects to spend 4% or less of the estimated project construction costs on pre-construction services.

### **1.5 Project Goals**

1. Design and construct a high-quality project that meets the needs of the future.
2. Allow and encourage innovative ideas to improve quality, shorten the time of construction, reduce cost, and/or reduce impacts to the public, environments, etc.
3. Reduce utility conflicts to shorten the project schedule and decrease the cost of the project.
4. Design and implement maintenance of traffic plans that provide a safe and efficient work zone for both the traveling public and the contractor.
5. Facilitate and foster collaboration, communication, and partnership with all members of the Project Team and stakeholders during design and construction.
6. Successful utilization of Accelerated Bridge Construction (ABC) techniques in the construction of the I-49 Overpass over MLK Blvd if determined to be advantageous for the project.
7. Successfully deploy the CMGC delivery method.

### **1.6 Procurement and Project Schedule**

The following represents the current ("Procurement Schedule") at the time of the release of this RFP.

<b>Procurement Schedule</b>		
<b>Activity</b>	<b>Due Date</b>	<b>Time</b>
Request for Clarification (RFC) submission deadline	January 20, 2021	4:00 p.m.
Responses to RFC Issued	January 25, 2021	
Proposal submission deadline	February 1, 2021	4:00 p.m.
Technical Interview	March 1, 2021	
CMGC Selection	March 17, 2021	
Contract Execution	April 2021	

The anticipated project design and construction schedule is shown in the table below. The Department may at its discretion amend the project schedule shown based on the actual design and construction schedule that is developed, with the CMGC, during the preconstruction phase of the project.

<b>Project Schedule</b>	
<b>Activity</b>	<b>Estimated Date</b>
Kickoff Meeting	May 2021
30% Design Review/OPCC	Summer 2021

60% Design Complete	Spring 2022
60% Design Review/OPCC	Spring 2022
90% Design Complete	Fall 2022
90% Design Review/OPCC	Fall 2022
100% Design Complete	Early 2023
GMP Bid Submittal	Early 2023
Start Construction	Spring 2023

### **1.7 Communication with Department / Proposer Point of Contact**

#### **Communication with Department**

All official communications during the Procurement Process shall be communicated from and directed to the Department Procurement Manager. When sending any communication to the Department, Proposers shall include “**CMGC ARDOT Job 040846**” in the subject line of the communication. All communication shall be sent by e-mail to the following address:

Alternative Project Delivery Manager  
E-mail: [alternativedelivery@ardot.gov](mailto:alternativedelivery@ardot.gov)  
Phone: (501) 569-2358

#### **Proposer Point of Contact**

The Proposer shall identify a Procurement Point of Contact (“PPC”) to be responsible for initiating or receiving all communication with the Department throughout the Procurement Process. The PPC must be delegated the full authority of the Proposer to communicate with the Department throughout the Procurement Process. The Department will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified in this RFP. Any contact determined by the Department to violate these rules of contact may result in the Proposer’s disqualification from the Procurement Process.

### **1.8 Requests for Clarification**

Requests for clarification or revision to any items, requirements, or specifications contained in this RFP must be received in writing at the Department offices no later than 4:00 p.m. (CST) on January 20, 2021. Respondents are responsible for ensuring that any written communications clearly indicate “**CMGC ARDOT Job 040846 – Request for Clarification**” in the subject line of each email. Oral communications shall not be binding on the Department and can in no way modify the terms, conditions, or specifications of this RFP or relieve the successful firm(s) of any obligations under any contract resulting from this RFP. Following receipt of a written request for a RFP clarification, an email response will be sent to all of the Department’s RFP holders no later than 4:00 p.m. (CST) on January 25, 2021. This procedure shall be followed in order to ensure competitive fairness by providing all prospective respondents with the same information.

The Department may make edits in addenda to this RFP in response to clarification requests. Alternatively, the Department may respond to those questions that the Department deems to be material and not adequately addressed through potential addenda to the RFP. The Department is not obligated to respond to each Request for Clarification.

## **1.9 Proposer Qualifications**

Proposers must have knowledge of Federal and State laws and regulations, and experience with similar services.

## **1.10 Compliance with Applicable Law**

Proposers must have knowledge and comply with all applicable Laws and refrain from lobbying any Governmental Authority in connection with the Procurement Process. During the Procurement Process, no employee, member, agent, advisor or consultant of the Proposer may undertake any ex-parte communications, directly or indirectly, regarding this procurement with any representative of the State, Department, or FHWA, including their staff, advisors, contractors, or consultants, except for communications expressly permitted by this RFP.

## **1.11 Choice of Law & Choice of Forum**

This RFP and any resulting contract shall be governed by and construed in accordance with the laws of the State of Arkansas. Any proceeding relating to any cause of action of any nature arising from or relating to this RFP or contract in no way waives the Department's sovereign immunity and may be brought only before the appropriate forum in Pulaski County, Arkansas.

## **1.12 Proposal Development and Other Costs, No Stipend**

The Department will not provide any Proposer with reimbursement for any costs incurred in connection with this procurement, and the Proposer is solely responsible for all costs and expenses, of any nature, associated with responding to the RFP, including attending briefing(s) and providing supplemental information and shall receive no compensation for any activity prior to authorization to perform work under the PreCon Agreement. If awarded the Pre-Construction Agreement, the CMGC shall additionally be responsible for all CMGC costs related to development and negotiation of the Guaranteed Maximum Price (GMP) following the conclusion of preconstruction services until a Construction Contract is awarded, if at all, to the CMGC.

## **1.13 Conflicts of Interest**

Proposers are directed to 23 CFR Section 636, Subpart A and, in particular, to Subsection 636.116 regarding organizational conflicts of interest. By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to the Department that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew or should have known about but, did not disclose, is determined to exist during the procurement process, the Department may, at its discretion, disqualify the Proposer.

*"It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Consultant for the purpose of securing business." Ark.Code.Ann. § 19-11-708(a).*

#### **1.14 Public Disclosure**

The Procurement Process will be conducted in accordance with the Arkansas “Freedom of Information Act of 1967,” as amended through A.C.A. § 25-19-101 et seq (FOIA). To the extent consistent with FOIA, all records related to this procurement process including, but not limited to, Proposals and any records created during the evaluation and selection process, will remain protected records until the Preconstruction Agreement has been executed except for the Department’s right to publicly disclose certain information about the Proposals, such as the name of the Proposers. All records pertaining to this Procurement Process will become public information after execution of the Preconstruction Agreement, unless such records are determined to qualify for an exemption under FOIA.

#### **1.15 Department Reservation of Rights**

The Department reserves the right to take any of the following actions at any time in its sole discretion:

1. To revise the RFP and issue addenda.
2. To modify the Procurement Process to comply with applicable Law and/or to address the best interests of the Department and the State of Arkansas, including canceling the procurement.
3. To reject any Proposal it determines is not responsive to RFP requirements.
4. To cancel the award to the successful Proposer at any time before the execution of the contract by all parties without any liability against the Department or the State of Arkansas.
5. To terminate negotiations with the successful Proposer if agreement cannot be reached on terms and conditions of the Preconstruction Agreement.
6. To seek clarification from the Proposer and consider responses as a component of selection.
7. To seek references or information regarding the general reputation of the Proposer from any source and to consider such information as a component of selection.
8. To conduct an independent investigation of any information, including prior experience, identified in the proposal by contacting project references, assessing public information, contacting independent parties or other means. The Department further reserves the right to request additional information from a Proposer during the evaluation of the proposal.
9. Where this RFP provides for Department approval, acceptance, determination or otherwise gives the Department the ability to make a decision about any matter, the Department reserves the right to make such approval, acceptance, determination, or decision in its sole and absolute discretion.
10. In the event that negotiation of the Preconstruction Agreement is unsuccessful, to reject the Proposal of the selected Proposer and begin negotiations with the next highest-ranking Proposer.
11. No contract resulting from the RFP may be assigned, sold, or transferred without the prior written consent of the Department, and no obligation incurred pursuant to this RFP and any resulting contract may be delegated without written consent of the Department.
12. Default and Remedies: Non-performance of any requirement or condition of any contract resulting from this RFP shall constitute default. Upon default, the Department shall issue a written notice of default providing a period in which the firm shall have seven (7) business days to cure said default. If the firm remains in default beyond the seven (7) days, or if the default is repeated during the term of the contract or any extension thereof, the Department may, in its sole discretion, terminate the contract(s) or remaining portions thereof and exercise any remedy provided by law.
13. Selected CMGC must be authorized to do business in the state of Arkansas. Failure to meet this requirement within thirty (30) days of selection may result in disqualification.

14. Right of Rejection: The Department reserves the right to award this contract to the firm that best meets the requirements of the RFP. The Department reserves the right to reject any or all RFPs prior to execution of the contract, with no penalty to the Department.
15. Execution of the preconstruction services agreement does not guarantee the selected firm will be awarded a construction contract.

## **2 SELECTION PROCESS**

The CMGC selection process will consist of an initial review of the Proposal submitted pursuant to Section 3 below to determine if it meets the Pass/Fail Criteria set for in Section 4.3.1. Any Proposal that fails to achieve a pass rating on any Pass/Fail Criteria or is determined non-responsive, will not be evaluated further and the Proposer will be unable to be selected as the CMGC. If a Proposal obtains a pass rating on all Pass/Fail Criteria and is determined to be initially responsive, the Proposal will be further evaluated utilizing the Technical Criteria set forth in 4.3.2. The Proposal will be scored out of 1000 points. The Department reserves the right, at the Department's sole discretion, to Short-List Proposers based solely on the Technical Criteria score. All Proposers selected to move forward in the selection process (either all responsive Proposers or all Short-Listed Proposers based on the Department's sole discretion) shall be invited to participate in a Proposer Interview. The interview process is described in Section 5. The Proposer Interview will also be scored out of 1000 points. For final selection, the Technical Criteria score and the Proposer Interview score shall each be weighted at 50% of the total score. The weighted scores for the Proposal and the Proposer Interview shall be added to create the Final Score. Award will be made to the Proposer with the highest Final Score.

## **3 PROPOSAL SUBMITTAL REQUIREMENTS**

### **3.1 Date and Time of Receipt**

The Proposal must be received no later than the time and due date specified in the Procurement Schedule. The Proposal must be enclosed in sealed boxes including electronic media necessary to provide a duplication of all items included in the paper submission. A Proposal delivered after the date/time specified in the Procurement Schedule will not be accepted and will be returned to the Proposer unopened to the address indicated on the cover of the package.

### **3.2 Submittal Address**

The Proposal must be addressed and delivered to the Department at the following location:

Alternative Project Delivery Manager  
Arkansas Department of Transportation  
P.O. Box 2261, Little Rock, AR 72203-2261  
or  
10324 Interstate 30, Little Rock, AR 72209  
[alternativedelivery@ardot.gov](mailto:alternativedelivery@ardot.gov)

It is the Proposer's sole responsibility to deliver the Proposal by either mail, courier service delivery, or hand delivery and email to the above location by the submittal due date. Hand delivery of proposals will be received at the Security Desk in the front lobby of the Central Office Complex during regular business hours Monday through Friday 8:00 am to 4:30 pm, excluding Department holidays. The Department bears no liability, and accepts no responsibility, for a Proposer failing to satisfy the submittal requirements of this RFP.

### **3.3 Proposal Format Requirements**

The Proposal must use standard black type, with no smaller than 10 pt. Times New Roman font. Lines should be single-spaced. Font sizes smaller than 10 pt. and colors other than black may be used in charts, exhibits and other illustrative and graphical presentations, provided that all the text is readily legible. All information including dimensions shall be in English.

Each page should be numbered consecutively within each section, in a consistent location at the bottom of each page. The Proposal must be printed on 8 ½ x 11-inch white paper; provided that charts, exhibits and other illustrative and graphical materials may be prepared on white 11 x 17 inch pages and submitted Z-folded and punched to fit along with the 8 ½ x 11 inch paper. Double-sided printed pages are encouraged, and each side of a double-sided page shall count as one page for numbering and page limitation purposes. While there is not an overall page limitation, page limitations do apply to individual sections as noted herein. Individual sections shall be separated by numbered dividers. Section dividers will not be counted for any page limitation.

Each Proposer must submit one original hard copy of the Proposal, with original signatures and labeled as “Original.” Additionally, each Proposer must provide one electronic copy in a single bookmarked PDF file on a USB memory device. The original Proposal must be bound and labeled with the Proposer’s name and designated as “Original”. At a minimum, reference the Project Name [Highway 62 Interchange Improvements (Fayetteville) (F)] and Job Number [040846] on the cover, and within the Cover Letter and the executive summary.

### **3.4 Proposal Organization**

The Proposal must be organized in the following order and comply with any noted page limitations identified:

Proposal	Points 1000	Maximum Pages	Additional Info Not included in Page Count
1. Cover Letter	0	1	None
2. Executive Summary	0	2	None
3. Body Sections			
Section 1 – Legal and Financial	0	No Limit	Eligible Proposer Certification Form A Form B EEO Policy Illegal Immigrant Certification Restriction of Boycott of Israel Contracts & Grants Disclosure Form
Section 2 – Organization and Key Personnel	200	1 page Organization Chart  1 page Resume for each Key Personnel	Form D for each Key Personnel
Section 3 – Proposer’s Capabilities and Experience	250	2	Form C for three projects
Section 4 – Project Understanding and Approach	300	4	
Section 5 – Risk Identification and Mitigation	50	2	

Section 6 – Project Innovations	50	4	
Section 7 – Approach to Price and Subcontracting	100	2	

### **3.5 General Content of Proposal**

Proposers should make every effort to present information clearly and concisely. Documentation that is difficult to read may be disregarded or rejected as insufficient and may lead to the Proposer being considered as non-responsive. The required Forms for the proposal are contained in Exhibit A of this RFP. The Forms are available in Word format for input by the Proposer. Proposers may only fill-out the blank items on each applicable form; no substantive alterations to these forms are allowed by the Proposer without the prior approval of the Department. It is allowable to add more rows in the Forms to document and demonstrate experience. There is no page limit for Form D-Key Personnel Project Reference Form.

#### **3.5.1 Cover Letter**

(Not Scored - 1 Page Maximum)

Provide a cover letter signed by an officer of the Proposer with the authority to contractually bind the Proposer indicating its desire to be considered for the Project. Include in the cover letter the following information, certifications, and acknowledgements in the order identified below:

1. Information: Identify the business name and address of the Proposer.
2. Information: Include in the subject line of the cover letter, "Proposal Cover Letter CMGC ARDOT Job No. 040846"
3. Information: Identify the PPC and provide the PPC's address, phone number and email address. Include this information for the PPC even if it is the same as the business information requested above.
4. Certification: "I certify that the contents of the Proposal are truthful and accurate."
5. Certification: "I certify that [insert business name] was prequalified by the Department on [insert date] pursuant to Department's Standard Specifications Edition of 2014, Section 102."
6. Certification: "I certify that no person or firm that has received compensation for assisting the department in preparing the request for proposals is included in the Proposal or will participate in any contract entered into as a result of the RFP."
7. Acknowledgement: "By submitting a response to this RFP, I acknowledge and accept Guaranteed Maximum Price development process as described in the RFP."
8. Acknowledgement: "I acknowledge that I have received and reviewed the RFP, and all Addenda to the RFP and all Department responses to Requests for Clarification identified below."
9. Information: List all RFP Addenda and RFC response matrices that were reviewed and included by the Proposer in the form of the table identified below. Expand tables by adding rows as needed (Cover letter may extend to second page if necessitated by excessive rows in this table).

<b>RFP Addendum No.</b>	<b>Issue Date</b>
1	(Add rows as needed to identify more addenda)
2	
<b>RFC Matrix No.</b>	
1	(Add rows as needed to identify more matrices)
2	



### **3.5.2 Executive Summary**

(Not Scored - 2 Pages Maximum)

Provide an executive summary (not more than two pages), written as a narrative, in a non-technical style, containing supplemental information for evaluators addressing the Proposer's Project approach, understanding of the CMGC project delivery method, and approach to risk identification/mitigation, cost estimating and scheduling.

### **3.5.3 Body Section 1 – Legal & Financial**

(Pass Fail - No Page Limitation)

For all Proposers, provide the following information in Section 1 of the Proposal:

1. Debarment/suspension/financial certification (Form A)
2. Conflict of Interest statement and disclosure (Form B)
3. A letter from a surety company that meets the requirements listed below:
  - a. The letter includes a statement that the Respondent is capable of obtaining a performance bond and payment bond for a minimum amount of \$50 million, and may not state that the Respondent has "unlimited" bonding/security capability;
  - b. Such surety company is listed in the current United States Secretary of the Treasury, Fiscal Service, Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies;
  - c. Such surety company has an A.M. Best rating level of A- or better and Financial Size Category of Class X or better, and evidence of the surety company's rating must be attached to the letter.
4. *Eligible Proposer Certification:* Provide a completed copy of the Eligible Proposer Certification
5. *EEO Policy:* Provide a copy of the firm's Equal Employment Opportunity (EEO) policy with the submittal. All parties of a joint venture shall provide the EEO policy, or be disqualified from consideration. A firm's reputation including its responsiveness to EEO and Civil Rights will be a factor in the selection.
6. *Illegal Immigrant Reporting:* Provide a copy of the current Illegal Immigrant Certification. Consultant and any subconsultants shall provide this form. Failure to provide this form will automatically disqualify Qualifications from review.
7. *Restriction of Boycott of Israel Certification:* Provide a copy of the current Restriction of Boycott of Israel Certification. Failure to provide this form will automatically disqualify Qualifications from review.
8. *Contracts & Grants Disclosure Form:* Provide a completed copy of the Contracts & Grants Disclosure Form. Failure to make any disclosure required by Governor's Executive Order (EO) 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the Department.

### **3.5.4 Body Section 2 – Organization and Key Personnel**

(250 Points Maximum –1 page Maximum for organizational chart and 1 page resume for each Key Personnel)

For all Proposers, provide the following information in the Proposal:

Organization - Proposer shall provide an organizational chart (no more than one page) showing the chain of command with lines identifying participants who are responsible for major functions to be performed and their reporting relationships. The chart must show the functional structure of the organization and include the names of the Key Personnel (and company).

Key Personnel – For each Key Personnel position, provide a one-page resume containing evidence of the requirements listed in the table below and two (2) references. In addition to the one-page resumes, Proposers shall submit Form D for each Key Personnel. Completed forms will be considered in addition to information included in the one-page resumes for the purposes of evaluating Key Personnel experience. There is no page limit for Form D. References must be owners or clients for whom the Key Personnel have performed project work in the past ten (10) years prior to the Proposal due date and must not be current or past employers of the Key Personnel. Proposers are prohibited from identifying a reference that is a current Department employee.

Key Personnel Position	Minimum Qualifications and Experience
Project Manager (PM)	Overall Project Manager for the CMGC preconstruction services and construction services. This person is expected to be directly involved in the CMGC services and have direct oversight over the construction phases if the CMGC is selected as the General Contractor for the construction of the Project. The Project Manager shall possess experience (10 years preferred) in managing the construction of projects of similar scope and complexity and shall have managed the complete construction of at least one project of similar scope and complexity. The PM is designated as the Single Point of Contact (“SPC”) throughout the Project and must be delegated with the authority to make decisions affecting any aspect of the Project. Resume must demonstrate relevant experience collaborating with project owners and stakeholders and experience identifying and mitigating risks. Registration as a Professional Engineer in the State of Arkansas is preferred.
Construction Manager (CM)	The Construction Manager is expected to be directly involved in the CMGC preconstruction services and construction services. The Construction Manager shall possess experience (10 years preferred) in managing the construction of projects of similar scope and complexity and shall have managed the complete construction of at least one project of similar scope and complexity. Resume must demonstrate relevant experience in design plan constructability reviews and experience identifying and mitigating risks. If the CMGC is selected as the General Contractor for the construction of the Project, then the CM shall be directly involved in and have full oversight of the Project construction until the Project is accepted by the Department.

Lead Cost Estimator (LCE)	The Lead Cost Estimator is expected to be involved in all aspects of the CMGC preconstruction services where price, risk, schedule, and other factors relevant to estimating/bidding are discussed. The LCE shall possess experience (10 years preferred) in estimating and bidding construction projects of similar scope and complexity
Lead Scheduler (LS)	The Lead Scheduler is expected to be involved in all aspects of the CMGC preconstruction services where price, risk, staffing, labor, schedule, and other factors relevant to schedule and resource loading are discussed. The LS shall possess experience (10 years preferred) in scheduling construction projects of similar scope and complexity. Experience with Primavera P6 shall be demonstrated in the LS resume.

Key Personnel shall be available at all times during the preconstruction and construction phases of the Project to attend meetings, workshops, conference calls and any other activities as determined by the Department. The Scope of Work in Exhibit B is provided only as an example of services to be provided and is not intended to be an exhaustive listing of all services that may be requested by the Department.

### **3.5.5 Body Section 3 – Proposer’s Capabilities and Experience** (250 Points Maximum - 3 Pages Maximum and Form C as required)

Proposer shall provide evidence of competency, capability, and capacity to complete a transportation project of similar size, scope, and complexity. Describe (not more than two pages) how the Proposer’s experience (including experience denoted on Form C) and technical capabilities are relevant to the success of this Project and to meeting the stated Project Goals (Stated in Section 1.5). Include any experience the Proposer has related to Accelerated Bridge Construction techniques. As part of this project right of way acquisition services provided by the CMGC are anticipated. The anticipated scope of work is presented in Exhibit C of this RFP. Provide description of right of way acquisition experience by Proposer and/or by right of way acquisition firm the Proposer plans to utilize for these services. As part of the CMGC preconstruction scope of work, right of way acquisition support is anticipated. Exhibit C is included in the RFP as an example of the anticipated scope of work for the right of way acquisition support services. The actual scope of work for CMGC preconstruction services, which is anticipated to include right of way acquisition support services, will be provided to the selected CMGC for pricing after selection. No cost or pricing information for any preconstruction services, including right of way acquisition support services, should be included in the submitted proposal in response to this RFP. Additionally, the Proposer shall use Form C to provide details for three (3) reference projects, completed in the last 10 years or currently near completion, that demonstrate the Proposer’s competency, capability, and capacity to complete the Project. Form C is not included in the maximum page count.

### **3.5.6 Body Section 4 – Project Understanding and Approach** (300 Points Maximum - 4 Page Maximum)

Proposer shall state (not more than four pages) their understanding of the Project and approach to addressing key issues of the Project and achieving the Project Goals. Address in detail at least the following topics:

1. Demonstrate the Proposer’s understanding of the Project Goals listed in the RFP and the approach to maximizing and attaining the Project Goals.
2. Propose a pre-construction approach and plan for coordination and collaboration with the Owner and Designer as well as a description of how Key Personnel will be utilized.

3. Propose a construction approach and sequence that optimizes value to the Project with a realistic view of known constraints. Discuss factors that would affect schedule such as outside constraints, seasonal work, materials, equipment and labor availability, etc.
4. Identify other resources and capabilities of the Proposer. Describe additional unique resources and capabilities that the Proposer's company will bring to the Project and how these unique resources and capabilities will be beneficial in achieving the Project Goals.
5. Discuss the Proposer's approach to support the Department in working with stakeholders such as regulatory agencies and third parties to achieve their goals.
6. Describe the Proposer's approach to scheduling the work on this project and how the Proposer will maintain a construction schedule that is realistic and achievable.
7. Describe the Proposer's approach to utilizing Accelerated Bridge Construction (ABC) techniques in the construction of the I-49 overpass.
8. Provide a brief description of your approach to maintaining traffic at the Hwy. 62 Interchange while the interchange improvements are constructed.
9. Describe the proposer's approach to working with the design team and independent cost estimator during the preconstruction phase of the project.

### **3.5.7 Body Section 5 – Risk Identification and Mitigation**

(50 Points Maximum - 2 Page Maximum)

Risk identification and mitigation is an important part of the Construction Manager General Contractor contracting method. It is intended for the CMGC to be involved during the preconstruction phase of the Project in identification and propose mitigations to identified risks. Provide proposer's approach to risk identification and mitigation during the Pre-Construction phase of the Project. Identify at least two (2) risks for this project and propose at least one mitigation strategy for each identified risk to eliminate or minimize the impact of the risk to the Project.

### **3.5.8 Body Section 6 - Project Innovations**

(50 Points Maximum - 4 Page Maximum)

The Construction Manager General Contractor contracting method is intended to involve the CMGC during the preconstruction phase of the Project to introduce innovations to meet or exceed the Project Goals. Identify at least two (2) innovations related to design or construction that may further improve the Department's ability to meet or exceed the Project Goals (not more than four pages). In particular, describe the potential impacts of the innovations on risk mitigation, time, safety, costs, and quality. The Propser acknowledges by submittal of its Proposal that the Department may incorporate any concept into the design of the project at the Department's sole discretion.

### **3.5.9 Body Section 7 - Approach to Price and Subcontracting**

(100 Points Maximum - 2 Pages Maximum)

To help assure that the Department is receiving a fair price for construction and to maintain public trust and confidence in the process, the CMGC is expected to be open and transparent with its pricing. Openness and transparency alone, however, do not ensure a fair and reasonable price. Describe Proposer's approach to pricing (not more than one page). Past performance on Department projects regarding costs, unit prices,

partnering, and negotiation of contracts, change orders, and/or agreements with the Department may be considered as well in the evaluation of this section of the Proposal. Address in detail at least the following topics:

1. Proposer's approach to ensure that the Department receives a fair price for construction. Include a description of the major cost components (i.e., cost drivers) for the project and Proposer's approach to obtaining a fair price for these.

**Subcontractor Plan:** the CMGC has a minimum self-performance requirement of 30 percent. Describe Proposer's approach to subcontracting (not more than one page). The CMGC will be required to solicit a minimum number of subcontractor quotes from sub-contractors and make quotes available to the Department to insure that the Department is receiving a fair price for the project. Address in detail at least the following topics:

1. Proposer's plan and approach to subcontracting work for this project. Describe the scope of work your team intends to self-perform. Describe the role subcontractors will play on Proposer's team, including during the preconstruction phase, and what benefits they will provide to Proposer's team.
2. Describe Proposer's approach to competitively soliciting subcontractor quotes, including how subcontracting packages will be developed and advertised to the subcontracting community. Describe Proposer's approach to openness and transparency in the subcontracting solicitation and selection process. If certain key subcontractors are engaged in the preconstruction phase, how will Proposer ensure they are open and transparent with their costs?
3. Describe Proposer's approach to enhancing Disadvantaged Business Enterprise (DBE) participation and Equal Employment Opportunities (EEO).

## **4 EVALUATION PROCESS**

### **4.1 General**

A submission of a Proposal in response to this RFP indicates the Proposer's acceptance of the evaluation process as detailed in this section and the recognition that subjective judgments must be made by the Selection Committee during the evaluation process and in its final selection. The Department will make an award (if at all) to the responsible and responsive Proposer that has complied with all of the requirements of this RFP and has the highest score. The Department will notify the successful Proposer and the unsuccessful Proposers.

### **4.2 Review and Evaluation of the Proposal**

The Proposer must submit all information requested in the RFP in accordance with the criteria provided in Section 3. The information will be evaluated in accordance with the Evaluation Scoring Criteria (ESC) for pass/fail evaluation (Pass/Fail Criteria) listed in Section 4.3.1 and for the technical evaluation (Technical Criteria) listed in Section 4.3.2.

### **4.3 Evaluation Scoring Criteria (ESC) for the Proposal**

The ESC is comprised of Pass/Fail Criteria and Technical Criteria. A Proposal must obtain a "pass" on all Pass/Fail items in order for such Proposal to be considered responsive and evaluated under the Technical Criteria.

#### **4.3.1 Pass/Fail Criteria**

The following are the Pass/Fail Criteria:

1. The Proposal contains all material RFP requirements set forth herein, subject to the Department's determination (in its sole discretion) to disregard minor informalities, irregularities or apparent clerical

mistakes.

2. Proposer has provided a cover letter meeting the requirements of Section 3.5.1
3. Proposer has provided a completed Eligible Proposer Certification.
4. Proposer has provided Form A certifying that information regarding any current event of disqualification, removal, debarment or suspension, or an event in the past five (5) years prior to the Proposal due date has been disclosed, in accordance with Section 3.5.3.1. (See Form A)
5. Proposer has provided Form B certification and disclosure of conflicts of interests. (See Form B)
6. Proposer has provided a letter from a surety company that meets the requirements of Section 3.5.3.3.
7. Proposer has provided a copy of the firm's EEO policy.
8. Proposer has provided a current copy of the Illegal Immigrant Certification.
9. Proposer has provided a current copy of the Restriction of Boycott of Israel Certification.
10. Proposer has provided a copy of the Contract and Grant Disclosure and Certification form.

Should a Proposal obtain a pass rating on all of the Pass/Fail Criteria and be determined to be initially responsive, the Proposal will be further evaluated utilizing the Technical Criteria. Any Proposal that fails to achieve a pass rating on any Pass/Fail Criteria or is determined non-responsive will not be evaluated further and the Proposer will be unable to be selected as the CMGC.

#### **4.3.2 Qualitative Technical Score**

Once a Proposal has been determined to meet the Pass/Fail criteria, the Department's Selection Committee will review each proposal identifying significant and minor strengths and weaknesses of the Proposal. This review may also include a comparative analysis of all Proposals received. Determination of Strengths and Weaknesses will be made at the sole discretion of Selection Committee members. Strengths and Weaknesses are considered on their own merits when determining an adjectival rating and point score and do not "offset" each other. Strengths and Weaknesses are generally defined as follows:

1. Strengths – That part of the Proposal which ultimately represents a clear benefit, advantage or value added to the Project and is expected to increase the Proposer's ability to meet or exceed the Project Goals. A minor strength has a slight positive influence on the Proposer's ability to meet or exceed the Project Goals, while a significant strength results when a Proposer clearly demonstrates a benefit, advantage or value added that has a considerable positive influence on the Proposer's ability to meet or exceed the Project Goals.
2. Weaknesses – That part of the Proposal which detracts from the Proposer's ability to meet the Project Goals or may result in an inefficient or ineffective performance. A minor weakness has a slight negative influence on the Proposer's ability to meet the Project Goals, while a significant weakness has a considerable negative influence on the Proposer's ability to meet the Project Goals.

Based on the identified strengths and weaknesses, the Selection Committee will select an objective rating. The following rating system will be used in determining the value for each Scoring Element of the proposal. In determining each rating, the Selection Committee may also take into account other relevant factors including, but not limited to, engineering merit of the proposed approach, innovation or lack thereof, approach to quality and timeliness of delivery, and record of past performance. These ratings may also involve a comparative analysis of all proposals submitted.

The selection panel will utilize a 0-5 rating system for the written proposal. The rating will contain a "high" and "low" weighting within the rating categories of Average and higher to allow the panel to select, for example, a 3 high or a 3 low.

Rating	Criteria for Rating
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5 Excellent	<p>The Proposer demonstrates a complete understanding of the subject and approaches it with unique, innovative and/or well proven methods. The Proposer's approach is considered to significantly exceed the listed requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project), and provides a consistently outstanding level of quality. There are clear advantages, benefits or value added to the proposed approach. There are no identified weaknesses for the subject.</p> <p>When considering proposer qualifications: The Proposer's qualifications are above excellent. The Proposer demonstrates through verifiable sources past relevant experience for personnel assigned to the Project with respect to their proposed roles at an excellent rating.</p>
4 Above Average	<p>The Proposer demonstrates a good understanding of the subject and an approach that meets the stated requirements and objectives of this Project. The Proposer's approach is considered to mostly exceed the listed requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project), and provides an above average level of quality. There are few to no identified weaknesses or deficiencies for the subject. There are only minor/potential weaknesses that can be readily corrected.</p> <p>When considering proposer qualifications: The Proposer's qualifications are above average. The Proposer demonstrates through verifiable sources past relevant experience for personnel assigned to the Project with respect to their proposed roles at an above-average rating.</p>
3 Average	<p>The Proposer demonstrates a general understanding of the subject and an approach containing some weaknesses/deficiencies regarding the stated requirements and objectives of this Project. The Proposer's approach is considered to consistently meet the RFP requirements/objectives and offers an acceptable level of quality. There is more perceived advantage, benefit or value added than perceived weakness or deficiencies. Weaknesses are minor and may be readily corrected.</p> <p>When considering proposer qualifications: The Proposer demonstrates through verifiable sources past relevant experience for personnel assigned to the Project with respect to their proposed roles and received an acceptable rating.</p>
2 Below Average	<p>The Proposer demonstrates a vague understanding of the subject and an approach containing significant weaknesses/deficiencies regarding the stated requirements and objectives of the Project. The Proposer's approach is considered to marginally meet the stated requirements/objectives and has a below average level of quality. There is higher than normal risk that the Proposer may fail to satisfy the requirements of the Contract and weaknesses are higher than normal.</p> <p>When considering proposer qualifications: The Proposer's qualifications raise questions about the Proposer's ability to successfully complete the Project. Verifiable sources provide a neutral to unfavorable rating.</p>
1 Poor	<p>The Proposer demonstrates insufficient understanding of the subject and an approach that fails to meet the stated requirements and objectives of the Project. The Proposer's approach that has a very good probability of failing to meet most of the stated requirements and objectives, provides poor quality, is a very high risk, and/or will fail to meet most of the requirements. The Proposer's qualifications do not indicate the likelihood that the work will be completed successfully and contains several weaknesses that may be considered major or extensive.</p> <p>When considering proposers qualifications: The Proposer's qualifications do not indicate the likelihood that the work will be completed successfully. Verifiable sources provide an unfavorable rating.</p>
0 Unacceptable	<p>The Proposer has demonstrated an approach which is considered a failure to meet the stated requirements/objectives, provides unacceptable quality, demonstrates no reasonable likelihood of meeting the requirements of the Solicitation, and/or contains weaknesses.</p> <p>When considering proposers qualifications: The Proposer's qualifications indicate that the work will be unsuccessful. Verifiable sources provide an unfavorable rating.</p>

A score will be calculated for the Qualitative Technical Proposal by multiplying the percentage of maximum

rating by the points available (1000 possible points).

#### **4.4 Department Request for Clarification**

Proposers will provide accurate and complete information to the Department. If information is not complete, the Department will either declare the Proposal non-responsive or notify the Proposer, that the Department may allow the Proposer to participate further in the procurement if all required information is provided within the timeframe established by the Department. The Department may waive irregularities in the form of the Proposal that do not alter the quality or quantity of the information provided.

The Department may, at its sole discretion, request clarifications and/or supplemental information from Proposers during the Proposal evaluation process. All responses must be in writing and submitted by email. Responses must be limited to answering the specific information requested by the Department. Proposers' responses must be submitted to the Department within three business days of receipt of the request from the Department except as otherwise specified in writing by the Department.

### **5 PROPOSER INTERVIEW**

Proposers selected through the Technical Criteria score to move forward in the Selection Process will be required to attend a technical interview. The team may bring any material that may assist in evaluating the team's qualifications. Each team will be required to attend the interview with the following Key Personnel: Project Manager, Construction Manager, Lead Cost Estimator, and Lead Scheduler. The presentation, case study exercises, and answer period will last approximately one (1) hour. The format of the interview will be as follows:

1. Introductions & Presentation from Interviewees: 10 minutes (200 Points Maximum)
  - a. Introduction of Key Personnel
  - b. Project Understanding & Approach
  - c. Risks Identified & Proposed Mitigation Plan
2. Presentation of Proposed Innovation: 15 minutes (400 Points Maximum)
  - a. 10 minutes to present Proposed Innovation
  - b. 5 minutes for questions from selection panel
  - c. Note: The Proposer will be informed by letter of which innovation the selection panel would like to see presented during the Proposer Interview.
3. Case Study Exercise: 15 minutes (250 Points Maximum)
  - a. 10 minutes to work as a team on the case study.
  - b. 5 minutes to present your solutions and findings to the panel.
  - c. Note: The selection panel will be in the room watching the team work together and collaborate. You may call on the Owner (part of the selection panel) for more information as needed, but this will be included in your 10 minutes.
4. Questions and Answers (Q&A): 15 minutes (150 Points Maximum)
5. Closing: 5 minutes

The rating system in Section 4.3.2 will be used to rate the Proposer's technical interview. Proposers will be evaluated on their ability to work as a team with five key selection criteria including:

- a. Team technical expertise



- b. Team collaboration and cohesiveness
- c. Ability to problem solve
- d. Presentation of solutions
- e. Ability to utilize the skills of all team members

A score will be calculated for the technical interview by multiplying the percentage of maximum rating by the points available (1000 possible points).

## **6 NEGOTIATION AND AWARD**

### **6.1 Preconstruction Services Agreement**

#### **6.1.1 Fee Development and Negotiation**

The successful Proposer will prepare a ("PreCon Cost Proposal") for preconstruction services identified in the Preconstruction Scope which may be adjusted by the Department's Project Manager during negotiations. The Preconstruction Cost Proposal shall be based on negotiated identified unit rates for Key Personnel and support staff that will participate on the Project. Terms of the PreCon Cost Proposal must be valid for the length of the Project. The successful Proposer must include a total cost of preconstruction services, along with the following:

1. A breakout of the hours by task for each employee.
2. Identification of anticipated direct expenses.
3. Identification of any assumptions made while developing this cost proposal.
4. Identification of any cost information related to additional services or tasks. This should be included in the cost proposal, but clearly identify it as additional costs and not made part of the total project cost.

#### **6.1.2 Form of CMGC Preconstruction Agreement**

Upon approval of the Preconstruction Cost Proposal, the CMGC will be required to execute the Preconstruction Agreement and perform the Preconstruction Scope of Work. The Preconstruction Agreement will be generally in the form of The Department's Professional Services Contract. An example of a Professional Services Contract is available at <http://www.arkansashighways.com/contracts/cmgc.aspx>. Much of the language reflected in the contract is required by statute. If there are exceptions to any of the terms, conditions or language in the example contract, the successful Proposer must negotiate those exceptions with the Department prior to submitting a Preconstruction Cost Proposal, and the Department makes no guarantee that exceptions will be approved.

#### **6.1.3 Additional Preconstruction Agreement Terms and Conditions:**

1. The Proposer's organization, including all Key Personnel identified in the Proposal, must remain unchanged for the duration of the preconstruction and construction phases for the Project unless approved in writing by the Department.
2. If the Department and the CMGC fail to reach agreement on the GMP, the Department may terminate the Preconstruction Agreement without penalty or payment (except payment for previously performed pre- construction services) and procure the construction of the Project by other means.
3. Department reserves the right to unilaterally terminate the Preconstruction Agreement in the event that the no- build alternative is selected.
4. The Department does not make regular payments on Professional Services Contracts based upon the passage of time; the Department only pays for services performed or work delivered after it is accomplished.

Reimbursements for travel and subsistence expenses actually and necessarily incurred by the successful Proposer, as a result of the Preconstruction Agreement, will not exceed the amounts provided in the current ARDOT Travel Regulations. Reimbursements will not be allowed for travel and subsistence expenses incurred outside of Arkansas, unless the successful Proposer has received the Department's written approval for out-of-state travel. Arkansas will be considered the home base for determining whether travel is out-of-state.

## **6.2 CMGC Guaranteed Maximum Price Development and Agreement**

The CMGC, ICE, and the Department shall work collaboratively as a team to maximize the scope, value, and quality of the Project during the performance of the Pre-Construction Work. The Preconstruction phase of the project will generally follow the outline as described in Exhibit E of this RFP.

Following the conclusion of preconstruction services, the CMGC shall have an opportunity to move to the construction phase upon reaching agreement with the Department on a construction bid called the Guaranteed Maximum Price (GMP). Development of the GMP shall consist of two phases.

During the initial phase, the CMGC shall develop costs for each bid item identified by the Department to be delivered during the course of the Project ('Base Construction Costs'). The Base Construction Costs shall include only those allowable costs identified in Exhibit D. The Department will evaluate the Base Construction Costs which evaluation will include comparison to the ICE cost estimate and the previously submitted OPCCs. The CMGC shall cooperate and negotiate in good faith with the Department through open and transparent pricing during development of the Base Construction Costs.

Upon Department approval of the Base Construction Costs, the CMGC shall develop the Guaranteed Maximum Price by applying a Markup to all bid items comprising the Base Construction Costs. The Markup shall be considered sufficient to account for the portion of home office overhead (G&A: General and Administrative Costs) allocated to the Project and profit where home office overhead (G&A) is defined as the cost of activities that are necessary to the overall operation of the CMGC's business allocated to all of the CMGC's ongoing projects, including insurance that is maintained by the CMGC as a general cost of doing business.

In accordance with Arkansas Code 19-11-1407(c) the Department may award a construction contract to the CMGC if the GMP does not exceed the cost estimate provided by the Department or independent third party by more than 10 percent.

Upon Department approval of the Guaranteed Maximum Price, the Department may award a construction contract for the Project to the CMGC. The Construction Contract shall be in accordance with the Department's Standard Specifications Edition of 2014.

Additionally, the Department will include the following key terms and conditions in the Construction Contract:

1. The Department may deny a change order or reduce the amount of a change order requested by the CMGC to the extent the events giving rise to the change order could have reasonably been identified and mitigated through the efforts of the CMGC during preconstruction services.
2. The Department may identify certain components of the Project to be delivered as a Lump Sum. The CMGC will not receive additional compensation for material over-runs on components delivered as a Lump Sum.

## **7 PROTESTS**

This section sets forth the exclusive Protest remedies available with respect to the RFP. By the submission of the Proposal, the Proposer expressly recognizes the limitation on its rights to file a Protest to only those rights and provisions contained herein. The Proposer expressly waives all other rights, remedies, and agrees that this Section 7 sets forth all rights and remedies of the Proposer regarding Protests. The provisions included

in this RFP are provided in consideration of such waiver and agreement by the Proposer. If a Proposer disputes, or does not follow the exclusive protest remedies set forth in the RFP, the Proposer must indemnify, defend, and hold harmless the Department, its directors, officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such Proposer action. The submission of a Proposal by a Proposer is deemed to include the Proposer's irrevocable and unconditional agreement with respect to such indemnification obligation.

### **7.1 Written Protests Only**

A Protest from a Proposer must be submitted to the Department in writing and contain all information described below in Section 7.2. The written Protest must be mailed to the following address:

Arkansas Department of Transportation  
10324 Interstate 30  
Attn:  
Assistant Chief of Administration  
Little Rock, AR 72209

Any Protest not received in writing by the Protest Official within seven (7) days of the action on which the Protest is based will be considered null and void and will not be considered for investigation or resolution. In addition, any Protest may be filed only after the respective Proposer has first discussed the nature and basis of the Protest with the Department's Project Manager in an effort to resolve the matter through discussion.

The Protest Official may, in his discretion, discuss the written Protest with the respective Proposer prior to issuance of the Protest Official's written decision. The Proposer shall possess, and maintain throughout the Protest process, the burden of proof regarding the Protest by clear and convincing evidence. No hearing will be assembled on the Protest and the Protest Official will resolve the Protest in a written decision issued to the protesting Proposer. The Proposer may appeal the decision of the Protest Official by filing a written appeal as described in Section 7.4.

It is the Proposer's sole responsibility to deliver the Protest to the Protest Official at the location noted and to obtain a written receipt appropriate to the means of delivery at the time of delivery. The Department bears no liability, and accepts no responsibility, for a Proposer not meeting the appropriate deadline(s) for any such Protest or appeal.

### **7.2 Protest Contents**

A Protest must include the following:

1. The name and address of the Proposer;
2. The Project name and Project number (040846);
3. A detailed statement of the nature of the Protest;
4. All factual and legal documentation in sufficient detail to establish the merits of the Protest. Any Protest information and documentation provided under oath could result in a penalty of perjury, should the information be proven to be inaccurate, whether intentional or unintentional.

The Proposer must establish a clear violation of a specific Law or regulation, or impropriety within the Procurement Process. The Protest Official will not be obligated to postpone the public announcement of the CMGC in order to allow the respective Proposer an opportunity to file or correct a Protest or appeal, unless otherwise required by Law.

### **7.3 Protest Process**

Upon receipt, the Protest Official will promptly make a determination, in writing, regarding the validity of the Protest and whether or not the Procurement Process should be delayed or the Department should reconsider the selection of the CMGC. If the Department determines that a delay in the Procurement Process is appropriate, all Proposers will be notified of the delay.

The Proposer agrees that if an appeal of the Protest Official's decision is not submitted within seven (7) days of the Protest Official's written decision, the decision of the Protest Official will be deemed to be final action and non-appealable. Any appeal within seven (7) days will be handled as described in Section 7.4 below.

#### **7.4 Right of Appeal**

If the Proposer disagrees with the written decision of the Protest Official, the Proposer may appeal the decision by submitting a written appeal to the Department Deputy Director & Chief Operating Officer within seven (7) calendar days after receipt of the decision of the Protest Official. The written Appeal must be mailed to the following address:

Arkansas Department of Transportation  
10324 Interstate 30  
Attn:  
Deputy Director & Chief Operating Officer  
Little Rock, AR 72209

The Deputy Director & Chief Operating Officer will provide a final decision on the Protest, either concurring with the decision of the Protest Official or amending the decision and will notify the respective Proposer in writing in a prompt manner of its decision.

If the Protest is not resolved after the appeal to the Deputy Director & Chief Operating Officer, the Proposer may continue the Protest only by appeal of the final decision in the same manner as provided in A.C.A. §25-15-207 for declaratory judgment. The Department's decision after review of the appeal by the Deputy Director & Chief Operating Officer will constitute final action by the Department. If the Proposer appeals the final action by the Department, the Department may, in its sole discretion, proceed with the Procurement Process, unless otherwise ordered by a judicial authority.

### **8 DBE AND EEO PROGRAM REQUIREMENTS**

#### **8.1 DBE Requirements**

It is the policy of the Department that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds. Consistent with this policy, the Department will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any U.S. Department of Transportation (DOT)-assisted contract because of sex, race, religion, or national origin. ARDOT has established a DBE program in accordance with regulations of the DOT, 49 CFR Part 26. In this regard, the CMGC will take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform the contract.

The Department will determine a DBE goal for this project. The DBE goal, which will be identified when the design of the project is nearing completion, will apply to the construction of the project. There will not be a DBE goal for the Preconstruction Agreement.

The Department participates in the "Arkansas Unified Disadvantaged Business Enterprise Certification Program," which provides a "one-stop" statewide certification process for disadvantaged business owners. Under the program, firms that provide primarily transit or highway construction services must submit applications for DBE designation to the Department. The Department then reviews all such applications and

makes an eligibility determination following an on-site review at the firm's headquarters and a project site review. Additional details regarding the program, including a DBE certification application and a directory of all firms authorized as DBEs under the program are available at <http://www.arkansashighways.com/dbe/dbe.aspx>.

## **8.2 Equal Employment Opportunity**

Equal employment opportunity requirements to not discriminate and to take Affirmative Action to assure equal employment opportunity apply to the CMGC. The specific Affirmative Action requirements for the CMGC Agreement are imposed pursuant to 41 CFR Part 60, 23 CFR Part 230, 23 CFR Part 633, FHWA Form 1273, the Americans with Disabilities Act of 1990 as amended in 2008 and 28 CFR Part 36.

By submission of a Proposal, a Proposer agrees to the following, if selected as the CMGC:

1. To comply with all Laws and to not discriminate against any person because of race religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, the programs or activities.
2. To include in all solicitations or advertisements for employees, the phrase "Equal Opportunity Employer."
3. To comply with the reporting requirements established in the RFP and any Law.
4. To include those provisions in every subcontract or purchase order so that all parties, Subcontractor or vendor, regardless of tier, are bound by such requirement.

## **8.3 Notice of Nondiscrimination**

The Department complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to Joanna P. McFadden, Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: [joanna.mcfadden@ardot.gov](mailto:joanna.mcfadden@ardot.gov).

Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

**EXHIBIT A**  
**REQUIRED FORMS**

**Form A**  
**DEBARMENT/SUSPENSION/FINANCIAL CERTIFICATION**

**Name of Proposer:** \_\_\_\_\_

1) The Proposer is not currently debarred, suspended, disqualified, or is currently removed from bidding or performing work, voluntarily or involuntarily, for the State of Arkansas, the federal government or any state or local government. If the Proposer takes exception with any portion of this statement, describe the circumstances below:

[Add exception]

2) The Proposer has not been debarred, suspended, disqualified, or removed from bidding or performing work, voluntarily or involuntarily, for the State of Arkansas, the federal government or any state or local government during the past (5) years. If the Proposer takes exception with any portion of this statement, describe the circumstances below:

[Add exception]

3) The Proposer is not subject to any proposed or pending debarment, suspension, or similar actions. If the Proposer takes exception with any portion of this statement, describe the circumstances below:

[Add exception]

4) The Proposer has not declared bankruptcy, been placed in receivership, or had any work completed by a surety.

[Add exception]

**Proposer Certification:**

I hereby certify that, to the best of my knowledge, the above statements are valid, true, and represent a complete and accurate understanding of the condition of the Proposer. It is understood and agreed upon that any false acknowledgement, misrepresentation, or inaccuracy may be cause for disqualification of the Proposer from the Procurement Process whether discovered during the Procurement Process or after the CMGC Contractor selection has been completed.

Proposer's Authorized Representative:

Attested By (Printed Name): \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

## Form B

### CONFLICT OF INTEREST STATEMENT

**Name of Proposer:** \_\_\_\_\_

Attention is directed to 23 CFR Part 636 Subpart A, and in particular, to Subsection 636.116 regarding organizational Conflicts of Interest. Section 636.103 defines "organizational conflict of interest" as follows:

“Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”

Proposers are advised that in accordance with Department policy, firms and/or individuals that have assisted with the Project procurement and document preparation or who are currently providing Independent Cost Estimating (ICE) services for the Project will not be allowed to participate in any Proposer organization.

This Conflict of Interest Statement must identify and document information relating to past, existing, anticipated, or potential interest(s) of the Proposer, or subcontractor firms, their respective chief executives, directors, and Key Personnel that may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

Proposer must disclose any past, present, or planned contractual or employment relationships with any Department employee, officer, or employee; or any member firm or employee of the ICE Consultant and any other circumstances that might create a financial interest in the Proposer if the Proposer is awarded a contract for preconstruction and / or construction services by the Department. The Proposer must also disclose whether it has an ownership interest of 10% or more of the stock of any other Proposer and whether it has any overlapping directors with any other Proposer. The Proposer must also disclose any contractual relationships with any other Proposer in the nature of a joint venture, as well as relationships wherein the Proposer is a contractor, consultant, subcontractor, or subconsultant to another Proposer. The foregoing is provided by way of example, and does not constitute a limitation on the disclosure obligations.

#### Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, that there **ARE** , or **ARE NOT** , any Conflicts of Interest for the Proposer. If selecting the affirmative response, the undersigned hereby affirms that all known Conflicts of Interest are identified as required in the table below in their totality as presented, represent the complete and factual representation of any involvement or conflict of any/all firms regarding this Project and that no other involvement or conflict exists, or is anticipated to exist.

Conflict Explanation and Mitigation	
Conflict No. 1	[Explain the nature of the conflict and describe proposed approach to mitigate conflict. Expand table by adding rows as needed]

Proposer’s Authorized Representative:

Attested By (Printed Name): \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_



## Form C

### PROPOSER PROJECT REFERENCE

<b>Name of Proposer:</b>	
Past project: (Provide information on projects within the time period identified in the RFP for reference projects)	
Describe the reference project including the type of work performed	
Describe how the reference project provides relevant experience for the Project	
List any awards, citations and / or Commendations received for the reference project	
Name of Client:	
Client Address:	
Contact Name:	
Contact Address:	
Start date:	
End date:	
Project value:	

**Form D**  
**KEY PERSONNEL PROJECT REFERENCE**

<b>Key Personnel Position</b>	<b>[Insert title here]</b>	
<b>Project Experience #1</b>	Project Name	
	Project Description	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Explanation regarding the relevance of this experience to the minimum qualifications for the Key Personnel position	
<b>Project Experience #2</b>	Project Name	
	Project Description`	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Explanation regarding the relevance of this experience to the minimum qualifications for the Key Personnel position	
	<i>[Copy and paste as needed to demonstrate additional project experience]</i>	
<b>Summary of Experience</b>	Total number of years' experience in a position relevant to experience required for the Key Personnel Position	<i>[Insert cumulative total years of experience as demonstrated by the above experience that are applicable to the Key Personnel position.]</i>

THIS CERTIFICATION MUST BE COMPLETED, SIGNED, AND RETURNED FOR THIS PROPOSAL TO BE CONSIDERED.

### **ELIGIBLE RESPONDENT CERTIFICATION**

Authority: I, the undersigned, affirm that this Proposal is made on behalf of the below-named individual/company, for whom I have legal authority to commit to the terms and conditions set forth in the RFP and this response, to which I/we agree to be bound if this qualifications is found acceptable by the Department; and that this qualifications is made without any collusion or coercion on the part of any person, firm, corporation or other entity; and

### **Services**

I, the undersigned, affirm and certify for the individual/company, and its employees that they are qualified, experienced and competent to perform and shall be evaluated for the individual services in this qualifications.

### **Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters**

I, the undersigned, represent and warrant for the individual/company, and its employees and certify they:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- Have not within a three-year period preceding this RFP been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are not presently indicted for or otherwise criminally charged or facing civil action by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph two (2) of this Certification;
- Have not within a one-year period preceding this application/Proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

### **Fair Labor Standards Act**

I, the undersigned, represent, warrant and acknowledge for the individual/company, its employees, and its subcontractors, the understanding that restrictions placed on the employment of labor or on the scale of pay for the work on a contract will be the requirements of the Fair Labor Standards Act (Federal Wage-Hour Law) of 1938, 28 United States Code (U.S.C.) §201 et seq., and other applicable labor laws.

**Applicability 31 U.S.C. §3801 et seq.**

I, the undersigned, executing this Certification further represent, warrant and affirm the truthfulness and accuracy of the contents of the statements submitted on or with this Certification and understand that the provisions of 31 U.S.C. §3801 et seq. are applicable thereto.

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Representative \_\_\_\_\_

Title \_\_\_\_\_

Phone \_\_\_\_\_

Email Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## ILLEGAL IMMIGRANT CERTIFICATION

Pursuant to Arkansas Code Annotated § 19-11-105, Consultant(s) shall certify that they do not employ or contract with illegal immigrants.

By signing below, the Firm agrees and certifies that they do not employ illegal immigrants and will not employ illegal immigrants during the remaining aggregate term of the contract.

Contract	
Firm Name	
Description	CMGC Contract

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Note: This document is required for Prime Consultants and Subconsultants

## RESTRICTION OF BOYCOTT OF ISRAEL CERTIFICATION

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract valued at \$1,000 or greater with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

By signing below, the Firm agrees and certifies that they do not boycott Israel and will not boycott Israel during the remaining aggregate term of the contract.

If a company does boycott Israel, see Arkansas Code Annotated § 25-1-503.

Contract	
Firm Name	
Description of product or service	CMGC Contract

Consultant Signature: \_\_\_\_\_ Date:\_\_\_\_\_

Note: This document is only required for Prime Consultants

## CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR:

SUBCONTRACTOR NAME:

☐ Yes ☐ No

IS THIS FOR:

TAXPAYER ID NAME:

☐ Goods?

☐ Services?

☐ Both?

YOUR LAST NAME:

FIRST NAME:

M.I.:

ADDRESS:

CITY:

STATE:

ZIP CODE:

---

COUNTRY:

**AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:**

### F O R I N D I V I D U A L S \*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and how are they related to you? [i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]	
	Current	Former		From MM/Y Y	To MM/Y Y	Person's Name(s)	Relation
General Assembly	<input type="checkbox"/>	<input type="checkbox"/>					
Constitutional Officer	<input type="checkbox"/>	<input type="checkbox"/>					
State Board or Commission Member	<input type="checkbox"/>	<input type="checkbox"/>					
State Employee	<input type="checkbox"/>	<input type="checkbox"/>					

☐ None of the above applies

### F O R A N E N T I T Y ( B U S I N E S S ) \*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/commission, data entry, etc.]	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/Y Y	To MM/Y Y	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly	<input type="checkbox"/>	<input type="checkbox"/>						
Constitutional Officer	<input type="checkbox"/>	<input type="checkbox"/>						
State Board or Commission Member	<input type="checkbox"/>	<input type="checkbox"/>						
State Employee	<input type="checkbox"/>	<input type="checkbox"/>						

☐ None of the above applies

## Contract and Grant Disclosure and Certification Form

**Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.**

**As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:**

- a. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

- b. I will include the following language as a part of any agreement with a subcontractor:

*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.*

- c. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

**I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.**

Signature\_\_\_\_\_Title\_\_\_\_\_Date\_\_\_\_\_

Vendor Contact Person\_\_\_\_\_Title\_\_\_\_\_Phone No.\_\_\_\_\_

Agency use only

Agency Number\_\_\_\_\_Agency Name\_\_\_\_\_Agency Contact Person\_\_\_\_\_Contact Phone No.\_\_\_\_\_Contract or Grant No.\_\_\_\_\_

Note: This document is required for Prime Consultants and Subconsultants



## **EXHIBIT B**

### **CMGC PRECONSTRUCTION SCOPE OF WORK**

The CMGC will be expected to provide the Project team with construction expertise and technical experience, to assist in Project decision-making and ensure the technical, social and economic challenges are addressed, and provide input on items affecting construction schedule and costs.

The CMGC shall consult with the Project team during the design phase in order to develop, implement and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all.

As part of the design team, the CMGC will provide input on schedule, phasing, constructability, materials availability, cost, etc. throughout the design phase of the Project. The CMGC tasks during the design phase include:

1. Provide a Project Manager, other Key Personnel and associated staff to consult with, advise, assist, and provide recommendations to the Department and the design team on all aspects of the planning, design, and proposed construction, as requested by the Department.
  - a. Attend an initial Project workshop.
  - b. Participate in a Value Engineering workshop if applicable to the Project.
  - c. Participate in design coordination meetings with the Department. Design coordination meetings are anticipated to be held bi-weekly, or as directed by the Department. Key personnel designated shall be made available for these meetings.
  - d. Formal design milestone review meetings will take place at milestones as determined by the Department but will generally occur at the following approximate design development milestones: 30%, 60% and 90%. The first milestone review meeting will cover 30% plan development. For each milestone review meeting, provide the following services:
    - i. Participate in formal constructability, material, equipment and labor availability reviews. These formal reviews will focus on identifying revisions to improve clarity for bidding, identifying potential design revisions that would reduce construction costs, and identifying elements to improve the time performance of the Project.
    - ii. Participate in formal risk analysis workshops with the Department. The focus of the risk analysis workshops will be to identify potential risks and to assign cost and schedule impacts to each risk in order to better define pricing and contingency. The CMGC shall also identify mitigation strategies for the identified risks.
    - iii. Provide progressively refined Opinion of Probable Construction Cost estimates (OPCC). For each OPCC develop a cost model and provide the Department with a written narrative that identifies the means, methods, assumptions, and risks that were used to price the work. Provide open-book examination of estimating model by the Department.
    - iv. Participate in price reconciliation meetings to reconcile components of the price that deviates from that of the ICE more than a stipulated amount. During price reconciliation meetings, the Department may request that the CMGC share the cost model in an over-the-shoulder environment with them to more fully understand how the proposed pricing was derived and to help reconcile differences. During these

meetings, any sharing of or discussions about the CMGC's cost model will be limited to the Department's Project Manager or designated representative, key estimating staff, and possibly the ICE. At the conclusion of each meeting all cost model data presented by the CMGC will remain with the CMGC and remain their property. The CMGC is responsible for preparing and updating the cost model. The following information is typical of what is included in a CMGC cost model:

- Unit prices and quantity take-offs.
  - Material costs, equipment costs, labor costs, hourly labor rates, crew sizes, shifts per day, hours per shifts. Labor rates shall include employee benefits, payroll taxes and other payroll burdens.
  - Risk assumptions and assignment of risks.
  - Production rates, transportation, and other facilities and services necessary for the proper execution of the work.
  - Copies of quotations from subcontractors and suppliers.
  - Field indirect costs, bonds, taxes and insurance.
- v. Provide written reports and recommendations of the conceptual drawings being prepared by ARDOT, including conflicts and/or deficiencies noted.
  - vi. Prepare and submit a resource and cost loaded Critical Path Method (CPM) schedule that supports each OPCC. Primavera P6 should be used to develop the CPM. The schedule shall be developed in a manner as directed by the Department.
- e. Continually provide informal oversight and constructability reviews with the Department on various specific elements of the Project and provide recommendations, including providing input on staging, sequencing, equipment storage, detour routes, traffic control, storm water management, accelerated bridge construction techniques, evaluation of bridge and retaining wall types, and materials that may be cost-effectively recycled during construction.
  - f. Identify any long lead items that may cause schedule impacts.
  - g. Prior to the development of the GMP, prepare a detailed baseline resource and cost loaded CPM schedule to serve as the Project Baseline Schedule, which identifies all activities during construction. In addition to the CPM Schedule, submit a finalized budget and schedule control management plan to ensure completion of construction within budget and in accordance with the Project Baseline Schedule.
  - h. Develop and formulate a Subcontracting Plan to integrate subcontractors as needed to accomplish all construction work. Identify the proposed plan to meet DBE contract goals for the overall Project.
  - i. Develop, propose, and track innovations for Project construction. Document and track cost savings and schedule impacts associated with innovations in a written report to the Department.

If the Construction Manager is selected as the General Contractor, the Project Manager and other Key Personnel shall continue to assist the Department in ensuring the Project is delivered on schedule and on budget. The Department expects the Construction Manager to continue to maintain a spirit of cooperation and open communication during the construction phase of the Project to ensure that all Project goals are achieved.

**EXHIBIT C**  
**RIGHT OF WAY ACQUISITION**  
**PROPOSED WORK PLAN**

**Purpose:** The purpose of this RFP is to secure professional services for the right of way acquisition of properties as part of the CMGC pre-construction services for Job 040846 in accordance with Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), Federal and State laws and regulations, and the Department Right of Way policies and procedures. The general scope for this right of way acquisition work includes, but is not limited to one or more of the following services:

1. Administrative Services
2. Title Services and Closing
3. Appraisal - Initial Appraisal Services and Appraisal Updates
4. Appraisal Review - Initial Appraisal Review and Appraisal Review Updates
5. Negotiations, Waiver Valuation, and Waiver Valuation Review
6. Relocation Assistance Services
7. Property Management Functions

**Background:** It is necessary for the Department to provide timely right of way acquisition services for this project in order to proceed with construction. The professional services to be provided by the consultant will support the Department's Right of Way Acquisition Program by providing the Department with special expertise or services, as needed, in one or more of the following areas of responsibility:

**Consultant Responsibilities:** The Consultant agrees to administer professional services, as needed, for right of way acquisition responsibilities for one or more of the following areas:

1. **Administrative Services:** The Consultant shall provide administrative services as described below in conjunction with any of the individual phase services as assigned in the task order. Costs associated with these services shall be included in the Unit Price per Tract for the individual phases as outlined in Attachment B - Cost Proposal.
  - 1.1. Provide bi-monthly, or as required, coordination reports to the Department.
  - 1.2. Conduct coordination meetings on an as needed basis. These meetings shall include the Consultant, the Department and others, as appropriate. The Consultant shall schedule these meetings with the Department concurrence, and compile and distribute meeting minutes, as required.
  - 1.3. Maintain project records including, but not limited to, correspondence and documentation of contacts with property owners.

- 1.4. Document expenses related to salaries, travel, employee benefits, telephone, equipment, supplies, etc.
- 1.5. Prepare invoices for payment utilizing the Department's standard invoicing procedures.

## **2. Title and Closing Services:**

### **2.1. Title Services includes:**

- 2.1.1. Furnish title work, prepare detailed title certificates and maintain supporting documents.
- 2.1.2. Provide title commitments including thirty (30) year title searches in accordance with the Department's Right of Way Operations Manual.
- 2.1.3. Be responsible for furnishing updates or revised information to the Department's Right of Way Engineering Section when change of ownership occurs subsequent to the certificates obtained during right of way plan preparation.
- 2.1.4. Prepare proper instruments of conveyance and releases upon determination of title status.
- 2.1.5. Prior to closing or condemnation filing, provide updated title commitments as necessary to include a certification date not older than 120 days.

### **2.2. Closing Services includes:**

- 2.2.1. Obtain title opinion identifying legal ownership and necessary parties for execution of conveyance and releases required to obtain clear title.
  - 2.2.2. Obtain required partial releases of mortgages and other encumbrances.
  - 2.2.3. Deliver state warrants on negotiated settlements after obtaining proper execution of instruments of conveyance and satisfaction of liens.
  - 2.2.4. Collect performance bonds and rent at closing from property owners in accordance with the Department's Right of Way Operations Manual.
  - 2.2.5. Record conveyance documents in appropriate county offices.
- 2.3. Provide right of way certification in accordance with the Department's Right of Way Division Operations Manual.

### **Appraisal Services (Initial Appraisal Services and Appraisal Updates):**

#### **3.1. *Initial Appraisal Services* includes:**

- 3.1.1. Review the Department's right of way and construction plans.
- 3.1.2. Perform field inspection of the proposed project and collect limited market information in order to determine estimated land and improvement values. Prepare sales brochure for the Review Appraiser's and Department's review.
- 3.1.3. Provide preliminary total estimated cost of acquiring the needed right of way and a tract by tract breakdown.
- 3.1.4. Prepare and submit for review the scope of work, which is a written document between the Department and the appraiser describing the appraiser's work and the assignment. This is a separate document that will be retained in the Department Right of Way Division files.
- 3.1.5. Make corrections or revisions to scope of work as direct by Review Appraiser and the Department.
- 3.1.6. Upon completion of the field inspection, cost estimate, and scope of work, notify the Department of any recommended changes to the type of appraisal outlined for each tract in the task order. Authorization to proceed with the recommended changes must be received prior to proceeding. Failure to perform services in accordance with the standard of practice of the Department's Right of Way policies and procedures could result in nonpayment.
- 3.1.7. Follow the Uniform Act for contacting property owners and conducting property owner's inspection. This includes inviting the property owners, preferably in writing, to accompany the appraiser during the appraiser's inspection of the property, and maintain record of contact in file.
- 3.1.8. Notify property owners as soon as feasible of the Department's interest in acquiring the real property, including the Department's obligation to secure an appraisal.
- 3.1.9. When applicable, the appraiser and the relocation coordinator will meet with the property owner and determine items that are appraised as real estate and which items will be handled as personal property. This realty/personal property list will become a part of the appraisal. Legal counsel may be required if there is a question on any item.

- 3.1.10. Submit proposed changes in right of way or construction design features arising through appraisal to the Department utilizing the Department's "Request for Plan Change" form.
- 3.1.11. Prepare appraisals in accordance with federal regulations and the Department's Right of Way Operations Manual.
- 3.1.12. Determine for on-premise signs if cost to cure would be less than purchase, and prepare compensation estimate or appraisal accordingly.
- 3.1.13. Prepare appraisal for off-premise signs in accordance with federal regulations and the Department's Right of Way Operations Manual.
- 3.1.14. Determine need for specialty report and advise the Department of recommendation. The Department will determine extent of report needed and most efficient and cost-effective method of preparation.
- 3.1.15. Obtain a listing of contaminated sites (petroleum, solid/hazardous waste, etc.) from the Arkansas Department of Environmental Quality (ADEQ).
- 3.1.16. Prepare written notification to the Department of any environmental concerns associated with the acquisition that could require environmental remediation.
- 3.1.17. Make corrections or revisions to appraisal as direct by Review Appraiser.
- 3.1.18. Assist on any appraisal problems or plan-in-hand inspections, right of way estimates and cost comparisons for public hearings, environmental programs, or other analyses as directed by the Department.
- 3.1.19. Appear and testify as an Expert Witness in eminent domain proceedings and be available for pre-hearing or pre-trial meetings as directed by the Department.
- 3.1.20. The Appraiser and Review Appraiser, if applicable, cannot be employed by, or otherwise associated with, the same appraisal company or firm.
- 3.2. Appraisal Updates includes: Revise, update or obtain new appraisals as needed in accordance with responsibilities listed in 3.1.

**4. Appraisal Review Services (Initial Appraisal Review and Appraisal Review Updates):**

- 4.1. Initial Appraisal Review Services includes:
  - 4.1.1. Review sales brochure and scope of work. Recommend any necessary revisions.
  - 4.1.2. Review appraisal reports for each tract to determine consistency of values and compliance with the Department policies and procedures and the Uniform Act

Approve the fair market value, and recommend just compensation to the Department.

4.1.3. Request any corrections or revisions from the appraiser, make minor corrections, make comments and provide additional supporting data as necessary to the appraisal report.

4.1.4. Provide a signed and dated certification of the appraisal review.

4.1.5. Review appraisals submitted by the property owners and comment by memorandum on the findings.

4.1.6. Appear and testify as an Expert Witness in eminent domain proceedings and be available for pre-hearing or pre-trial meetings as directed by the Department.

4.1.7. The Appraiser and Review Appraiser, if applicable, cannot be employed by, or otherwise associated with, the same appraisal company or firm.

4.2. Appraisal Review Update Services includes: Review appraisal update reports for each tract to determine consistency of values and compliance with Department policies and procedures and the Uniform Act, approve the fair market value and recommend just compensation to the Department in accordance with responsibilities listed in 4.1.

## **5. Negotiation Services, Waiver Valuation Services, and Waiver Valuation Review:**

5.1. Negotiation Services includes:

5.1.1. Prior to the initiation of the negotiation process, perform a review of the project and appraisal reports with the negotiator, review appraiser and Department personnel.

5.1.2. Prepare the appropriate acquisition documents and assemble tract packets in accordance with Right of Way Division Operations Manual.

5.1.3. Prepare an offer letter for signature by the appropriate Department official stating the summary of the basis for the total amount offered.

5.1.4. Present offer letter to the property owner, discuss the offer amount and rationale for compensation and address any concerns. Advise the property owner of their full rights under the laws of eminent domain if no agreement can be reached and condemnation action is necessary.

5.1.5. Maintain a project log indicating, at a minimum, the dates of the following: compensation estimate or appraisal approved, initiation of negotiations, contract signed and recommendations for condemnation.

- 5.1.6. On acquisitions involving relocatees, coordinate property owner meetings with personnel administering relocation assistance.
- 5.1.7. Maintain detailed records of all information pertinent to the job: ownership addresses, encumbrances, dated and signed negotiator notes, offer letters, and contracts. Negotiator notes should include a record of each contact, explanation of the plans, offers and counteroffers, property owner requests, opinions, proposed solutions and recommendations for condemnation.
- 5.1.8. Notify the Department if a property owner requests an appraisal in lieu of the waiver valuation presented.
- 5.1.9. Collect supporting documents from the property owner necessary to complete the transaction including but not limited to trusts, corporate resolutions, partnership agreements, et al.
- 5.1.10. As negotiations are completed, review tract packets for completeness, prepare acceptance letters for the Department's execution, and distribute tract packets for further handling.
- 5.1.11. Submit proposed changes in right of way or construction design features arising through negotiations to the Department utilizing the Department "Request for Plan Change" form.
- 5.1.12. Submit counteroffers from the property owners to the Department with recommendations for acceptance or rejection.
- 5.1.13. Recommend tracts for condemnation to the Department when negotiations prove to no longer be beneficial or when the property owner states they wish to discontinue negotiations.
- 5.1.14. Execute Rights of Entry Agreements with property owners as directed by the Department.

5.2. Waiver Valuation includes:

The Department may determine when an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated to be \$10,000 or less based on a review of available data. An appraisal review is not required.

It is not necessary for an appraiser to complete the waiver valuations. A state certified or licensed appraiser preparing a waiver valuation must not include appraisal license information, Uniform Standards of Professional Appraisal Practice (USPAP) requirements, or any other information within the valuation document that gives the appearance of an appraisal.



The waiver valuation is referred to in the Department's Right of Way Division Operations Manual as a "Compensation Estimate" in Section 5. To prepare a waiver valuation, the Consultant will:

5.2.1. Make a sufficient valuation analysis to determine if the impact of the proposed right of way acquisition is minor.

5.2.2. Provide vacant land sales for waiver valuations in order to validate the compensation estimate.

5.2.3. Provide waiver valuation reports to the Department for administrative review and approval.

5.2.4. Revise waiver valuation reports as recommended by the Department.

5.2.5. The waiver valuation will be deemed complete when an acceptable report has been submitted by the Consultant and approved by the Department.

5.3. Waiver Valuation Review includes: If requested, waiver valuations should be checked to ensure consistency with other waiver valuations and appraisals done for the project.

5.4. Provide right of way certification in accordance with the Department's Right of Way Division Operations Manual.

## **6. Relocation Assistance Services:**

6.1. Provide preliminary total estimated cost of relocations for the project and a tract by tract breakdown when requested by the Department.

6.2. Prior to negotiations, contact property owners to discuss relocation program and benefits, deliver the relocation brochure, and complete the Displacee Needs Questionnaire, Relocation Coordinator's Report, and Decent, Safe and Sanitary Report.

6.3. Prepare relocation studies and determine replacement housing payments as appropriate.

6.4. Coordinate property owner meetings with negotiators.

6.5. Advise eligible owner-displacees of their monetary payments and how they were determined showing the comparable housing used and provide a ninety (90) day written notice.

6.6. Contact the eligible tenant displacees in writing within seven (7) working days of the initiation of negotiations and present comparable housing and relocation payment calculations.

- 6.7. Provide displacees (residential tenants, businesses, etc.), a ninety (90) day written notice within seven (7) working days of initiation of negotiations.
- 6.8. Provide displacee a thirty (30) day written notice specifying the exact date by which the property must be vacated and/or personal property removed as needed.
- 6.9. Notify the Department immediately if displacee does not move after the thirty (30) day written notice expires.
- 6.10. Offer advisory services to and conduct personal interviews of nonresidential and residential displacements. Determine the relocation needs and preferences of each business (farm and non-profit organization) or person to be displaced and explain the relocation payments and other assistance for which the business/person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.
- 6.11. Provide, for nonresidential relocatees, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation in obtaining and establishing a suitable replacement location.
- 6.12. Minimize hardships to persons in adjusting to relocation by providing counseling, advice regarding other sources of assistance that may be available, and such other help as may be appropriate.
- 6.13. Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.
- 6.14. Maintain relocation contact logs.
- 6.15. Prepare any necessary bid documents, forms and claims for displacees' moving and related expenses.
- 6.16. Determine the eligibility of and amount of replacement housing payments for owner occupants.
- 6.17. Compute increased interest payments, rental subsidy payments, and down payment assistance payments as needed.
- 6.18. Determine the eligibility of mobile homes for replacement housing payment.
- 6.19. Deliver relocation payments.

- 6.20. Handle any property owner request for appeal hearing and appear as needed.
- 6.21. Appear and testify as an Expert Witness in eminent domain proceedings and be available for pre-hearing or pre-trial meetings as directed by the Department.
- 6.22. Provide right of way certification in accordance with the Department's Right of Way Division Operations Manual.

## **7. Property Management Services:**

- 7.1. Establish the amount of bond required in the event improvements are retained by the owner for appraised salvage value.
- 7.2. Maintain records of improvements by completing the "Improvement Checklist" form prior to the transfer of packets to the negotiator for acquisition.
- 7.3. After the tract is negotiated, review the tract packet to ascertain the decision of the property owner regarding retention of the improvements.
- 7.4. Perform initial inspection of the project site in accordance with the Department's Right of Way Division Operations Manual including taking photographs of all improvements within the right of way. Search for underground storage tanks (UST's), tank pumping systems, and other hazardous materials. Verify that items of realty included in the appraisal remain on the premises.
- 7.5. As directed by the Department, make subsequent inspections to determine the progress of the removal of improvements that have been retained by the property owners and to formulate the method of disposal of improvements not retained.
- 7.6. Compile a Removal and Disposal List of structures to be removed, including buildings, slabs, footings, foundations, wells, septic systems, storm cellars and any other man-made object within the acquisition area. Provide this list to the Department to be incorporated into the construction plans and removed by the road contractor.
- 7.7. Provide "Improvement Checklist" and supporting documentation to the Department.
- 7.8. Complete an asbestos inspection, collect samples for asbestos testing and, when necessary, hire an asbestos testing lab and/or asbestos abatement contractor to handle asbestos abatement in accordance with the Department's Right of Way Division Operations Manual.
- 7.9. For improvements to be demolished prior to road construction, prepare necessary estimates and bid documents, solicit for bids, and recommend bid awards from demolition contracts.
- 7.10. Prepare demolition contracts for the Department's execution.

- 7.11. Perform site inspection upon completion of demolition. Document inspection, prepare invoice, and submit to the Department for payment.
- 7.12. Provide right of way certification in accordance with the Department's Right of Way Division Operations Manual.

## **Deliverables:**

1. **Administrative Services:** The Consultant shall provide administrative services as described below in conjunction with any of the individual phase services as assigned in the task order.

- 1.1. Coordination Reports
- 1.2. Coordination Meeting Minutes
- 1.3. Monthly Invoices
- 1.4. Project Records upon Project Closeout

2. **Title and Closing Services:**

- 2.1. Title Certificates
- 2.2. Source Documents for Title Research
- 2.3. Proper Instruments of Conveyance and Releases
- 2.4. Signed Closing Statements
- 2.5. Original Copies of Recorded Executed Deeds, Affidavits of No Liens, Partial Releases, and Notices of Tax Exemption

3. **Appraisal Services:**

- 3.1. Preliminary Estimated Total and Per Tract Cost of Acquisition
- 3.2. Sales Brochure
- 3.3. Appraisal Scope of Work
- 3.4. Notifications of Environmental Concerns
- 3.5. Requests for Plan Changes
- 3.6. Appraisal Report
- 3.7. Certification of Appraiser
- 3.8. Revised and Updated Appraisals as needed

4. **Review Appraisal Services:**

- 4.1. Sales Brochure Review Comments
- 4.2. Appraisal Report Review Comments
- 4.3. Certification of Review Appraiser
- 4.4. Review Comments of Property Owner Appraisals
- 4.5. Review Comments of Revised and Updated Appraisals

5. **Negotiation and Waiver Valuation Services:**

- 5.1. Waiver Valuation Report with Supporting Analyses Documents
- 5.2. Signed and Dated Offer Letters
- 5.3. Requests for Plan Changes
- 5.4. Tract Packets including but not limited to Negotiator's Checklist, Negotiator Notes, Negotiator Certification, Contracts to Sell, Supporting Documents, and Condemnation or Administrative Adjustment Recommendation Memos.

- 5.5. Rights of Entry Agreements as needed
- 5.6. Right of Way Certification

**6. Relocation Services:**

- 6.1. Preliminary Estimated Total and Per Tract Cost of Relocations
- 6.2. Relocation Studies
- 6.3. Relocation Tract Packets including but not limited to Contact Logs, Eligibility Determinations, Letters, Bids, Forms, Computations, Claims, Receipts, and Records of Payment.
- 6.4. Right of Way Certification

**7. Property Management Services:**

- 7.1. Inspection Checklist
- 7.2. Removal and Disposal List
- 7.3. Asbestos Documentation
- 7.4. Demolition Documentation
- 7.5. Right of Way Certification

**Department Responsibilities:** The Department agrees to administer professional services for the right of way acquisition of properties as follows:

- 1. Upon completion of right of way plans and environmental handling, prepare a request for authority to appraise and acquire for submission to FHWA.
- 2. Provide timely reviews and approval of submissions.
- 3. Provide examples of standard forms and brochures to be used in the acquisition process.
- 4. Process and issue all warrants for payments.
- 5. Provide final approval for all payments including, but not limited to, compensation estimates or appraisals and relocation assistance.
- 6. Conduct surveys of property owners and displacees to determine quality of performance by the Consultant.
- 7. Initiate, coordinate, and administer environmental investigation surveys.
- 8. Process condemnation actions including legal document preparation, filing, settlement or trial actions.
- 9. Prepare exhibits used in court cases on condemned tracts as needed.

10. Provide legal opinions or recommendations that arise during the acquisition process, as needed. Consultant must notify the Department if legal advice is needed.
11. Forward right of way certifications to FHWA for review and approval.

**Project Conditions of the Work:** The Consultant agrees to administer professional services for the right of way acquisition of properties as follows:

1. Professional services shall be provided in accordance with the current edition of the Department's Right of Way Division Operations Manual.
2. All right of way functions will comply with the Uniform Act, 23 Code of Federal Regulations (CFR), 49 CFR and pertinent Federal regulations.
3. Consistent with this policy, all programs and activities administered by the Right of Way Division shall comply with Title VI of the Civil Rights Act of 1964 and related statutes and regulations to include the Civil Rights Restoration Act of 1987 and the Americans with Disabilities Act of 1990
4. All compensation estimates and appraisals shall conform to the Uniform Act and appropriate Federal regulations, State law and the Department Right of Way policies and procedures. Detailed appraisals shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition and requirements found in 49 CFR Part 24.
5. The relocation assistance advisory program shall satisfy the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and 49 CFR Part 24.
6. No Appraiser or Review Appraiser shall have any interest, direct or indirect, in the real property being appraised and must sign a certificate to that effect.
7. No person preparing or approving waiver valuations shall have any interest, direct or indirect, in the real property being valued and must sign a certificate to that effect.
8. No Appraiser or Review Appraiser shall act as a negotiator for real property which that person has appraised or reviewed.

**Special Conditions of the Work:** The Consultant agrees to adhere to any special conditions required by the Department in order to administer professional services for the right of way acquisition of properties included in this RFP.

All work performed by the Consultant shall comply with all applicable Federal, State, and local laws, regulations, and ordinances.

The Consultant shall submit a cost estimate, and a work schedule with each Task Order, which will permit the work to be completed within the required period after receiving notice to proceed.

Time is an essential element of the Agreement between the Consultant and the Department. It is important that the work be pressed vigorously to completion in accordance with the schedule as stated in each Task Order. For work uncompleted after the agreement time has expired, liquidated damages will be deducted from money due to the Consultant.

The Consultant must be registered with the Arkansas Secretary of State's office to do business in the State of Arkansas prior to Contract execution. Failure to comply with this requirement within 30 days of selection notification may result in failure to execute a Contract with the Consultant. The Department may then reject the selected Consultant for the duration of this process and negotiate a contract with the next most qualified Consultant on the list until a contract has been executed.

The Consultant shall provide annual updates of the Department of Finance and Administration (DFA) Illegal Immigrant Contractor Disclosure Form (within the last year) on file with the Consultant Contracts Office of the Department.

The Consultant, as applicable, may have to certify activities regarding lobbying per 49 CFR Part 20, Appendix A.

The Consultant will be required to maintain general liability and other insurance as required for the duration of the agreement.



**COST PROPOSAL**  
**(Unit Price per Tract)**

*The Proposer shall only include costs for the individual services indicated in Section 5.2 of the Eligible Proposer Certification.*

*Costs associated with Administrative Services shall be included in the Unit Price per Tract for each individual service.*

<b>Title &amp; Closing Services</b>	
Title Commitment - 30 Year Title Search	
Closing Services	

<b>Initial Appraisal Services</b>	<b>\$ / Tract</b>
Compensation Estimate (\$10,000.00 or Less)	
Detailed Appraisal – Vacant Residential Land	
Detailed Appraisal – Vacant Agricultural Land	
Detailed Appraisal – Vacant Commercial Land	
Detailed Appraisal - Residential Single Family	
Detailed Appraisal - Residential Multi-Family	
Detailed Appraisal - Small Commercial Property	
Detailed Appraisal - Large Commercial Property	
Detailed Appraisal - Improved Agricultural Property	
Billboard Valuation	

<b>Appraisal Services - Updates</b>	<b>\$ / Tract</b>
Compensation Estimate (\$10,000.00 or Less)	
Detailed Appraisal – Vacant Residential Land	
Detailed Appraisal – Vacant Agricultural Land	
Detailed Appraisal – Vacant Commercial Land	
Detailed Appraisal - Residential Single Family	
Detailed Appraisal - Residential Multi-Family	
Detailed Appraisal - Small Commercial Property	
Detailed Appraisal - Large Commercial Property	
Detailed Appraisal - Improved Agricultural Property	
Billboard Valuation	

**COST PROPOSAL**  
**(Unit Price per Tract)**

*The Proposer shall only include costs for the individual services indicated in Section 5.2 of the Eligible Proposer Certification.*

*Costs associated with Administrative Services shall be included in the Unit Price per Tract for each individual service.*

<b>Initial Appraisal Review Services</b>	<b>\$ / Tract</b>
Compensation Estimate (\$10,000.00 or Less)	
Detailed Appraisal – Vacant Residential Land	
Detailed Appraisal – Vacant Agricultural Land	
Detailed Appraisal – Vacant Commercial Land	
Detailed Appraisal - Residential Single Family	
Detailed Appraisal - Residential Multi-Family	
Detailed Appraisal - Small Commercial Property	
Detailed Appraisal - Large Commercial Property	
Detailed Appraisal - Improved Agricultural Property	
Billboard Valuation	

<b>Appraisal Review Services - Updates</b>	<b>\$ / Tract</b>
Compensation Estimate (\$10,000.00 or Less)	
Detailed Appraisal – Vacant Residential Land	
Detailed Appraisal – Vacant Agricultural Land	
Detailed Appraisal – Vacant Commercial Land	
Detailed Appraisal - Residential Single Family	
Detailed Appraisal - Residential Multi-Family	
Detailed Appraisal - Small Commercial Property	
Detailed Appraisal - Large Commercial Property	
Detailed Appraisal - Improved Agricultural Property	
Billboard Valuation	

<b>Negotiation &amp; Waiver Valuation Services</b>	<b>\$ / Tract</b>
Negotiation Services	
Waiver Valuation	
Waiver Valuation Review	

**COST PROPOSAL**  
**(Unit Price per Tract)**

*The Proposer shall only include costs for the individual services indicated in Section 5.2 of*

*the Eligible Proposer Certification.*

*Costs associated with Administrative Services shall be included in the Unit Price per Tract for each individual service.*

<b>Relocation Assistance Services</b>	<b>\$ / Tract</b>
Business Relocation	
Partial Business Relocation	
Landlord Business Relocation	
Residential Relocation	
Personal Property Relocation	

<b>Property Management Services</b>	<b>\$ / Tract</b>

<b>Eminent Domain/Relocation Proceedings*</b>	
Pre-trial Conference (1/2 Day)	
Pre-trial Conference (Full Day)	
Expert Witness at Trial/Hearing (1/2 Day)	
Expert Witness at Trial/Hearing (Full Day)	

*\* Applicable to all Proposers regardless of the individual services it wishes to be considered.*

## MILESTONE PAYMENT SCHEDULE

ITEM	SCHEDULE
Title Services	Monthly - Per Tract 100% of Title Fee for Title Certificates or Commitments completed in the previous month
Initial and/or Updated Waiver Valuation and Appraisal Services	Monthly - Per Tract 100% of the Appraisal Fee for appraisals reviewed and approved in the previous month
Initial and/or Review Waiver Valuation and Appraisal Services	Monthly - Per Tract 100% of the Appraisal Review Fee for appraisals reviewed and approved in the previous month
Negotiation Services	Monthly – Per Tract 25% Upon Presentation of Offer 25% When Contract to Sell is signed or the Tract is recommended for condemnation 50% After the Contract to Sell has been accepted by the Department or Condemnation proceedings have been approved and a fully documented acquisition file has been submitted
Closing Services	Monthly – Per Tract 100% After closing is completed and all original closing documents have been submitted to the Department
Relocation Services	Monthly – Per Tract 20% Upon Presentation of Relocation Eligibility 50% Upon Relocation of Occupant/Tenant 30% Upon Final claims paid and submittal of fully documented relocation file
Property Management Services	Monthly – Per Tract 100% of property management services completed in the previous month
Eminent Domain/Relocation Hearings	Monthly – Per Tract 100% of services completed in the previous month

## **EXHIBIT D**

### **ALLOWABLE BASE CONSTRUCTION COSTS**

The Base Construction Costs may include all field indirect costs and costs associated with direct Project construction activities, including but not limited to risk or contingency. See below in this Exhibit for further clarification regarding project costs (direct and field indirect) that may be included in the Base Construction Costs.

#### **Field Indirect Costs (General Conditions of Work)**

The list below states the categories of field indirect costs that are acceptable to ARDOT and may be included in the Base Construction Costs, and not included as part of the Fixed Markup.

1. Job Supervision and Overhead: Wages including benefits, payroll insurance and taxes for onsite management, supervision, engineers, safety personnel, quality control staff, and administration staff.
2. Survey: Cost of construction survey including both CMGC-hired and outside service.
3. Site Office Expense: Ownership or rental of building, maintenance, removal, utilities, office and engineering expendables, furniture, computers and infrastructure, photographs.
4. Insurance and Taxes: Insurance other than that based on payroll, such as railroad protective, equipment insurance, and other specified or CMGC-required insurances. Taxes excluding payroll taxes such as property tax and any special local or State. Sales tax should be included with the applicable item taxed.
5. Temporary Buildings: Cost of ownership or rental, set up, maintenance and removal of such buildings as owner's office (if not a direct pay item), warehouses, first aid building, and other miscellaneous.
6. Personnel Expense: Small tools and supplies, safety expendables, drug screen testing, training, physicals, and hiring expense. Include any per-diem costs for craft or indirect personnel.
7. Project Utilities: Site utilities such as temporary electric, water, and sanitary.
8. Mobile Equipment: Overhead vehicles, maintenance equipment and personnel (if not in Equipment Operating Expense), and general service equipment and personnel (such as flatbeds and forklifts if not in direct cost).
9. Mobilization: Cost of transportation of equipment and other items for move in, move out, set up, and take down. Include cost of personnel moves and related expense.
10. Construction Plant: Include site fences, parking areas, material yards, temporary access, and other such special construction not included in direct costs. Haul road construction and maintenance to be included in direct costs.
11. Quality Control: Cost of QC labor, equipment, and supplies and outside services and CMGC-hired personnel with site overhead wages.
12. Bonds: Include cost of payment and performance bond or other guaranties as specified or allowed. Cost of subcontract or material bond shall also be included here.
13. Escalation: Estimated cost of Items for which firm pricing cannot be obtained. Includes increases in craft and field indirect wage rates and fringe benefits whether by agreement or estimated.

When pricing the work for OPCCs, field indirect costs will be broken out separately. Prior to submitting the price proposal (typically at the 90% OPCC) field indirect costs will be allocated accordingly to the contract pay items.

## **EXHIBIT D**

### **ALLOWABLE BASE CONSTRUCTION COSTS**

#### **Allowable Construction Costs for Direct and Field Indirect Costs**

Definitions of some of the items of direct and field indirect costs are set forth below and may be included in the Base Construction Costs:

1. Labor: Includes wages and add-ons including overtime, vacation pay, and all fringe payments such as health and welfare, pensions, and any other that may be included in union agreement or as paid to both craft and staff employees. Payroll insurance including Worker's Compensation and General Liability if based on labor amounts. Payroll taxes including FICA and State and Federal unemployment.
2. Permanent Materials: Includes the cost of materials incorporated into the Work. To include estimated loss, waste, and non-pay overruns. Sales tax and any shipping for these materials will be a part of this category.
3. Construction Expendable Materials: Includes non-permanent materials, temporary facilities, small tools, formwork, temporary construction, office supplies, services, insurance, and taxes.
4. Equipment Ownership: Includes rental or ownership charge of both company-owned and outside rentals and sales tax on any rentals.
5. Equipment Operating Expense: Includes repair parts, tires and tracks, CMGC's repair labor, services and fuel, oil and grease.
6. Subcontract: Cost of Items of work subcontracted including contracted trucking

## **EXHIBIT E**

### **FAIR PRICING APPROACH**

The CMGC and the Department shall work collaboratively as a team to maximize the scope, value, and quality of the Project during the performance of the Pre-Construction Work. Such efforts shall include the following:

1. Development of a collaborative team environment that fosters communication, accountability, and trust;
2. The involvement of an independent cost estimating team (“ICE”) selected by the Department in its discretion that is familiar with the scope, schedule, and risks of the Project and is involved in key team meetings and aware of decisions;
3. Regular risk and opportunity/innovation workshops;
4. Interactive design process to incorporate mitigation strategies and innovations into the design;
5. Plan and specification reviews and quantity reconciliation meetings at major milestones as determined by the parties;
6. Opinions of probable construction cost (“OPCC”) at various milestones wherein the ICE is blinded and the CMGC shall share the details of their cost model with the team;
7. Reconciliation meetings to review differences in the assumptions of those items; and
8. Protection and maintenance of the independent estimates of the ICE.

#### **Section 1. Initial Approach to Cost Meetings**

Before any pricing begins, the CMGC, the Department, and the ICE (the “Project Team”) shall meet to discuss and agree on how the team will develop and evaluate price for purposes of Work Packages and the GMP for Construction. In addition to reviewing the overall fair price strategy, the team will seek agreement on how certain elements of price will be handled. The following issues will be discussed:

1. Definition of fair market price;
2. Acceptable percentage of difference between the CMGC, the Department, and the ICE;
3. Expectation of Construction Manager General Contractor cost versus low bid;
4. Overhead and profit margins (includes management labor above project manager level, audited home office overhead rate, and profit margin);
5. Labor and equipment rates;
6. Subcontractor quotes and self-performed work; and
7. Number of OPCCs and bid submittals.

#### **Section 2. Risk and Opportunity Workshop, Constructability Review, and Quantity Reconciliation Meeting**

The Project Team shall hold a risk and opportunity workshop to identify and prioritize risks, discuss possible risk mitigation strategies, and explore risk sharing concepts. The workshop shall seek to quantify risks and predict probabilities of occurrence in an effort to predict a total Project contingency figure. The

meeting shall focus on risk mitigation and how risks would affect bid items. For the priority risks, associated bid items will be identified and the affected pricing components (production rates, labor, materials cost, etc.) summarized for each.

During the risk and opportunity workshop, the Project Team shall also discuss constructability review comments and quantities. The plans shall be reviewed to ensure that the risk mitigation strategies and opportunities stemming from the risk and opportunity workshop have been incorporated. This review shall also include quantity takeoffs, verification, and reconciliation to ensure all bidding parties have agreed to bid quantities. A key element of these reviews is the limitations of operations specification which will describe the segment and schedule requirements for the Project, which will be helpful to the estimating teams as they each prepare their separate construction schedules.

### **Section 3. 100% Blinded OPCCs**

After the risk and opportunity workshop, each member of the Project Team will prepare an OPCC based on a pre-formatted Excel spreadsheet with the bidding schedule. The CMGC and ICE will prepare a production-based estimate. The Department will prepare an estimate using historical unit cost data. Each Project Team member will use its own construction schedule in developing its estimate. For this estimate, indirect items, profit, and risk will be broken out separately. Once the OPCC estimates are complete, each Project Team member will submit its spreadsheet to a designated price facilitator who is not associated in any way with the Project. This person will combine the OPCCs to compare the costs for each item and highlight any items that vary from the ICE estimate by more than the divergence percentage identified by the Department. The total cost of each OPCC will also be compared to ensure that the OPCCs are within the Project budget. The price facilitator will then return the spreadsheet to the Project Team.

### **Section 4. OPCC Meeting**

After the Project Team receives the OPCC comparison report from the price facilitator, the Project Team will meet and discuss the assumptions for items which have a discrepancy greater than the divergence factor defined by the Department. Costs will not be discussed. Rather, the factors that contribute to the costs are shared and discussed. The goal of these meetings is to clarify and resolve differences where possible between estimators. Each estimator determines for themselves if and how they might adjust their estimate. The goal would be for the total project cost to be at fair-market value at the time any GMP is determined with respect to a Work Package or GMP for Construction.



## XIII: Sample Minute Order



ARKANSAS STATE HIGHWAY COMMISSION

MINUTE ORDER

District:    Statewide

Page 1 of 1 Page

County:     Statewide

Category:   Alternative Delivery Program

**WHEREAS**, Act 1019 of 2019 granted the Commission authority to procure qualification based, Construction Manager-General Contractor (CMGC) services to implement the CMGC Method of Procurement Pilot Program; and

**WHEREAS**, the CMGC alternative project delivery method provides value to the Department by including a construction contractor to participate in a project's pre-construction activities and thereby encouraging innovation, reducing risk, improving design, improving cost certainty, and optimizing construction schedules; and

**WHEREAS**, selection of the Contractors for CMGC projects is qualifications-based using the criteria listed in Arkansas Code Annotated § 19-11-1406.

**NOW THEREFORE**, the Director is authorized to request and evaluate proposals and enter into any necessary contracts and agreements with firms for on-call Construction Manager-General Contractor (CMGC) services on assigned CMGC projects for calendar years 2021 through 2024.

Approved:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chairman

Vice-Chairman

Member

Member

Member

DD-COO

Form 19-456

Rev. 1/13/2016

Submitted By:

\_\_\_\_\_  
Deputy Director and Chief Operating Officer  
Approved: \_\_\_\_\_  
\_\_\_\_\_  
Director  
Minute Order No. \_\_\_\_\_  
Date Passed \_\_\_\_\_

# XIV: Sample Notification of Award CM-GC Services



ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

LITTLE ROCK, ARKANSAS

(Date)

MEMORANDUM

**TO:** (name), Director of Highways and Transportation  
**FROM:** (name), Deputy Director and Chief Operating Officer  
**SUBJECT:** Selection of Construction Manager/General Contractor for Job #####

Proposals were received from two (2) contractors in response to the Request for Proposals (RFP) for Construction Manager/General Contractor (CM/GC) for Job #####, Hwy. XX Interchange Impvts., which was advertised for four weeks beginning (date). Those contractors were:

1. (Contractor #1 name)
2. (Contractor #2 name)

The attached information is an evaluation of the contractors. Based on the Selection Committee's review, it is recommended that negotiations begin with the following contractor to provide Construction Manager/General Contractor services for Job #####:

(Contractor name)

Your concurrence in this recommendation is requested.

Concur: \_\_\_\_\_

Selection Committee: (name), Staff Construction Engineer  
(name), Assistant Resident Engineer  
(name), Staff Bridge Design Engineer  
(name), Staff Roadway Design Engineer  
(name), Alternative Delivery Project Engineer

Attachment

cc: Alternative Project Delivery Administrator  
Alternative Project Delivery Manager

**Evaluation of Requests for Proposals  
Construction Manager/General Contractor for Job #####**

(Contractor #1 name)

- Above Average Organization and Key Personnel
- Good Capabilities and Experience with Similar Projects
- Above Average Project Understanding and Approach to Achieve Project Goals
- Good Risk Identification and Mitigation
- Good Identification of Innovations
- Average Approach to Pricing and Subcontracting

(Contractor #2 name)

- Very Good Organization and Key Personnel
- Good Capabilities and Experience with Similar Projects
- Above Average Project Understanding and Approach to Achieve Project Goals
- Above Average Risk Identification and Mitigation
- Excellent Identification of Innovations
- Below Average Approach to Pricing and Subcontracting

# XV: Sample CM-GC Master Agreement

**MASTER AGREEMENT**  
**FOR**  
**PROFESSIONAL SERVICES**  
(ARDOT VERSION – SPECIFIC RATE OF COMPENSATION)

**Construction Manager/General Contractor (CMGC) Services for ArDOT Job No. #####**

**PREAMBLE**

**THIS AGREEMENT**, entered into this [See Info Tech Doc Express Signature Page for Date of Execution], by and between the Arkansas State Highway Commission (“Commission”), acting by and through its Director of Highways and Transportation (“Director”), as authorized by Commission Action on (DATE) , and (CMGC CO. NAME) (“CMGC”), a corporation existing under the laws of the State of (STATE) , with principal offices at (ADDRESS) .

**WITNESSETH:**

**WHEREAS**, Act 809 of 2017 granted the Commission authority to procure qualification based, Construction Manager-General Contractor (“CMGC”) services to implement the CMGC Method of Procurement Pilot Program; and

**WHEREAS**, the CMGC alternative project delivery method provides an advantage by including a construction contractor to participate in a project’s preconstruction activities and thereby shifting liability and risk for cost containment and project scheduling to the CMGC; and

**WHEREAS, IN PULASKI COUNTY**, in the City of Little Rock, a project is scheduled to provide operational improvements to (PROJECT NAME) (the “Project”); and

**WHEREAS**, it has been determined that this Project is a good candidate for the CMGC Method of Procurement Pilot Program.

In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

**1. PRELIMINARY MATTERS**

- 1.1. “CMGC’s Representative” shall be (NAME) , until written notice is provided to the Owner designating a new representative.
- 1.2. “Fee.” As used herein, the term means the specific rates of compensation set forth in the schedule in Subsection 3.1.1. The Fee includes compensation for all cost and profit. There shall be no reimbursement of costs incurred by the CMGC in the performance of this Agreement.
- 1.3. “Default” means the failure of the CMGC to perform any of the provisions of this Agreement. *Default includes, but is not limited to, failure to complete phases of the work according to schedule or failure to make progress in the work so as to endanger timely performance of this Agreement, failure to pay subcontractors in a timely manner, failure to comply with federal and state laws, and failure to comply with certifications made in or pursuant to this Agreement.*
- 1.4. “DOT” means the United States Department of Transportation.

- 1.5. "FAR" means the Federal Acquisition Regulations, codified in 48 C.F.R.
- 1.6. "FHWA" means the Federal Highway Administration.
- 1.7. "Owner" means, collectively, the Arkansas State Highway Commission and the Arkansas Department of Transportation ("Department").
- 1.8. "Title I Services" are those services provided by the CMGC before the award of the contract for the construction of the Project, consisting primarily of professional services related to the planning, environmental or design of the Project.

## **2. TYPE OF AGREEMENT**

- 2.1. This Agreement is a specific rate of compensation contract. The CMGC shall perform professional services in connection with the Project as set forth herein. In consideration for the services rendered by the CMGC, the Owner shall pay to the CMGC the Fee, to be determined according to the labor and activity rates as set forth in Section 3, Fees and Payment. The Fee includes compensation for any cost incurred by the CMGC, and the CMGC shall not be reimbursed separately for costs incurred. The CMGC shall bear the costs, and resulting risks, of performing this Agreement.
- 2.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the CMGC. Therefore, notwithstanding any provision of this Agreement, all payments to the CMGC are subject to the requirements and limitations of 48 C.F.R. Part 31, and the CMGC shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any other information submitted to the Owner with any claim for full or partial payment.

## **3. FEES AND PAYMENT**

*Fee.* The justification for the fees and the use of the specific rate of compensation method of payment, the scope of services, and the description of the Project are detailed in the applicable Task Order. The Owner shall pay CMGC a Fee determined by the hourly or other unit rate shown in the following schedule. Partial hours and units shall be pro-rated.

- 3.1.1. The foregoing paragraph does not authorize or permit the CMGC to perform services at the overtime rates shown, but only establishes the appropriate rates in the event that the Owner subsequently authorizes overtime. Payment of the Fee at overtime rates is expressly contingent upon the written approval by the Owner *before* the CMGC, its employees, or its agents begin the work for which the overtime rate will be requested. Regardless whether Owner authorizes and pays the overtime rates set forth above, the CMGC shall comply with all state and federal wage and hour laws and regulations.
- 3.1.2. Allowable costs for travel are reimbursed for actual expenses incurred and are subject to the limitations, regulations, and cost principals and procedures in 48 C.F.R. Part 31 and the State Travel Regulations issued by the Department, which are expressly incorporated into this Agreement by reference.
- 3.2. *Invoices and Partial Payments.* Partial payments of the Fee shall be made as follows, unless modified by the written agreement of both parties:
  - 3.2.1. Not more often than once per month, the CMGC shall submit to the Owner, in such form and detail as the Owner may require, an invoice or voucher stating the hourly rates and



hours for each category of personnel, the unit rates and units for the activities performed, and the amount of the Fee due for the time period covered by the invoice.

3.2.2. Accompanying the invoice, the CMGC shall also submit an estimate of the amount and value of the work accomplished under this Agreement for the period of time covered by the invoice, along with any supporting data required by the Owner. The CMGC shall include in the invoice and estimate only that work which meets the standards of quality established under this Agreement. At a minimum, the supporting data shall include progress reports in the form and number required by the Owner.

3.2.3. Upon approval of the invoice and estimate by the Owner, payment upon properly executed vouchers shall be made to the CMGC, as soon as practicable, of 100 percent of the approved amount of the Fee earned, less all previous payments.

### 3.3. *Final payment.*

3.3.1. The CMGC shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than forty-five (45) days (or longer, as the Owner may approve in writing) after the completion date. Upon approval of the completion invoice or voucher, and upon the CMGC's compliance with all terms of this Agreement, the Owner shall promptly pay any balance of that part of the Fee (if any) earned and approved but not previously paid. After the final release, the CMGC agrees that it will continue to provide consultation services to the Owner as needed through supplemental agreement(s) with respect to the contracted services under this Agreement until all work is completed under Title I Services.

3.3.2. Before final payment under this Agreement, the CMGC and each assignee whose assignment is in effect at the time of final payment shall execute and deliver a release of all claims discharging the Owner, its officers, agents, and employees from all liabilities, obligations, and claims which were known or could reasonably have been known to exist arising out of or under this Agreement.

3.4. *Owner's Right to Withhold Payment.* At any time, the Owner may withhold payment to such extent as it deems necessary as a result of: (1) third party claims arising out of the services of the CMGC and made against the Owner; (2) evidence of fraud or over-billing by CMGC, or overpayment to CMGC; (3) inclusion of non-allowable costs by CMGC; (4) failure of CMGC to make prompt payments to subcontractors in the time provided by this Agreement; (5) payment requests received including fees for unapproved subcontractors of CMGC; and/or (6) CMGC's unsatisfactory performance of services. The withholding of payment under this provision shall in no way relieve the CMGC of its obligation to continue to perform its services under this Agreement.

## 4. **RECORDS & AUDITS**

4.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

4.2. *Examination.* The CMGC shall maintain, and the Owner, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to document all work performed, all costs and fees claimed or anticipated to be incurred and earned during the performance of this Agreement, any request for modification or amendment of this Agreement, and any claim or dispute. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination that a specific rate of compensation type of agreement is justified, including any

CPA audit. This right of examination shall also include inspection at all reasonable times of the CMGC's offices and facilities, or parts of them, engaged in performing the Agreement.

- 4.3. *Supporting Data.* If the CMGC has been required to submit data in connection with any action relating to this Agreement, including the negotiation of the Fee, request for an adjustment, or assertion of a claim, the Owner, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the CMGC's records, including computations and projections, related to—
- Any proposal for the Agreement, subcontract, or modification;
  - Discussions conducted on the proposal(s), including those related to negotiating;
  - Fees or costs under the Agreement, subcontract, or modification;
  - Performance of the Agreement, subcontract or modification; or,
  - The amount and basis of any claim or dispute.
- 4.4. *Audit.* The Owner, FHWA, or their authorized representatives, shall have access to and the right to examine any of the CMGC's records involving transactions related to this Agreement or a subcontract hereunder.
- 4.5. *Reports.* If the CMGC is required to furnish cost, funding, or performance reports, the Owner, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the CMGC's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 4.6. *Availability.* The CMGC shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 28, Disputes and Claims, for examination, audit, or reproduction, until six years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 4.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 4.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.
- 4.7. The CMGC shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

## **5. DESCRIPTION OF THE PROJECT**

The description for each individual work component relating to the Project will be as stated in each individual task order.

## **6. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY CMGC**

Information and services to be provided will be as stated in each individual task order.

## **7. INFORMATION TO BE PROVIDED BY THE OWNER**

Information to be provided by the Owner will be as stated in each individual task order.

## **8. COORDINATION WITH OWNER**

Throughout the Project, the CMGC shall hold conferences **as needed** in Little Rock, Arkansas, or such other location as designated by the Owner, with representatives of the Owner and the FHWA so that as the Project progresses, the CMGC shall have full benefit of the Owner's knowledge of existing needs and facilities and be consistent with the Owner's current policies and practices. The extent and character of the work performed by the CMGC shall be subject to the general oversight and approval of the Owner.

## **9. OFFICE LOCATION FOR REVIEW OF WORK**

Review of the work as it progresses and all files and documents produced under this Agreement may be made by representatives of the Owner and the FHWA at the Project office of the CMGC located in Fort Worth, Texas at 13119 Old Denton Road

## **10. ACCESS TO PROPERTY**

The CMGC's services to the Owner may require entry upon private property. The Owner will present or mail to private landowners a letter of introduction and explanation, describing the work, which shall be drafted by the CMGC. The CMGC will make reasonable attempts to notify resident landowners who are obvious and present when the CMGC is in the field. The CMGC is not expected to provide detailed contact with individual landowners. The CMGC is not expected to obtain entry by means other than the consent of the landowner. If the CMGC is denied entry to private property by the landowner, the CMGC will not enter the property. If denied entry to the property, the CMGC shall notify the Owner and advise the Owner of an alternate evaluation method if one is feasible. The Owner shall decide on the course of action to obtain access to the property.

## **11. DELIVERABLES**

Deliverables will be as stated in each individual task order.

## **12. SUBCONTRACTING**

12.1. Unless expressly disclosed in Appendix B, the CMGC may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.

12.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the CMGC's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the CMGC of any responsibility, obligation, or duty under this Agreement.

- 12.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fees payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 12.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 12.5. *Prompt Payment.* The CMGC shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the CMGC. Any retainage payments held by the CMGC must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the CMGC. If the CMGC fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:
- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the CMGC;
  - notify any sureties; and/or,
  - withhold any or all reimbursements or payments otherwise due to the CMGC until the CMGC ensures that the subcontractors have been and will be promptly paid for work performed.
- 12.6. The CMGC shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

### **13. RESPONSIBILITY OF THE CMGC**

- 13.1. Notwithstanding any review, approval, acceptance or payment by the Owner the CMGC shall be responsible for the professional quality and technical accuracy of all work furnished by the CMGC under this Agreement. The CMGC shall, without additional compensation, correct or revise any errors or deficiencies in its work.
- 13.2. The CMGC shall demonstrate to the Owner's Representative the presence and implementation of quality assurance in the performance of the CMGC's work. The CMGC shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of drawings, specifications, cost estimates, and other services provided.
- 13.3. The Owner shall have the right at any time and in its sole discretion to submit for review all or any portion of the CMGC's work to consulting firms engaged by the Owner for that purpose. The CMGC shall fully cooperate with any such review.
- 13.4. The CMGC and any subcontractor shall employ qualified and competent personnel to perform the work under this Agreement.
- 13.5. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. The CMGC shall be and remain liable to the Owner for all damages to the Owner caused by the CMGC's negligent performance of any of the services furnished under this Agreement.

13.6. The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights and remedies provided by law.

13.7. If the CMGC is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

#### **14. WARRANTY OF SERVICES**

14.1. *Definitions. Acceptance*, as used in this Agreement, means the act of an authorized representative of the Owner by which the Owner approves specific services, as partial or complete performance of the Agreement. *Correction*, as used in this Agreement, means the elimination of a defect.

14.2. Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the CMGC warrants that all services performed and work product under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement.

14.3. If the CMGC is required to correct or re-perform, it shall be at no cost to the Owner, and any services corrected or re-performed by the CMGC shall be subject to this section to the same extent as work initially performed. If the CMGC fails or refuses to correct or re-perform, the Owner may, by contract or otherwise, correct or replace with similar services and charge to the CMGC the cost occasioned to the Owner thereby, or make an equitable adjustment in the Fee.

14.4. If the Owner does not require correction or re-performance, the Owner shall make an equitable adjustment in the Fee.

14.5. Nothing within this section shall constitute a waiver or exclusion of any other right or remedy that the Owner may possess at law or under this Agreement.

#### **15. TERM, COMMENCEMENT, AND COMPLETION**

15.1. This Agreement shall commence on the effective date set forth above and remain in effect until the completion of the CMGC's Scope of Services, as defined herein, and remain in effect until **December 31, 2020**, unless extended or terminated by the Owner in accordance with this Agreement.

15.2. The CMGC shall begin work under the terms of this Agreement within ten (10) days of receiving written notice to proceed. [If services are to be performed in subsequent phases, then each phase shall be commenced upon the Owner's approval of the previous phase. The CMGC shall not be entitled to any compensation or reimbursement for services performed in a phase unless and until it has received approval from the Owner to proceed with such services.]

15.3. It is further agreed that time is of the essence in performance of this Agreement. The CMGC shall complete the work, or each phase, as scheduled, and the Owner shall provide any required approval of the work or phase meeting the requirements contained herein in a reasonable and timely manner. Projects shall be completed as stated in each individual task order.

#### **16. TERMINATION**

16.1. The Owner may terminate this Agreement in whole or, from time to time, in part, for the Owner's convenience or because of the Default of the CMGC.

- 16.2. The Owner shall terminate this Agreement by delivering to the CMGC written notice of the termination.
- 16.3. Upon receipt of the notice, the CMGC shall:
- Immediately discontinue all services affected (unless the notice directs otherwise).
  - Deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.
  - Terminate all subcontracts to the extent they relate to the work terminated.
  - In the sole discretion and option of the Owner, and if and only if requested to do so, assign to the Owner all right, title, and interest of the CMGC under the subcontracts terminated, in which case the Owner shall have the right to settle any claim or dispute arising out of those subcontracts without waiver of any right or claim the Owner may possess against the CMGC.
  - With approval or ratification by the Owner, settle all outstanding liabilities arising from the termination of subcontracts, the cost of which would be allowable in whole or in part, under this Agreement.
  - Complete performance of the work not terminated.
  - Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the CMGC and in which the Owner has or may acquire an interest.
- 16.4. If the termination is for the convenience of the Owner, the Owner shall make an equitable adjustment in the Fee, subject to the Ceiling Prices and Funding Limitations provisions, *but shall allow no anticipated Fee or profit on unperformed services.*
- 16.5. If the termination is for the CMGC's Default, the Owner may complete the work by contract or otherwise and the CMGC shall be liable for any reasonable and necessary additional cost incurred by the Owner to the extent caused by CMGC's default.
- 16.6. Disputes and claims arising from termination of this Agreement shall be governed by Section 27, Disputes and Claims.
- 16.7. The rights and remedies of the Owner provided in this section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy.

## **17. STOP WORK ORDERS**

17.1. The Owner may, at any time, by written order to the CMGC, require the CMGC to stop all, or any part, of the work called for by this Agreement for a period of up to 90 days after the order is delivered to the CMGC, and for any further period to which the parties may agree. Upon receipt of the order, the CMGC shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the CMGC, or within any extension of that period to which the parties shall have agreed, the Owner shall either—

17.1.1. Cancel the stop work order; or,

17.1.2. Terminate the work pursuant to Section 17, Termination.

17.2. If a stop work order issued under this section is canceled or the period of the order or any extension thereof expires, the CMGC shall resume work. The Owner shall make an equitable adjustment in the delivery schedule or Fee, or both, and the Agreement shall be modified, in writing, accordingly, if—

- The stop work order was not issued because of CMGC's Default in its performance of its obligations under any part of this Agreement;
- The stop work order results in an increase in the time required for, or in the CMGC's cost properly allocable to, the performance of any part of this Agreement; and,
- The CMGC provides Notice of Potential Claim pursuant to Section 27, Disputes and Claims.

## **18. CHANGES**

18.1. The Owner may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement, including but not limited to: (1) drawings, designs, or specifications; (2) time of performance (i.e., hours of the day, days of the week, etc.); and (3) places of inspection, delivery, or acceptance.

18.2. If any such change causes an increase *or decrease* in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the Owner shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms.

18.3. All claims and disputes shall be governed by Section 27, Disputes and Claims. As provided in Section 27, the CMGC must provide written notice of its intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notice is not given, the CMGC hereby agrees to waive any claim for such additional compensation.

18.4. Failure to agree to any adjustment shall be a dispute under Section 27, Disputes and Claims. *However, nothing in this section or any other provision of this Agreement shall excuse the CMGC from proceeding with the Agreement as changed.*

## **19. OWNERSHIP OF DOCUMENTS & DATA**

Except for any pre-existing intellectual property, all Project-related documents and data, regardless of form and including but not limited to original drawings, disks of CADD drawings, cross-sections, estimates, files, field notes, and data, shall be the property of the Owner. The CMGC shall further provide all documents and data to the Owner upon the Owner's request. The CMGC may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the Owner shall have an irrevocable license to use such documents, or data compilations, or work product.

## **20. PATENT AND COPYRIGHT INFRINGEMENT**

- 20.1. The CMGC shall report to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the CMGC has knowledge.
- 20.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the CMGC shall furnish to the Owner, when requested by the Owner, all evidence and information in possession of the CMGC pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the CMGC.
- 20.3. The CMGC agrees to include, and require inclusion of, the provisions of this section in all subcontracts at any tier for supplies or services.
- 20.4. The CMGC shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.
- 20.5. This indemnity shall not apply unless the CMGC shall have been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the CMGC, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the CMGC, unless required by final decree of a court of competent jurisdiction.

## **21. BANKRUPTCY**

In the event the CMGC enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the CMGC agrees to furnish, by certified mail, written notice of the bankruptcy to the Owner. This notice shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of AHTD job numbers and FAP numbers for all contracts with Owner against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.



## **22. FUNDING LIMITATIONS**

The Owner's obligations under this Agreement are contingent upon the availability of appropriated funds from which payments under the terms of this Agreement can be made in this and each subsequent fiscal year for the duration of the Agreement. No legal liability on the part of the Owner of any kind whatsoever under this Agreement shall arise until funds are made available to the Owner for performance of this Agreement, including those to be appropriated by the State of Arkansas and those to be provided by the United States.

## **23. EMPLOYMENT PROVISIONS**

23.1. The CMGC shall not be permitted to employ or make an offer of employment, for regular or part-time work related to any Department projects during the term of this Agreement, to any person who:

- is or has been employed with the Department at any time and, during the person's employment with the Department, the person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise on any matter pertaining to this Agreement;
- is or has been an employee of the Department within the twelve (12) months immediately preceding the execution of this Agreement and, during the person's employment with the Department, any matters pertaining to this Agreement were within the person's official responsibility; or
- is or has been an employee of the Department within the twelve (12) months immediately preceding the execution of this Agreement and will engage in selling or attempting to sell commodities or services, including technical or professional CMGC services to the Department, unless the former employee's last annual salary with the Department did not exceed ten thousand five hundred dollars (\$10,500).
- has been employed by the Department at any time and was terminated with cause or allowed to resign/retire in lieu of termination with cause.

23.2. Any individual or entity acting as a principal or agent on behalf of any person disqualified pursuant to the terms of provision 23.1 shall not be permitted to perform any work related to any Department project for the CMGC during the term of this Agreement.

## **24. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the Owner nor the CMGC may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the Owner or any other governmental entity either made a party to, or possessing any interest in, this Agreement.

## **25. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY**

25.1. *Indemnity.* The CMGC shall hold harmless and indemnify the Owner, Owner's officers, employees, and agents, and all other governmental agencies from and for all claims and

liabilities stemming from any wrongful (whether negligentreckless, or intentional) acts or omissions on the part of the CMGC and its subcontractors, and their agents and employees.

25.2. *No Personal Liability.* No director, officer, manager, employee, agent, assign, or representative of the Owner shall be liable to the CMGC in a personal or individual capacity under any term of this Agreement, because of any breach thereof, or for any act or omission in its execution or performance.

25.3. *Independent Contractor Relationship.* The parties intend that the CMGC shall be an independent contractor of the Owner and that the CMGC shall be solely liable for any act or omission of the CMGC or its agents, employees, or subcontractors arising under or occurring during the performance of this Agreement. No act or direction of the Owner shall be deemed to be an exercise of supervision or control of the CMGC's performance.

## **26. INSURANCE**

26.1. *Professional Liability Insurance Coverage.* The CMGC shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts arising out of the performance of this Agreement in an amount per claim of not less than five (5) times the original Contract Ceiling Price or \$1,000,000, whichever is less. Such insurance shall extend to the CMGC and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the CMGC's subcontractors, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the CMGC or alleged to have been committed by the CMGC or any person for whom the CMGC is legally responsible.

26.2. *Deductible.* The CMGC may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Owner if, in the judgment and opinion of the Owner, the CMGC's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The CMGC shall submit promptly to the Owner, upon request as often as quarterly, detailed financial statements and any other information requested by the Owner to reasonably determine whether or not the CMGC's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.

26.3. *Worker's Compensation Insurance.* The CMGC shall at all times during the Term of this Agreement maintain Worker's Compensation and Employers Liability Insurance as required under Arkansas law.

26.4. *General Liability Insurance.* The CMGC shall at all times during the term of this Agreement maintain comprehensive general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles. The CMGC's insurance coverage shall also cover restoration of plans, drawings, field notes, and other documents in the event of their loss or destruction while in the custody of the CMGC.

26.5. *Insurance Certificates.* Prior to the execution of this Agreement, the CMGC shall furnish to the Owner certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The CMGC's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which Owner, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.

26.6. *Additional Insurance Requirements.* All insurance maintained by the CMGC pursuant to this

Section shall be written by insurance companies authorized to do business in Arkansas, in form and substance satisfactory to the Owner, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Owner. In the event that the insurance is cancelled, terminated, or changed during its term and thirty (30) days written notice cannot be provided to the Owner, the CMGC shall provide any insurance required under this Article for continual coverage upon expiration of the existing policy or become financially responsible for any claims associated with the expired period.

- 26.7. *Duration of Insurance Obligations.* The CMGC shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the Project or the completion of the CMGC's services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the CMGC's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the Project or completion of the CMGC's services, whichever comes first.
- 26.8. *CMGC's Insurance Primary.* All insurance policies maintained by the CMGC pursuant to this Agreement shall provide that insurance as applying to the Owner shall be primary and the Owner's own insurance shall be non-contributing.
- 26.9. *Additional Insured.* All liability insurance policies, except the professional liability policy and Worker's Compensation policy, maintained by the CMGC pursuant to this Agreement shall be endorsed to include the Owner, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Owner.

## **27. DISPUTES AND CLAIMS**

- 27.1. *Notice of Potential Claim.* Whenever a CMGC deems that any additional compensation is due, the CMGC shall notify the Alternative Delivery Project Manager in writing of its intention to make a claim for additional compensation ("Notice of Potential Claim") ***before beginning the work that gives rise to the claim.***
- 27.2. *Time & Manner for Submitting Claim.* All disputes and claims shall first be submitted in writing to the Alternative Delivery Project Manager within 45 calendar days after the completion or termination date. ***The CMGC hereby agrees that the failure to submit the dispute or claim to the Alternative Delivery Project Manager prior to 45 calendar days after the completion or termination date shall constitute a waiver of the dispute or claim.***
- 27.3. *Form.* All disputes and claims must be submitted in writing and in sufficient detail to permit the Owner to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:
- A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim;
  - The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;
  - A copy of the "Notice of Potential Claim";
  - The name, title, and activity of each Department employee knowledgeable about facts that gave rise to such claim;

- The name, title, and activity of each CMGC, Subcontractor, or employee knowledgeable about the facts that gave rise to the claim;
- The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;
- The identification and substance of any relevant documents, things, or oral communications related to the claim;
- A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;
- If an extension of time is sought, the specific number of days sought and the basis for the extension;
- The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,
- Any other information or documents that are relevant to the claim.

27.4. *Decision and Appeal.* If an adverse decision is rendered by the Alternative Delivery Project Manager, the CMGC shall submit the claim or dispute in writing to the Alternative Project Delivery Director within 60 days from the date of the decision the Alternative Delivery Project Manager. The decision of the Alternative Project Delivery Director shall be final and conclusive unless, within 60 calendar days from the date of receipt of the Alternative Project Delivery Director's decision, the CMGC files a claim with the Arkansas State Claims Commission ("Claims Commission") appealing the decision of the Alternative Project Delivery Director. The CMGC will be afforded an opportunity to be heard and offer evidence in support of its appeal before the Claims Commission, subject to the rules and regulations of the Claims Commission, including Ark. Code Ann. § 19-10-302, which requires pursuit and exhaustion of all remedies against responsible third parties and insurance coverage.

27.5. *Continued Performance.* Pending final resolution of a dispute or claim, unless the Owner has terminated this Agreement pursuant to Section 17 or issued a stop work order pursuant to Section 18, the CMGC shall proceed diligently with the performance of this Agreement in accordance with the Alternative Delivery Project Manager's and Alternative Project Delivery Director's decisions.

27.6. *Nonexclusive Remedies.* The rights and remedies of the Owner provided in this section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the Owner decides the facts justify the action, the Owner may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

## **28. COVENANT AGAINST CONTINGENCY FEES**

28.1. The CMGC warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Fee or consideration, or otherwise recover, the full amount of the contingent fee.

- 28.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the CMGC for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 28.3. *Bona fide employee*, as used in this section, means a person, employed by the CMGC and subject to the CMGC's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 28.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 28.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

## **29. TITLE VI ASSURANCES (NONDISCRIMINATION)**

During the performance of this Agreement, the CMGC, for itself, successors, and assigns, certifies and agrees as follows:

- 29.1 *Compliance with Regulations.* The CMGC shall comply with the Regulations relative to Title VI (Nondiscrimination Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations as amended, and hereinafter referred to as the "Regulations". These regulations are herein incorporated by reference and made a part of this Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.
- 29.2 *Nondiscrimination.* The CMGC, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CMGC shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 29.3 *Solicitations for Subcontracts, Including Procurements of Materials & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the CMGC or for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CMGC of the CMGC's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 29.4 *Information and Reports.* The CMGC shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities by the Owner or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the CMGC is in the exclusive possession of another who fails or refuses to furnish this information, the CMGC shall so certify to the

Department or the USDOT and its Affiliated Modes, as appropriate, and shall set forth what efforts it has made to obtain the records or information.

29.5 *Sanctions for Noncompliance.* In the event of the CMGC's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such contract sanctions as it or USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the CMGC under the Agreement until the CMGC complies with the provisions and/or cancellation, termination, or suspension of the Agreement, in whole or in part.

29.6 *Incorporation of Provisions.* The CMGC shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CMGC shall take such action with respect to any subcontract or procurement as the Owner or USDOT and its Affiliated Modes may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however that in the event the CMGC becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the CMGC may request the Owner to enter into such litigation to protect the interests of the State and litigation to protect the interest of the United States.

### **30 DBE CLAUSE**

30.1 The CMGC or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Agreement. The CMGC shall comply with the applicable requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the CMGC to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.

30.2 The CMGC shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

### **31 TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)**

31.1 The CMGC will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.

31.2 The CMGC, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The CMGC shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.

31.3 In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

**32. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

32.1. The CMGC certifies, to the best of its knowledge and belief, that—

32.1.1. The CMGC and any of its Principals—

32.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

32.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

32.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 33.1.1.2; and,

32.1.1.4. The CMGC has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

32.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.

32.3. The CMGC shall provide immediate written notice to the Owner if, at any time prior to contract award, the CMGC learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

32.4. The certification in subsection 33.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the CMGC knowingly rendered an erroneous certification, the Owner may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the Owner.

**33. MISCELLANEOUS**

33.1. *General Compliance with Laws.* The CMGC shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.

33.2. *Registered Professional Engineer's Endorsement.* All plans, specifications, estimates, and engineering data provided by the CMGC shall be endorsed and recommended by an authorized representative of the CMGC, who shall be a registered Professional Engineer licensed in the State of Arkansas.

33.3. *Choice of Law.* This Agreement shall be governed by the laws of the State of Arkansas without consideration of its choice of law provisions.

- 33.4. *Choice of Forum.* The CMGC agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within State of Arkansas. The CMGC's sole remedy following the decision of the Alternative Delivery Project Director regarding any claim or dispute, pursuant to Section 28, Disputes and Claims, shall be before the Arkansas State Claims Commission.
- 33.5. *No Waiver of Immunity.* The Owner expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.
- 33.6. *Conflicts Between Laws, Regulations, and Provisions.* In the event of conflicting provisions of law, the interpretation shall be governed by the following in this order, from most controlling to least: Federal law and regulations, Arkansas State law and regulations, Department and FHWA Standards, and this Agreement.
- 33.7. *Severability.* If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.
- 33.8. *No-Waiver.* The failure of the Owner to strictly enforce any term of this Agreement shall not be construed as a waiver of the Owner's right to require the CMGC's subsequent performance of the same or similar obligation or duty.
- 33.9. *Modification and Merger.* This written Agreement and any provisions incorporated by reference reflect the entire agreement of the parties and may be modified only by the express written agreement of both parties.

#### **34. CERTIFICATION OF AUTHORIZED REPRESENTATIVES**

This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

*Remainder of Page Left Blank*



35. **NOTICE**

35.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the Owner's Alternative Delivery Project Manager or the CMGC's Representative, and mailed or hand-delivered to:

35.1.1. To the Owner:

Arkansas Department of Transportation  
10324 Interstate 30  
Post Office Box 2261  
Little Rock, AR 72203

35.1.2. To the CMGC:

(CMGC COMPANY NAME)  
(STREET ADDRESS)  
(CITY, STATE, ZIP CODE)

**IN WITNESS WHEREOF**, the parties execute this Agreement, to be effective upon the date set out above.

(CMGC COMPANY NAME)

ARKANSAS STATE  
HIGHWAY COMMISSION

BY: \_\_\_\_\_

(NAME)  
(TITLE)

BY: \_\_\_\_\_

(NAME)  
Director

**Disclaimer:**

This contract is being electronically signed. The Info Tech DocExpress Document Signing History will be located on the final page of the executed contract. This document will have all dates and electronic signatures applicable to the execution and certifications of this contract.

## **APPENDICES**

APPENDIX A      SUBCONTRACTS

APPENDIX B      STANDARD CERTIFICATIONS  
B-1  
B-2 (SubcontractorName)  
B-3 Arkansas Highway Commission

## **SUBCONTRACTOR MASTER AGREEMENT**

### **1. SUBCONTRACTOR AGREEMENT**

- 1.1. The services to be performed under this Subcontractor Agreement will be performed in connection with the Agreement for Professional Services ("Prime Agreement") between the CMGC and the Arkansas State Highway Commission ("Commission") for Construction Manager/General Contractor (CMGC) Services, dated \_\_\_\_\_, \_\_\_\_\_. \_\_\_\_\_ ("CMGC") and \_\_\_\_\_ ("Subcontractor") hereby agree that the Subcontractor shall perform the professional and related services as described herein. In consideration for the performance of the professional services the CMGC agrees to compensate (and reimburse, if applicable) the Subcontractor in the manner and at the rate(s) provided herein.
- 1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subcontractors, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subcontractor Agreement and made binding upon the Subcontractor.

### **2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED**

The description of the project will be as stated in each individual task order. Information and services to be provided will be as stated in each individual task order.

### **3. COSTS, FEES, PAYMENTS AND RATE SCHEDULES**

- 3.1. This Agreement is a specific rate of compensation contract. The Subcontractor is being hired to perform professional services in connection with the Project as set forth herein. In consideration for the professional services rendered by the Subcontractor, the CMGC shall pay to the Subcontractor the Fee, to be determined according to the labor and activity rates as set forth in Section 3, Fees and Payment. The Fee includes compensation for any cost to be incurred by the Subcontractor, and the Subcontractor shall not be reimbursed for costs incurred. The Subcontractor shall bear the costs, and resulting risks, of performing this Agreement.
- 3.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the CMGC. Therefore, notwithstanding any provision of this Agreement, all payments to the Subcontractor are subject to the requirements and limitations of 48 C.F.R. Part 31, and the Subcontractor shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any other information submitted to the CMGC with any claim for full or partial payment.
- 3.3. *Fee.* The justification for the fees and the use of the specific rate of compensation method of payment, the scope of services, and the description of the project are detailed in the applicable Task Order. The CMGC shall pay Subcontractor a Fee determined by the hourly or other unit rate shown in the Task Order. Partial hours and units shall be pro-rated.
- 3.3.1.**
- 3.4. The foregoing paragraph does not authorize or permit the Subcontractor to perform services at the overtime rates shown, but only establishes the appropriate rates in the event that the Owner subsequently authorizes overtime. Payment of the Fee at overtime rates is expressly contingent upon the written approval by the Owner *before* the Subcontractor its employees, or its

agents begin the work for which the overtime rate will be requested. Regardless whether Owner authorizes and pays the overtime rates set forth above, the Subcontractor shall comply with all state and federal wage and hour laws and regulations.

#### **4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW**

The Project (as defined in the Prime Agreement), part of which is to be performed under this Subcontractor Agreement, is a federally-assisted project and federal funds will be used, in part, to pay the CMGC and Subcontractor. Therefore, notwithstanding any provision of this Subcontract Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 C.F.R. Part 31, including those relating to determination of indirect cost rates, if applicable. The Subcontractor shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable), along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subcontract Agreement.

#### **5. COMMISSION, AHTD, AND FHWA AS THIRD PARTY BENEFICIARIES**

- 5.1. This Subcontract Agreement is between and binding upon only the CMGC and Subcontractor. The Commission, ARDOT, and FHWA are not parties to this Subcontract Agreement, but are expressly made third-party beneficiaries of this Subcontract Agreement and shall be entitled to enforce any obligation of the Subcontractor owed to the CMGC. No provision of this Subcontract Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Commission, the ARDOT, the FHWA, or any of their employees, officers, or agents.
- 5.2. The Subcontractor's sole recourse, if any, for any injury arising under or related to this Subcontract Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the CMGC.
- 5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subcontract Agreement.

#### **6. RECORDS & AUDITS**

- 6.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 6.2. *Examination.* The Subcontractor shall maintain, and the Owner, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subcontractor's offices and facilities, or parts of them, engaged in performing the Agreement.
- 6.3. *Supporting Data.* If the Subcontractor has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, FHWA, or their

authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the CMGC's records, including computations and projections, related to—

- The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
- Any proposal for the Agreement, subcontract, or modification;
- Discussions conducted on the proposal(s), including those related to negotiating;
- Fees or allowable costs under the Agreement, subcontract, or modification;
- Performance of the Agreement, subcontract or modification; or,
- The amount and basis of any claim or dispute.

6.4. *Audit.* The Owner, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subcontractor's records involving transactions related to this Agreement or a subcontract hereunder.

6.5. *Reports.* If the Subcontractor is required to furnish cost, funding, or performance reports, the Owner, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

6.6. *Availability.* The Subcontractor shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this section and Section 29, Disputes and Claims, for examination, audit, or reproduction, until six years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—

6.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,

6.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

## **7. SUBCONTRACTING**

7.1. Unless expressly disclosed in Appendix B, the Subcontractor may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.

7.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subcontractor of any responsibility, obligation, or duty under this Agreement.

- 7.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 7.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 7.5. *Prompt Payment.* The CMGC shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the CMGC. Any retainage payments held by the CMGC must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the CMGC. If the CMGC fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:
- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the CMGC;
  - notify any sureties; and/or,
  - withhold any or all reimbursements or payments otherwise due to the CMGC until the CMGC ensures that the subcontractors have been and will be promptly paid for work performed.

## **8. COVENANT AGAINST CONTINGENCY FEES**

- 8.1. The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this Subcontract Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the AHTD and CMGC shall have the right to annul this Subcontract Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 8.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subcontractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 8.3. *Bona fide employee*, as used in this section, means a person, employed by the Subcontractor and subject to the Subcontractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 8.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 8.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

## **9. TITLE VI ASSURANCES (NONDISCRIMINATION)**

During the performance of this Subcontract Agreement, the Subcontractor, for itself, successors, and assigns, certifies and agrees as follows:

- 9.1. *Compliance with Regulations.* The Subcontractor shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Subcontract Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.
- 9.2. *Nondiscrimination.* The Subcontractor, with regard to the work performed by it during the term of this Subcontract Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Subcontractor shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 9.3. *Solicitations for Subcontracts, Including Procurements of Materials & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Subcontractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Subcontractor of the Subcontractor's obligations under this Subcontract Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 9.4. *Information and Reports.* The Subcontractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the ARDOT or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the CMGC is in the exclusive possession of another who fails or refuses to furnish this information, the Subcontractor shall so certify to the ARDOT or the USDOT and its Affiliated Modes, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 9.5. *Sanctions for Noncompliance.* In the event of the Subcontractor's noncompliance with the nondiscrimination provisions of this Subcontract Agreement, the ARDOT shall impose such contract sanctions as it or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the CMGC or Subcontractor under the Agreement until the Subcontractor complies with the provisions and/or cancellation, termination, or suspension of the Subcontract Agreement, in whole or in part.
- 9.6. *Incorporation of Provisions.* The Subcontractor shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subcontractor shall take such action with respect to any subcontract or procurement as the ARDOT or the USDOT and its Affiliated Modes may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however that, in the event the Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

direction, the Subcontractor may request the ARDOT to enter into the litigation to protect the interests of the State, and, litigation to protect the interest of the United States.

#### **10. DBE CLAUSE**

- 10.1. The Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Subcontract Agreement. The Subcontractor shall comply with the applicable requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subcontractor to comply with or perform these requirements is a material breach of this Subcontract Agreement, which may result in the cancellation, termination, or suspension of this Subcontract Agreement in whole or in part, or such other remedy that the ARDOT may determine appropriate.
- 10.2. The Subcontractor shall insert a clause containing all the terms of this section in all subcontracts under this Subcontract Agreement.

#### **11. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)**

- 11.1. The Subcontractor will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 11.2. The Subcontractor, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Subcontractor shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 11.3. In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

#### **12. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

- 12.1. The Subcontractor certifies, to the best of its knowledge and belief, that—
- 12.1.1. The Subcontractor and any of its Principals—
- 12.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;
- 12.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;



12.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 12.1.1.2; and,

12.1.1.4. The Subcontractor has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

12.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.

12.3. The Subcontractor shall provide immediate written notice to the AHTD if, at any time prior to contract award, the Subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

12.4. The certification in subsection 12.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subcontractor knowingly rendered an erroneous certification, the AHTD may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the AHTD.

### 13. **NOTICE**

13.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

13.1.1. To the Subcontractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13.1.2. To the CMGC:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties execute this Subcontract Agreement, to be effective

\_\_\_\_\_.

(SUBCONTRACTOR NAME)

(CONTRACTOR NAME)

BY: \_\_\_\_\_  
NAME  
TITLE

BY: \_\_\_\_\_  
(NAME)  
(TITLE)

**CERTIFICATION OF CMGC**

I hereby certify that I, \_\_\_\_\_, am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose headquarters address is \_\_\_\_\_, and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;

(d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment.

**NOTICE OF NONDISCRIMINATION STATEMENT**

***[Provided by CMGC/SubCMGC. A sample is shown below.]***

The \_\_\_\_\_ ("CMGC"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the CMGC does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in CMGC's programs and activities, as well as the CMGC's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the CMGC's nondiscrimination policies may be directed to [Insert Contact's name] (ADA/504/Title VI Coordinator), [Insert Contact's address and telephone number], (Voice/TTY 711), or , the following email address: \_\_\_\_\_.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

\_\_\_\_\_  
Authorized Firm Representative

\_\_\_\_\_  
Date

**Disclaimer:**

This contract is being electronically signed. The Info Tech DocExpress Document Signing History will be located on the final page of the executed contract. This document will have all dates and electronic signatures applicable to the execution and certifications of this contract.

**CERTIFICATION OF SUBCONTRACTOR**

I hereby certify that I, \_\_\_\_\_, am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose headquarters address is \_\_\_\_\_, and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;

(d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment.

**NOTICE OF NONDISCRIMINATION STATEMENT**  
***[Provided by CMGC/Subcontractor. A sample is shown below.]***

The \_\_\_\_\_ ("Subcontractor"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Subcontractor does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in Subcontractor's programs and activities, as well as the Subcontractor's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Subcontractor's nondiscrimination policies may be directed to [Insert Contact's name] (ADA/504/Title VI Coordinator), [Insert Contact's address and telephone number], (Voice/TTY 711), or the following email address: \_\_\_\_\_.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

\_\_\_\_\_  
Authorized Firm Representative

\_\_\_\_\_  
Date

**Disclaimer:**

This contract is being electronically signed. The Info Tech DocExpress Document Signing History will be located on the final page of the executed contract. This document will have all dates and electronic signatures applicable to the execution and certifications of this contract.

**CERTIFICATION OF ARKANSAS STATE HIGHWAY COMMISSION**

I hereby certify that I am the Director of the Arkansas Department of Transportation and that the aforementioned CMGC or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee contributions donation, or consideration of any kind:

except as here expressly stated (if any):

\_\_\_\_\_  
(NAME)  
Director

\_\_\_\_\_  
Date

**Disclaimer:**

This contract is being electronically signed. The Info Tech DocExpress Document Signing History will be located on the final page of the executed contract. This document will have all dates and electronic signatures applicable to the execution and certifications of this contract.

# XVI: Sample CM-GC Task Order

# XVII: Sample Kick-off Meeting Agenda

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# (PROJECT NAME)

**Meeting Title:** CM/GC Kickoff

**Date:** (date)

**Location:** Virtual (or in person)

**Time:** 8:00 AM – 4:30 PM

Topic	Time	Presenter
<b>Welcome</b>	8:00 AM	Project Manager
<b>Introductions and Overview of Workshop</b> <ul style="list-style-type: none"><li>Attendee Introductions including project org chart<ul style="list-style-type: none"><li>Owner – Arkansas Department of Transportation (ARDOT)</li><li>Design Engineer – (company name)</li><li>Independent Cost Estimator – (company name)</li><li>Construction Manager – (company name)</li></ul></li></ul>	8:00 AM	All
<b>Leadership Remarks</b> <ul style="list-style-type: none"><li>ARDOT's Secretary</li><li>Federal Highways</li></ul>	8:15 AM	
<b>ARDOT's Vision of Success</b> <ul style="list-style-type: none"><li>ARDOT Vision of Success<ul style="list-style-type: none"><li>CM/GC Highlights<ul style="list-style-type: none"><li>What right looks like</li></ul></li><li>Project Status and Vision of Success<ul style="list-style-type: none"><li>Discuss selection of CM/GC delivery method</li><li>Objectives for preconstruction phase</li></ul></li></ul></li></ul>	8:30 AM	Project Manager
<b>Project from Team Member Perspectives</b> <ul style="list-style-type: none"><li>Each organization identifies challenges, concerns, opportunities, and goals and outlines their approach/proposed plan to collaborate and contribute toward project success. Lessons learned from prior collaborative project can also be shared during this time.<ul style="list-style-type: none"><li>ARDOT (15 minutes) – Project Manager</li><li>Designer (30 minutes) – Project Lead</li><li>ICE (30 min) – Project Manager or Lead Estimator</li><li>CM (30 min) – Project Manager</li></ul></li></ul>	8:45 AM	Group Leaders
<b>Break</b>	10:30 AM	

<b>Open Discussion/Hot Wash</b> <ul style="list-style-type: none"> <li>Aimed at identifying/prioritizing common concerns</li> </ul> <i>Potential topics of discussion</i> <ul style="list-style-type: none"> <li>Challenges not yet discussed</li> <li>Missing information</li> <li>Potential differing points of view</li> <li>Prioritization of resources</li> <li>Continued discussion of common concerns</li> <li>Action items/Next steps</li> </ul>	11:00 AM	Project Manager
<b>Schedule and Reconciliation Process</b> Review of baseline schedule and possible variations. Discuss reconciliation process for construction schedules and agreement on path forward. <ul style="list-style-type: none"> <li>Current baseline schedule overview <ul style="list-style-type: none"> <li>Design (Review Schedule)</li> <li>Construction</li> <li>Political Issues/Impacts</li> </ul> </li> <li>Approach to Scheduling and Reconciliation <ul style="list-style-type: none"> <li>Independent Approach Initially → Collaborate to Optimize</li> <li>Weather</li> <li>Holidays and Events</li> <li>Work days (5-10s, 5-8s or ?)</li> <li>Other limitations or milestones</li> </ul> </li> </ul>	11:30 AM	ICE
<b>Lunch</b>	12:00 PM	
<b>Risk Management</b> <ul style="list-style-type: none"> <li>Review of existing process/tools, discussion of CM plan/process and assignment of risk managers for programmatic, design and construction related risks. <ul style="list-style-type: none"> <li>Risk Management Plan overview <ul style="list-style-type: none"> <li>Risk Contingency</li> </ul> </li> <li>Risk Management Process</li> <li>Agreement on process/modifications moving forward</li> <li>Initial Risk Register</li> <li>Schedule next Risk Meeting</li> </ul> </li> </ul>	1:00 PM	ICE
<b>Innovations</b> <ul style="list-style-type: none"> <li>Review of proposed Innovation Management Plan and prioritization of previously identified innovations <ul style="list-style-type: none"> <li>Innovation Implementation Plan</li> <li>Experience/plan for tracking innovations</li> <li>Agreement on process/modifications moving forward</li> <li>Initial prioritization of previously identified innovations</li> <li>Schedule next Innovation Meeting</li> </ul> </li> </ul>	2:00 PM	CM



## Cost Model Development

3:00 PM

ICE

- ICE

*Topics for Discussion:*

- Independent Approach to Construction (Initially)
- “Fair Market Price” Definition and Discussion
  - Divergence Factor Percentage
- Subcontracting Plan
  - Plug Numbers
  - Sub Selection Process (Typical Process)
  - DBE Goal
- OPCC Meetings Overview
  - Open Book Estimating
  - Labor Rates
  - Equipment Rates
  - Materials Quotes
  - Indirects
  - Profit and Overhead
  - Subcontractor quotes
  - Escalation

## Schedule next Cost Model Meeting

## Wrap Up

4:00 PM

Project Manager

- Outstanding concerns/identified issues
- Review of action items/next steps
- Schedule task force follow-up meetings

## Closing Comments

4:30 PM

Group Leaders

# XVIII: Sample Task Force Meeting Agenda

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# (PROJECT NAME)

**Meeting Title:** Task Force Meeting (Railroad & Utilities)

**Date:** (DATE)

**Location:** Virtual (or in person)

**Time:** 9:00 AM – 10:00 AM

Topic	Time	Presenter
Welcome/Introductions	9:00 AM	Project Manager
<b>Design Developments and Progress Summary</b> <ul style="list-style-type: none"><li>•</li><li>•</li></ul>	9:05 AM	Design Lead or PM
<b>Review Action Items</b> <ul style="list-style-type: none"><li>•</li><li>•</li></ul>	9:15 AM	Design Lead or PM
<b>Review Risk Register</b> <ul style="list-style-type: none"><li>•</li><li>•</li><li>•</li><li>•</li></ul>	9:25 AM	ICE
<b>Review Innovations Log</b> <ul style="list-style-type: none"><li>•</li><li>•</li><li>•</li></ul>	9:35 AM	CM
<b>Discuss Potential Early Work Package Items</b> <ul style="list-style-type: none"><li>•</li><li>•</li></ul>	9:45 AM	Design Lead or PM
<b>Wrap Up</b> <ul style="list-style-type: none"><li>• Summarize New Action Items and Assign Champions</li><li>• Next Meeting</li></ul>	9:50 AM	PM
Closing Comments		

# XIX: Sample Approach to Cost Meeting Agenda



# (PROJECT NAME)

**Meeting Title:** Approach to Cost

**Date:** (date)

**Location:** Virtual (or in-person)

**Time:** 8:00 AM – 10:00 AM

Topic	Time	Presenter
<b>Welcome/Introductions</b>	8:00 AM	Project Manager
<b>Expectations and Instructions</b> <ul style="list-style-type: none"><li>• Definition “Fair Market Price” &amp; “Open Book” review</li><li>• Roles and responsibilities</li><li>• Overall process discussion</li></ul>	8:05 AM	ICE
<b>Subcontracting</b> <ul style="list-style-type: none"><li>• Identify bid items performed by subcontractors</li><li>• Plug numbers discussion</li><li>• Subcontractor selection process</li></ul>	8:25 AM	ICE & CM
<b>Opinion of Probable Cost of Construction (OPCC) Meetings</b> <ul style="list-style-type: none"><li>• Pre-meeting – quantities, submittals, and forms</li><li>• OPCC Meeting - What to expect</li><li>• Divergence Factor</li><li>• ICE “blinded”</li><li>• Engineer’s Estimate</li><li>• OPCC reconciliation process</li><li>• Schedule first OPCC meeting (if appropriate)</li></ul>	8:40 AM	ICE
<b>Review of Open Book Estimating</b> <ul style="list-style-type: none"><li>• Lump-sum items</li><li>• Discipline breakout subtotals</li><li>• Risk Reserve/Force Account/Contingency</li></ul>	9:00 AM	ICE or ARDOT
<b>Escalation</b> <ul style="list-style-type: none"><li>• Wage Rates, fuel, materials (plugs)</li><li>• Methods of calculation</li></ul>	9:15 AM	ICE
<b>Overhead and Profit</b> <ul style="list-style-type: none"><li>• Home office overhead, project indirect costs, profit margins, etc.</li><li>• Time Related Overhead (TRO)</li></ul>	9:20 AM	ICE & CM



<b>Labor and Equipment Rates</b>	9:25 AM	ICE & CM
<ul style="list-style-type: none"><li>• Coordinate rates and discuss what will be shared</li></ul>		
<b>CPM Schedule</b>	9:30 AM	ICE & CM
<ul style="list-style-type: none"><li>• Independent Approach Initially</li><li>• Calendars</li><li>• Workdays</li></ul>		
<b>Final Bid Submittal</b>	9:50 AM	ICE
<ul style="list-style-type: none"><li>• Review/Award</li></ul>		
<b>Wrap Up</b>	9:55 AM	Project Manager
<ul style="list-style-type: none"><li>• Outstanding concerns/identified issues</li><li>• Review of action items/next steps</li><li>• Schedule follow-up meetings</li></ul>		
<b>Closing Comments</b>		

# XX: Procurement Award Memo



# INTEROFFICE MEMORANDUM

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January 2, 20XX

**TO:** Director

**THROUGH:** Chief Engineer - Preconstruction

**FROM:** Alternative Project Delivery Administrator

**SUBJECT:** Award of Contract  
Job XXXXXX  
XX Rd. – XX Dr. (City) (F)  
XX County

Act 809 of 2017 granted the Arkansas Highway Commission authority to procure qualification based Construction Manager-General Contractor (CM-GC) services to implement the CM-GC Method of Procurement Pilot Program. The subject project was delivered using the CM-GC contracting method. Contractor A was selected to serve as the CM-GC on this project.

The Department contracted with a firm to provide independent cost estimates at pricing milestones during the pre-construction/design phase of the project. XXX provided contractor style, production-based cost estimates. The Department provided the Engineer's Estimate for the project.

The Department received the Guaranteed Maximum Price (GMP) bid for the project from Contractor A on January 1, 20XX. Contractor A submitted a bid price of \$XX,XXX,XXX. This bid was compared to the independent cost estimates provided by XXX and EE. It has been determined that the Contractor A bid price is within ten (10) percent of an independent cost estimate, as required by the above referenced legislation.

Therefore, it is my recommendation that this project be awarded, contingent upon satisfactory contract negotiations.

Concur: \_\_\_\_\_

c: Chief of Administration  
Chief Engineer - Operations  
Assistant Chief Engineers  
Program Management