

VOLUME 5, PART II

CHAPTER 1

CONTRACT ADMINISTRATION

INTRODUCTION

This chapter discusses administration of the construction contract during the construction phase of a project. The construction contract documents are contained in FM4[II]. Other agreements, including those for the executive design professional, are contained in FM3[II].

1.1 CONTRACT ADMINISTRATION RESPONSIBILITY AND POLICY

References:

- **University policy: "Capital Improvement Program Management"** (see [FM1:5.1](#)).

The duties and responsibilities of the University's Representative may include construction contract administration during the construction phase of a project.

University policy is to have contract administration and the role of University's Representative performed by either design professionals or by Facility personnel. (see [FM1:5.1](#)). If construction contract administration is performed by the design professional, the services to be performed are described in the Executive Design Professional Agreement and the construction contract documents. If construction contract administration is performed by Facility personnel, outside consultants may be used to provide support services to the University's Representative.

1.1.1 The University and the University's Representative

References:

- **Long Form, General Conditions, Revision 4, July 1, 2006** (see FM4[II]).

In University construction documents, "University" is a contract term meaning The Regents of the University of California. In the *Facilities Manual*, the more common term "University" has been substituted for "The Regents of the University of California" wherever possible.

The name of the University's Representative is identified in the construction contract documents and may be the design professional or a University employee. The term

"University's Representative" is used in the construction contract documents even if the "design professional", as that term is referred to in University policy, is fulfilling the role of the University's Representative.

1.1.2 Facility Responsibilities

In addition to the contract administration performed by the University's Representative, the Facility is responsible for administering additional contract duties and responsibilities of the University (The Regents) required by the construction Agreement and the Executive Agreement. The Facility must also administer all University and Facility policies and procedures related to the project. These additional duties and responsibilities of the University are usually administered by University's Designated Administrator who is generally a University employee.

1.1.3 Keeping a Project File

During contract administration, all contract documents, forms, correspondence, and other related records must become part of the Facility's project file (see Figures, [RD1.3](#), and [FM3\[II\]](#)).

1.1.4 Administration of Projects Funded by Federal Grants

During contract administration of projects funded by federal grants, the Facility may be required to comply with specific terms and conditions of the grants, especially in the areas of affirmative action, project reports, reviews, payment of Davis-Bacon wages instead of California prevailing wages.

1.2 PRECONSTRUCTION CONFERENCE (KICK-OFF)

References:

- Long Form, Specifications, Section 01200, Paragraph 1, Revision 3.1, January 2, 1996 (see FM4[II]).

Prior to commencement of the work, the University's Representative holds a preconstruction conference to discuss administrative procedures to be followed during performance of the work. Items typically discussed at the conference include the construction documents, the schedule, communications, submittals, change orders, use of the site, special project requirements, required guarantees, and payment procedures. The following parties are usually required to attend the preconstruction conference:

- University
- University's Representative
- University's consultants (including the design professional)
- Project Manager
- Contractor

- Contractor's superintendent
- Major subcontractors
- Other parties the University's Representative or University deems appropriate, i.e. Fire Marshal,
- Parking Services, Facilities Management.

Specific project requirements will determine what is discussed and who should attend.

1.3 SUBMITTALS

References:

- **Long Form, General Conditions, Paragraph 9.8, Revision 3.1, January 2, 1996 (see FM4[II]).**
- **Long Form, Specifications, Section 01740, Revision 3.1, January 2, 1996 (see FM4[II]).**

Submittals are those items submitted by the contractor to the University's Representative as required by the contract documents. During construction, submittals may include but are not limited to the following:

- Contract schedule
- Written plans
- Shop drawings, product data, and samples
- Test reports
- Materials and equipment substitution requests
- Certifications
- Mix designs
- Calculations
- Qualifications of installers

The University's Representative is responsible for reviewing and approving submittals, and for maintaining a file of approved submittals.

Before completion of the work, additional submittals are made by the contractor to the University's Representative. These submittals include the following:

- As-built documents
- Maintenance contracts
- Guarantees
- Operating and maintenance data

1.3.1 Schedules

References:

- Long Form, General Conditions, Paragraph 3.9, Revision 3.1, January 2, 1996 (see FM4[II]).
- Long Form, Specifications, Section 01310, and Section 01340, Paragraph 2.3, Revision 3.1, January 2, 1996 (see FM4[II]).

Two schedules are required by the contract documents: the preliminary contract schedule and the contract schedule. Each is prepared by the contractor and submitted to the University's Representative. If other schedules are deemed necessary, list these schedules in Specifications, Section 01310.

Preliminary Contract Schedule. The preliminary contract schedule graphically shows how the contractor has planned the work activities of the project. The contractor is required to submit this schedule with the signed Agreement. Within 7 days after receipt, the University's Representative reviews the preliminary contract schedule for content. If the schedule is acceptable it is so noted and returned to the contractor for use until the contract schedule is due. If the schedule is not acceptable, the University's Representative makes review comments and returns the schedule to the contractor for appropriate adjustments. Once the preliminary schedule is accepted, the contractor uses it as the basis in developing the contract schedule.

Contract Schedule. The contract schedule graphically shows each work activity, the start and finish time for each activity, the interrelationship of all work activities, and the critical path activities. This schedule is used by the contractor to coordinate the work of subcontractors. It is also used by the University's Representative and University to determine the progress of the work and to determine monthly progress payments. Payment of progress payments is dependent upon University's Representatives acceptance of the contract schedule. Requirements for the contract schedule are specified in Section 01310. Additional requirements may be added such as cost and manpower loading. The University's Representative also uses the accepted contract schedule to judge the validity of the contractor's claims of delays (see [III:3.4](#))

The contract schedule is required to be updated to show actual conditions (see [III:4.1](#)) including the following:

- The as-built condition of all completed and in-progress work activities.
- All agreed-upon changes and all changes from change orders and field orders.
- Agreed-upon modifications to the methods of accomplishing the work.

The original contract schedule depicts the intent (as-planned) schedule. The updated contract schedule shows both the actual (as-built) and the intent (as-planned)

The University's Representative is not responsible for approving the contract schedule but must determine its acceptability and determine if the contractor is using the schedule to coordinate the work. The University's Representative is responsible for approving the updated contract schedule.

1.3.2 Shop Drawings

References:

- **Long Form, General Conditions, Revision 4, July 1, 2006 (see FM4[II]).**
- **Long Form, Specifications, Section 01340, Revision 3.1, January 2, 1996 (see FM4[II]).**

Shop drawings are drawings, diagrams, schedules, and other data specially prepared for the work by the contractor or a subcontractor to illustrate some portion of the work. Shop drawings are submitted by the contractor to the University's Representative for review and are used in actual construction by the construction team. The contractor is responsible for ensuring that all parts of the work are fabricated and installed correctly and as approved. The University's Representative reviews shop drawings to ensure their conformance with the contract documents.

Submittal Process:

1. Contractor or subcontractor prepares shop drawings (subcontractor submits them to the contractor).
2. Contractor reviews and approves shop drawings for conformance with the contract documents and submits them to the University's Representative.
3. If the University's Representative is the design professional, the University's Representative reviews and stamps the shop drawings. The stamp shows whether the shop drawings are to be revised and resubmitted or if they are acceptable. If the University's Representative is not the design professional, the University's Representative transmits the shop drawings to the design professional for review and acceptance.

During construction, the University's Representative maintains a file containing all approved shop drawings. At the completion of the work, the Facility receives this file from the University's Representative.

1.3.3 Product Data and Samples

References:

- **Long Form, General Conditions, Revision 4, July 1, 2006(see FM4[II]).**
- **Long Form, Specifications, Section 01340, Revision 3.1, January 2, 1996 (see FM4[II]).**

Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the contractor to illustrate or describe materials or equipment for some portion of the work.

Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the work will be judged.

Product data and samples are prepared by the contractor or subcontractor as a package and include technical data from manufacturers and other information proving that specified items meet the requirements of the contract documents. The submittal process for product data and samples is the same as that for shop drawings (see [III:1.3.2](#)). During construction, the University's Representative maintains a file containing a list of all approved product data and samples. At the completion of the work, the Facility receives this file, along with actual product data and samples, from the University's Representative.

1.3.4 Test Reports

References:

- Long Form, Specifications, Section 01400, Revision 3.1, January 2, 1996 (see FM4[II]).

Test reports are written documents prepared by testing laboratories reporting on examinations performed on materials used in the construction (see [III:2.3](#)). The testing laboratory submits test reports to the University's Representative.

1.3.5 Requests for Substitution of Materials and Equipment

References:

- Long Form, Specifications, Section 01630 “Product Options and Substitutions”, Revision 3.1, December 1, 2003 (see FM4[II]).

The required standards of quality, utility, and appearance of materials and equipment are established by the use of specific manufacturers' names, catalog numbers, specific brands, or trade names. Substitutions which are equal in quality, utility, and appearance to those specified may be accepted, subject to the provisions and procedures specified in the Specifications.

1.4 ASSIGNMENTS

References:

- Long Form, General Conditions, Revision4, July 1, 2006 (see FM4[II]).

The General Conditions prevents the contractor and the University from assigning any of their responsibilities under the contract without the written consent of the other party.

However, the General Conditions requires the contractor to assign its interest in first-tier subcontracts to the University, for performance of any part of the work. If the contractor is suspended or terminated, the University may accept assignment of any of these subcontracts and complete the work. At the time of suspension or termination, the University must notify the contractor in writing indicating which subcontracts will be accepted for assignment.

Any decisions concerning assignment are made by the University's Designated Administrator (see definition in Executive Agreement, FM3[II]). The University's Designated Administrator (1) prepares a document that designates the subcontracts to be assigned and gives consent to the assignment (see [RD2.40](#), Assignment of Subcontractors), and (2) obtains the Facility's accounting office report for the project. Both documents must be submitted to the Office of the General Counsel for approval prior to execution of the consent document.

After the consent document is executed, a copy of the original signed document must be submitted to the Facility's accounting office to alert that office that there will be a change in disbursement of funds for completed work. Place the original consent document in the project file and send copies to each subcontractor whose subcontract is accepted for assignment.

1.5 SUBSTITUTION OF SUBCONTRACTORS AFTER CONTRACT AWARD

References:

- Long Form, General Conditions, Revision 4, July 1, 2006(see FM4[II]).
- [Public Contract Code, State of California, Section 4100 et seq.](#), Subletting and Subcontracting Fair Practices Act.

The University is subject to and follows the requirements of the Subletting and Subcontracting Fair Practices Act (the act):

- The act prohibits the performance of any work by other than the listed subcontractor (including the contractor) without the consent of the awarding authority (the University).
- The act provides for substitution of subcontractors, but limits the situations (grounds) when the awarding authority may consent to a contractor's request to substitute a subcontractor not listed in its bid (see [III:1.5.1](#)).
- The act also establishes procedures for the awarding authority to consent to substitute subcontractors.

The Instructions to Bidders requires each bidder to submit a list of first-tier subcontractors (those that have a direct contract with the contractor) who will provide labor, equipment, or materials valued at more than one-half of one percent of the bidder's lump-sum base bid.

1.5.1 Authorized Grounds for Consenting to a Contractor's Request for Substitution

The grounds for which the University may consent to substitute another entity for a listed subcontractor are those in Public Contract Code 4107 which are currently as follows:

1. When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, and drawings and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the contractor.
2. When the listed subcontractor becomes bankrupt or insolvent.
3. When the listed subcontractor fails or refuses to perform his or her subcontract.
4. When the listed subcontractor fails or refuses to meet the bond requirements of the contractor as set forth in [Public Contract Code, Section 4108](#). Section 4108 states, in part, that the subcontractor must be prepared to submit a Performance and Payment Bond (or bonds) if so requested by the contractor to whom it has submitted a bid.
5. When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to further provisions set forth in [Public Contract Code, Section 4107.5](#) that the name of the subcontractor was listed as a result of an inadvertent clerical error (see [\[I\]: 10](#)).
6. When the listed subcontractor is not licensed pursuant to the contractor's License Law.
7. When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial accordance with plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.
8. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
9. When the awarding authority determines that a listed subcontractor is not a responsible contractor.

1.5.2 Procedures for Substitution Requests on Grounds Other Than a Clerical Error

(For substitution requests resulting from clerical error, see [\[I\]:9.2.1](#).)

When a contractor's request for substitution or request to perform work for a listed subcontractor is received, the Facility must give the listed subcontractor prompt, written notice of the contractor's request to substitute and the reason for this request (see [RD2.22](#), Notice of Substitution). Although additional subjects can be added to the notification letter, the following requirements must be met:

1. The notification letter shall be sent to the listed subcontractor by certified or registered mail to the last known street address of the listed subcontractor.

2. A description of the scope of the work to be performed by the proposed substitute subcontractor shall be included in the notification letter.
3. A copy of the contractor's request for permission to substitute or remove a listed subcontractor shall be enclosed with the notification letter.
4. The notification letter shall advise the listed subcontractor that it has five working days from the date of receipt of the notice to submit written objections to the substitution, to the Facility office issuing the letter.

The listed subcontractor's failure to file written objections within five working days is deemed to constitute the listed subcontractor's consent to the substitution.

The contractor's request may be consented to using the Consent to Substitution of Subcontractors (see [RD2.23](#)) if (1) the listed subcontractor consents either expressly in writing or by not objecting within five working days, and (2) the proposed substitute subcontractor or the contractor (if the contractor proposed to do the work) is acceptable, that is, considered "responsible" (see [II:4.1](#)), by the University and University's Representative.

If Facility consents to substitution of subcontractor, then contractor is sent Indemnity Agreement (see [RD2.23](#), Substitution of Subcontractors Indemnity Agreement).

Public Hearing. If the listed subcontractor files timely written objections, the Facility must request a hearing officer from the Chair, Construction Review Board. Make the request in writing or, if the request is made by telephone, follow up the telephone request in writing. Attach a copy of all related correspondence to the written request.

The hearing officer working with General Counsel; the Chair, Construction Review Board; and the Facility gives written notice of the hearing, by a means that provides proof of receipt, to the contractor and the listed subcontractor, at least five working days before the date of the scheduled hearing.

Based on evidence and testimony offered at the hearing, written findings are issued on whether the stated justification for the substitution is an authorized ground and has been substantiated. If an authorized ground is found to have been substantiated, the Facility must consent to the substitution request provided that the proposed substitute subcontractor or the contractor (if the contractor proposed to do the work) is acceptable, that is, considered "responsible," by the University and University's Representative.

If a listed subcontractor has been prequalified, the University shall require that the substitute subcontractor also have been prequalified.

1.5.3 Consent Does Not Change the Contract

The Facility must inform the contractor that a consent to substitution or consent to the contractor's performance of the listed work does not entitle the contractor to an increase in the contract sum or an extension of contract time.

1.5.4 Failure to Specify a Subcontractor

If the contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the work, and that portion exceeds one-half of one percent of the contractor's lump-sum base bid, the contractor must perform that portion of the work as set forth in [Public Contract Code, Section 4106](#).

Exception to this regulation is permitted in cases of public emergency or necessity, and then only after a finding reduced to writing is issued as a public record of the University setting forth the facts constituting the emergency or necessity ([Public Contract Code, Section 4109](#)). In these cases, the Facility must contact the Office of the General Counsel by telephone, e-mail, or facsimile, and General Counsel will determine if an emergency or necessity exists.

Another exception to this regulation is permitted for change orders ([Public Contract Code, Section 4107\[c\]](#)). An unlisted subcontractor may be used for change order work if that subcontractor is acceptable to the University and, if applicable, to the University's Representative.

1.5.5 Penalty for Violating Fair Practices Act Provisions

A contractor violating any provisions of the Subletting and Subcontracting Fair Practices Act defaults under its contract with the University, and the University may exercise the option, at its own discretion, of (1) canceling the contract or (2) assessing the contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved. The contractor is entitled to a public hearing (see [III:1.5.2](#)) and five days' prior written notice of the time and place of the hearing before the University can determine which sanction, if any, to impose ([Public Contract Code, Section 4110](#)).

If the Facility discovers that work is being performed by someone other than the subcontractor listed in the bid, the Facility must notify the contractor, in writing, of any planned penalty for this violation. In the notification letter, the Facility must inform the contractor of entitlement to a public hearing if the contractor objects to the planned penalty within five working days of receipt of the notification letter. If the contractor does not object to the planned penalty, no hearing is required. If the contractor does object, the Facility must request a hearing officer from the Chair, Construction Review Board.

Occasionally, a violation is discovered during the substitution request process. In these cases, the Facility requests in writing that the hearing officer inform the contractor that penalties will be considered during the hearing. The hearing officer's findings may include a statement that the contractor has violated the provisions of the Subletting and Subcontracting Fair Practices Act, and that the Facility may impose a penalty at its discretion.

1.6 INSURANCE AND BONDS

References:

- **Long Form, General Conditions, Article 11, Revision 4, July 1, 2006 (see FM4[II]).**
- **Long Form, Supplementary Conditions, Revision 4, July 1, 2006(see FM4[II]).**
- **Long Form, Instructions to Bidders, , Revision 4, July 1, 2006 (see FM4[II]).**

The lowest responsible bidder is required to submit, to the University, Certificates of Insurance and bonds required by the General Conditions and Instructions to Bidders. The certificates are part of a package of documents required to be submitted within ten days after the bidder's receipt of the Notice of Selection as Apparent Lowest Responsible Bidder. The certificates must be prepared on the forms required by the University (see Exhibits, FM4[II]).

The following insurance policies, coverages, and bonds must be furnished by the contractor:

- Payment Bond (see Exhibits, FM4[II])
- Performance Bond (see Exhibits, FM4[II])
- Comprehensive or commercial form general liability insurance
- Business automobile liability insurance
- Workers' compensation and employer's liability insurance

1.6.1 Payment Bond

The Payment Bond (see Exhibits, FM4[II]) secures the payment of claims initiated by subcontractors, laborers, mechanics, material suppliers, and other persons, as provided by civil law. Three original bonds are executed. One original is for the contractor, one original is for the Surety, and one is for the University.

1.6.2 Performance Bond

The Performance Bond (see Exhibits, FM4[II]) guarantees that the project will be completed if the contractor is unable to fulfill the requirements of the contract documents. Three original bonds are executed. One original is for the contractor, one is for the Surety, and one is for the University.

The Facility must contact the Office of the General Counsel if the contractor is unable to complete the contract.

1.6.3 Liability Insurance

Comprehensive or commercial form general liability insurance, business automobile liability insurance, workers' compensation, and employer's liability insurance protect the contractor, University, University employees and consultants, and the University's

Representative from claims resulting from accidents and injuries related to the construction of the project.

The Facility's Project Manager records in detail the events leading up to an accident, the conditions at the time of the accident, and a complete description of the accident, damage, and injuries. This report must be submitted to the Facility's risk management office.

1.6.4 Builder's Risk Property Insurance and Loss Reporting

References:

- Long Form, General Conditions, Revision 4, July 1, 2006 (see FM4[II]).

For contracts valued at \$200,000 or more, builder's risk property insurance, excluding earthquake and flood insurance, is provided by the University. The contractor is responsible for any deductible.

Once the contractor has been selected for the project, the Facility is responsible for completing and filing the builder's risk insurance application with Aon Risk Services (See [RD2.43](#), Builder's Risk Insurance Application.) This application must be filed before the Notice to Proceed is issued.

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