

Negotiating Large Professional Services

University Facilities (UF)

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Approved by: Todd Barnette

This document establishes official Guideline for negotiating a large professional service contract.

Objective

Negotiation of a contract for professional services is both a negotiation of issues surrounding an agreement such as scope of work, insurance, work stoppages, termination, schedule, personnel, and many other issues, and it is about the fees to be paid by the owner to the professionals that are being hired. Per State law, fees do not enter into the A/E selection process; they only arise during contract negotiation. Only after the selection is made are specific fees discussed. Clemson University and the A/E negotiate to further define the A/E's scope/terms/conditions and arrive at a reasonable level of compensation for the work. Fees are generally negotiated as a fixed lump sum based on a specific scope of work and/or deliverables with a set construction budget.

To initiate the negotiation process, the Director of University Planning & Design (Director (UP+D)) notifies the selected A/E firm after the selection of an A/E is made. The Director will contact the selected A/E firm to schedule an initial meeting to begin the contract negotiation stage. For simple projects, having a contract in place and going through contract approvals before the first meeting with project users is a reasonable expectation. It is often desirable, however, on complex projects to allow the A/E to begin programming a project before a contract is in place. This allows the A/E to gain a full understanding of the scope of work, and the people and processes that will be involved. This minimizes the risk both to the University and the A/E for miscalculation of both scope and fee. The early engagement, if so desired, is at the A/E's risk. If a contract is not executed, the A/E will not be compensated for the initial engagement. In some cases, it may be desirable to initiate a small contract (under \$25K) with the A/E to provide for access to important information and processes, and this is allowed on a case-by-case basis.

Procedure

Project Kickoff Meeting

The purpose of the Project Kickoff Meeting is to ensure that all project stakeholders have the same understanding of the project scope, schedule, and authorized funding at that point in time. Attendees at the meeting should include the A/E, the Director (UP+D), the Director of Capital Projects, the CU Project Manager, and appropriate user representatives. After the meeting, the A/E is to draft and circulate meeting minutes confirming consensus on project scope, schedule, and budget. If questions arise in regard to the scope or required services the Director (UP+D) is to research the issues and provide answers in writing within one week to clarify the project requirements.

Draft Proposal

The A/E is to draft a proposal to design the project within the authorized budget and the scope and/or schedule clarified at the Project Kickoff Meeting. The draft may be a letter that outlines the issues detailed below in advance of the full contract. The proposal must not conflict with, or modify any terms or conditions of the standard CU Agreement for Professional Services. The proposal should include the following information:

1. Project Description and Understanding of Scope: For very simple projects, the minimum project description should reference to the CU Project Name and State Project Number and include a descriptive narrative or attachments such as the Agency project advertisement, Memorandum of Project Understanding, A/E Project Kickoff Meeting Minutes, Project Charter, etc.
2. A/E's Scope of Work: Include a description of tasks or services to be provided and/or the deliverables necessary to successfully meet the authorized project scope, schedule, and budget. Specifically identify any additional services with description of tasks or deliverables. It is imperative that the A/E make site visits to the project at vital points during construction to ensure that construction is consistent with the design. Therefore, the proposal must specify the minimum number, frequency and/or a list of vital points of construction for site visits -- (including those required for Commissioning activities), and consistent with the contract language.
3. A/E's Proposed Schedule: The A/E's schedule should successfully accomplish the project within the authorized project schedule or timeline and identify milestones, deadlines, and completion dates as contained in the project description or as defined by all parties at the A/E Project Kickoff Meeting. The following specific schedule milestones shall be the minimum identified in terms of dates (month & year) and/or durations per activity, as applicable:

- Pre-Design Phase: For programming and assessments - Completion of services date or other milestones.
 - Phase 1 Preliminary Design: Completion of Design Concept and Development Phase, Design Report, Preliminary Design Review.
 - Phase 2 Final Design, Documentation, and Construction Administration: Design Development, Working Drawings, Specifications, Final Design Review.
 - Bidding Phase (for Design/Bid/Build projects): Anticipated Bid Opening and Due Diligence period.
 - Construction Phase: Anticipated Construction Start, Anticipated Substantial Completion.
4. Proposed Fee: A complete listing of Basic Service fees, Additional Services Scope and Fees, and Reimbursable Expenses.
- Each component of the proposed fee must be broken down into Preliminary Design (Phase 1) and Final Design, Documentation, and Construction Administration (Phase 2). Phase 1 will target approximately 1% or less of the total project budget.

Proposal Review

The proposal will be sent to the Director (UP+D) who will evaluate the fee proposal against similar projects, other design contracts, and fee schedules published by other states and agencies similar in nature to Clemson and South Carolina, the state of Florida being an excellent source of information in 2017. If the proposed fee exceeds the guidelines, the A/E shall substantiate why the fee is greater than what was anticipated and consider adjusting the fee as appropriate. Similarly, where the proposed project schedule exceeds or is different from what is required, the variance is to be noted and justified and amended as necessary.

Within two weeks after receipt of the draft proposal the Director (UP+D) with consultation of the Project Manager, will comment on the A/E submittals. Comments will be based upon the needs, schedule, and available financial resources of the project. With input from the Director of Capital Projects and the Project Manager, the Director (UP+D) shall determine if the proposal is acceptable for the basis of a contract. If it is acceptable, the Director (UP+D) will work with the A/E to complete the entire contract package and proceed to compile and submit the information necessary to acquire authorization to enter into a contract for professional services. If good faith negotiations with the first selected A/E does not produce an agreement, the Director (UP+D) may, with proper consultation with the Chief Facilities Officer and the VP for Finance and Operations, terminate negotiations and negotiate with the next A/E team identified in the ranking contained on the SE217.

Professional Service Fees

Professional Service fees for major projects are dynamic in nature. They are generally a smaller percentage of construction value for large projects and they are generally a larger percentage of construction value for small projects. Complexity also plays a significant role in determining a fee, the more complex, the higher the fee. The following website hosted by the State of Florida provides guidance concerning these two primary variables. While this is a very good reference, the way in which Florida defines Basic Services must to be built into the contract. The information that defines what is excluded from Basic Services is noted on the website below. <https://fp.state.fl.us/docs/DMSAEFeeGuidedefinition.asp>

Very Large Professional Service Contract Negotiation

For Large Professional Service contracts that are likely to be in excess of \$10 million, including basic services/additional services and reimbursable expenses, a more intensive and engaging process will be used internally to negotiate the contract. In each discussion with the A/E, the Director of University Planning & Design, the Director of Capital Projects, the Project Manager, and the Chief Facilities Officer will be present and involved. At each stage of contract review, each internal member will review the project in detail and provide comments to the Director of University Planning & Design. Upon final review of the contract, each member must agree that the contract accurately reflects the scope and scale of the project and that it is a fair and reasonable contract.

Relationship to Office of the State Engineer Manual

The latest edition of the OSE Manual for Planning and Execution of State Permanent Improvements sets the requirements and parameters for Professional Service Contracts. A review of that information will be useful to understand the process and procedure of selecting the A/E prior to initiating the A/E contract, and to understand how subsequent activities of the A/E are managed. OSE's website:

<https://procurement.sc.gov/manual>