Overview - Long Term Facilities Planning and Construction Project Agreements

- LTFMR Legislation; Planning/Process: Allowable Uses
- Bidding and Awarding Contracts
- Agreement Terms
- Authorization to Proceed, Records, Payments, …
- Final Payments Closeout
- Conflicts and Disputes

LTFMR Legislation

- Approved by 2015 legislature
- Effective beginning FY 2017 - projects started
- Flexible tool for financing certain maintenance and improvement projects
- Replaces other funding sources – Hlth. & Safety, Deferred Maint., Alt. Facil.
Restricted Uses

- Construction of New Facilities
- Remodeling of Facilities
- Purchase of Portable Classrooms
- Energy-efficiency Projects
- Violence Prevention & Facilities Security
- Ergonomics or Emergency Communications Devices
- Deferred Payment Agreements
  - Lease Purchase, Installment

LTFMR Planning Process

- Facilities Assessment – Who and How?
  - Define and Prioritize
    - Health and Safety
    - Building envelope
    - Accessibility
    - Other

- 10 Year Plan – maintenance and repair (Capital Improvements?)
  - Annually
    - Submit MDE by July, 31st indicate levy or bonds
    - Monitor and review (updates and amendments?)

LTFMR Planning Process - continued

- Bonds
  - Accounting - separate accounting of bond revenues from other. (deferred maintenance, health and safety, pre-K remodeling)
  - If issuing bonds, make sure you are preserving enough LTFMR revenue to fund ongoing project needs.
  - Consider who is advising the large projects by sale of bonds
    - Is there any conflict of interest
    - Assure consideration of ongoing capital maintenance
Considerations

- Selecting – Professional Service Providers
  - Long Range Facilities Planning Consultant
    - 10Yr Plan – maintenance and repair
    - 10Yr Plan – Capital improvement or replacement
  - Program Manager Approach
    - Owners representative option
    - General over other disciplines (Architect, Engineer, Construction Management, Commissioning, Special Inspections, Surveying, Environmental Services, …)

- Selecting – Professional Service Providers
  - Multiple Services Agreements Approach
    - Separate but coordinated agreements
      - Program/Plan Manager
      - Architect, Engineer
      - Construction Management
      - Commissioning
      - Special Inspections
      - Surveying
      - Environmental Services
Considerations

- Agreement Terms

- Forms
  - Standard AIA® Forms (American Institute of Architects)
    - Most widely used family of forms
    - "A" Series – owner/contractor
    - "B" Series – architectural services
    - "C" Series – architect and its subconsultants
  - Engineers Joint Contract Documents Committee (EJCDC®)
    - Traditionally used where lead designer is an engineer
  - Associated General Contractors of America (AGC®)
    - Popular subcontract form, modified at state level by local chapters
- Other
  - Consensus Docs, Construction Mgmt Assoc. of Amer., Design-Build Institute

Considerations

- Agreement Terms

- Amendments to standard forms
  - General Considerations – Owner/Professional
    - Architect is solvent, experienced; owner relying on architect's representation that it possesses the skills to perform the services;
    - Architect will provide professional services necessary to perform complete design / construction for the project;
    - All professionals will be licensed; standard of care applies and is not reduced;
    - Design shall comply with statutes, regulations and code
    - Owner can approve architect's designated representative, which can't be changed without owner approval;
    - Insurance requirements of architect;
    - Architect obligated to provide services necessary to needs of project;
    - Construction Documents should identify the materials, systems and other requirements for the Work.

Considerations

- Agreement Terms

- Amendments to standard forms
  - General Considerations – Owner/Professional
    - Copyright assignment to owner
    - Evaluation of the Work (site visit obligations)
    - Dealing with non-conforming work
    - Restrict architect's authority on deciding matters of performance
    - Architect as 'Initial Decision Maker' on claims
    - "Minor changes in the Work" – subject to owner approval
    - Statute of limitations
    - Consequential damages
    - Dispute Resolution / Choice of Venue at Owner's place of business
    - Termination
    - Indemnification by architect in favor of owner
Agreement Considerations

• Agreement Terms

• Amendments to standard forms
  - General Considerations – Owner/Contractor (General Conditions)
    - Improved definitions (furnish, recognize, discover, knowledge)
    - Inconsistencies in Contract Documents – better quality applies
    - Specifications, rules, codes, etc – most current and latest editions
    - Work shall comply with Contract Documents, and applicable laws, codes, regulations and industry standards
    - “Instruments of Service” – owned by Owner, not Architect
    - Contractor to carefully study field condition and Contract Docs, and report to Architect and owner inconsistencies or omissions
    - Indemnification – cover both Work and non-Work and loss of use
    - Improved warranty obligations of contractor
    - Consequential Damages

Agreement Considerations

• Agreement Terms

• Amendments to standard forms
  - General Considerations – Owner/Contractor (General Conditions)
    - Dispute resolution – retain rights as to architect’s review of claims
    - Dispute resolution – retain rights to choose forum and relief
    - Mediation or Arbitration – subject discretion of owner
    - Final payment – not a waiver of claims
    - Safety
    - Insurance – (including “other than the Work itself”)
    - Insurance – Products/Completed Ops – how long after completion?
    - Insurance – Builders Risk – who procures?
    - Waiver of Subrogation
    - Change Orders – need details of proposed change
    - Compliance with schedule and more stringent as to delays

Agreement Considerations

• Agreement Terms

• Amendments to standard forms
  - General Considerations – Owner/Contractor (General Conditions)
    - Substantial completion – strengthen what it means
    - Statute of Limitations
    - Termination
Agreement Considerations

• **Bidding and Awarding Contracts**
  - Request for Proposals: RFPs (Professional Services)
    - Avoid common bid terms and language
    - School Board Policy or Understanding
  - Request for Qualifications: RFQ
    - Select based on qualifications and business fit
    - Negotiate fees and terms
    - Second selected and repeat process

• **Bidding and Awarding Contracts**
  - **Construction**
    - Competitive bid (§ 123B.52 CONTRACTS )
    - Requirements outlined in Section § 471.345, Subd. 3
    - Two weeks' published notice
  - **Best Value Alternative** (§ 16C.28 Subd. 1b)
    - Commissioner established procedures and selection criteria must be included in the solicitation document and must be evaluated in an open and competitive manner.
    - Board may authorize its superintendent or business manager
      - Agreements and Changes

• **Authorization to Proceed with Construction**
  - **Before any onsite work**
    - Performance and payment bonds received
    - Construction Permit from City/State (Before award of bid?)
    - Board awards bid and authorizes agreement
    - Agreement forms are fully executed and in district's possession
Agreement Considerations

- Authorization to Proceed with Construction (Cont.)
  - Before any onsite work
    - Certificates of Insurance – actual endorsement for named insured
    - Asbestos containing materials acknowledgement form
    - Exemption from Surety Deposits for Non-MN contractors
    - Authorization to proceed letter from District to contractor
      - Routed through Architect or Construction Manager

Agreement Considerations

- Records – construction and payment
  - Define accounting structure prior to advertising or awarding
    - Separation of accounts and funding sources
    - Cost of construction breakdown
    - Final reporting requirements and considerations
  - Construction progress photo journal
    - Drawing/Plan referenced, tagged or linked
    - Frequency and quantity
    - Contractor notification prior concealment/cover processes

Agreement Considerations

- Final Payments Closeout
  - Certified/approved application for payment
  - Received and fully executed change orders
  - Punch lists resolved
  - Consent of surety to final payment
  - Contractors affidavit acknowledging payment status
  - IC134 MN DOL - required labor withholdings
Agreement Considerations

- Conflicts and Disputes
  - Construction progress meetings
  - Surety notifications
  - Consider cost of formal proceedings
- Mediation
- Arbitration
- Litigation

Questions & Considerations

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