

UNIVERSITY of HOUSTON

Office of Contract Administration

<http://www.uh.edu/legal-affairs/contract-administration/index.php>



Submittal Process

- ▶ Contracts must be approved by OCA before they can be executed.
- ▶ All contracts should have:
 - Contract coversheet: http://www.uh.edu/legal-affairs/contract-administration/pdf-documents/Contract_Coversheet_OGC-S-2006-14.pdf
 - Recommendation for Award: <http://www.uh.edu/legal-affairs/contract-administration/pdf-documents/Recommendation%20for%20Award.pdf>
- ▶ Submit contracts electronically to contractadmin@uh.edu



SAM No. 03.A.05

- ▶ 3.b. Each component university shall develop and maintain a contract management system to ensure that the terms and conditions of each contract are performed in an appropriate manner. ***The individual(s) responsible for ensuring that the terms and conditions of the contract are met shall sign an appropriate statement acknowledging this important responsibility. Such documentation, to include an acknowledgement statement and the person's name, title (if appropriate or required), signature and date of signature shall be maintained with the records associated with each contract.***

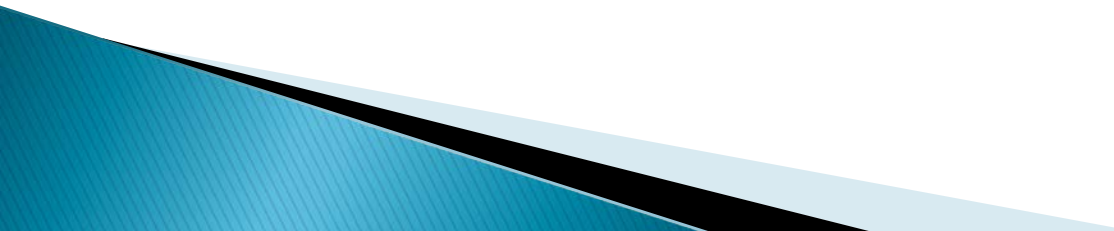
Submittal Process

- ▶ Mary Armintor logs each contract into the system and assigns a “K number” to the contract. *K-11-00XXX*
- ▶ Anamaria reads through the contract. She then forwards the approved contract to the Assistant Vice President (or the contact listed) noting any questions or concerns with the terms.

Standard Forms

- ▶ Standard forms are available on the OCA website. Any deviation to the form will delay the review.

Office of the General Counsel
Type of Agreement
OGC-S-20XX-XX
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SBDC

Student Affairs

TMAC

University Advancement

Checklist

- ▶ Before submitting a form:
 - Check that the fields were filled in properly, including:
 - Contract amount(s) **\$\$\$**
 - Party names/contact information 
 - Proper and complete exhibits and/or attachments
 - Make sure that the information contained in the Exhibits does not change the terms of the contract.
 - Incomplete contracts cannot be approved 

Updated Forms

- ▶ Construction Manager-at-Risk Agreement
- ▶ Design/Build Agreement (twice)
- ▶ Owner – Architect Agreement
 - Design Change Authorization
- ▶ Owner – Contractor Agreement
- ▶ Owner – Contractor Agreement by Project Job Orders
- ▶ Professional Services Agreement




Forms in Progress:



- ▶ Continuing Services Agreement
 - Like JOC, but for architectural/engineering services (did Master O-A for Morris Architects for ERP)
- ▶ Supplemental General Conditions
- ▶ Revision of forms' reference to UGC (2010 version)
 - Incorporated in every construction contract by Government Code §2166.302 except “small construction projects” (under \$100K that require advance preparation of working plans or drawings)

Sec. 2166.302. ADOPTION OF CONDITIONS.

- ▶ (a) Except as provided by Subsections (b) and (c), the commission shall adopt uniform general conditions to be incorporated into all building construction contracts made by the state, including a contract for a project excluded from this chapter by Section 2166.003, but not including a contract for a project excluded from this chapter by Section 2166.004.
 - ▶ (b) The commission is not required to adopt uniform general conditions for small construction projects, as defined by Section 2166.001.
 - ▶ (c) Subsection (a) does not apply to a project constructed by and for the Texas Department of Transportation.
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Forms Needed:

- ▶ Delivery method-specific RFQs and RFPs



Specific Contract Provisions

▶ Indemnity:

- ▶ Bodily Injury and Property Damage. To the fullest extent permitted by law, and as consideration for the terms and conditions of this Agreement, Design/Build Contractor ("**Indemnitor**") agrees to release, indemnify, protect, defend with counsel approved by Owner, and hold harmless Owner, the University of Houston, and/or any of their respective component institutions, directors, board members, regents, trustees, officers, administrators, agents, employees, licensees, successors and assigns ("**Indemnitees**") from any claims, damages, losses, liabilities, liens, costs and/or expenses, controversies, causes of action, lawsuits, proceedings, injuries, judgments and expenses (including mediation, settlement, attorney fees, and other costs or expenses) (each, a "**Claim**") if the Claim: (1) is related to bodily injury, sickness, disease, death or loss or damage to real or personal property, including any loss of use resulting therefrom (collectively, "**Damage**"); and (2) is caused in whole or in part by any of the following: (a) a negligent act or omission by Design/Build Contractor, a Subcontractor, the Project Architect, or any other party for whose acts they may be liable (each, an "**Indemnifying Party**"); or (b) the refusal or failure to comply with any obligation in the Agreement by an Indemnifying Party; or (c) violation of applicable law(s) by an Indemnifying Party.
- ▶ Design/Build Contractor shall not be obligated to indemnify the Indemnitees from or against a Claim resulting from Owner's negligence when such negligence is the sole and proximate cause of the Damage which is the basis of the Claim. In the event Direct/Build Contractor and Owner are found jointly liable by a court of competent jurisdiction, liability for the Claim will be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the Parties under Texas law.

Indemnity

- What it means (make UHS whole in the event of a listed act/loss)
- What it covers (acts/omissions of contractor)
- Why would anyone carve out intentional acts?
- ▶ Financial
 - Does it match what was posted by UHS and agreed to by the parties?
 - Do revisions make sense?
 - Example: contractor requests that we add a new line item after Construction Administration Services for pre-construction phase fee. (1) Any issues with that? (2) Any other issues with this excerpt?

Pre-Construction Phase Fee

- ▶ The GMP includes the Pre-Construction Phase Fee equivalent to the sum of all fees for services rendered in the Pre-Design, Schematic Design, Design Development, Construction Document and Construction Administration phases, and which is comprised as follows:

- ▶ Pre-Design Phase: \$40,260 (5%)
- ▶ Schematic Design Phase: \$80,520 (10%)
- ▶ Design Development Phase: \$161,040 (20%)
- ▶ Construction Documents Phase: \$402,600 (50%)
- ▶ Construction Administration Services: \$120,780 (15%)
- ▶ Total Amount* \$805,200 of which 100% represents the Project Architect fee.



Exhibits



- Are they attached?
- Is each the latest agreed version?
- Does any exhibit contain extra/unnecessary information?
 - Could that information be used by the contractor to avoid a contractual obligation or to charge more than agreed?
 - Strike through and get contractor's initials.



Non-UHS Agreements Affecting Development and Maintenance

▶ Easements

- An easement is the conveyance of an interest in real property
- An easement requires approval of the Board of Regents
- Filed of record in the county where the real property is located
 - You must confirm that the description of the property affected is correct
 - If not UHS or Board of Regents of UHS, then you must get Real Estate involved to have the record corrected
 - You must confirm that the description of the easement tract is correct
- Considerations
 - Restrictions on use/improvement/development

Easements

- ▶ UH may use the Water Line Easements for any purpose that does not interfere with City's use of the Water Line Easements, but UH will not construct, install or place any bridges, buildings, or other permanent vertical improvements (other than fencing) within the Water Line Easements without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned, or delayed. If UH requests the City's consent to construct, install, or place bridges, buildings or other permanent vertical improvements within the Water Line Easements, UH:
 - (a) Must comply with the City's internal review and approval processes; and
 - (b) Recognizes that building within five feet of the edge of a pipeline or appurtenance is automatically unreasonable and consent will be withheld under those circumstances.

Easements

- Sufficient description of the purpose
- Indemnification
 - Public entities (municipalities, counties, utilities) will not indemnify, but they will agree to require the contractor to indemnify UHS as a condition to commencing work

Non-UHS Agreements Affecting Development and Maintenance

- ▶ Licenses/rights of entry/memoranda of understanding
 - Used almost interchangeably to get UHS' permission to enter UHS property to conduct work (usually utilities, road work, etc.)
 - Not a conveyance – a contract
 - Parties' rights are as set forth in the contract, no more or less
 - All considerations for an easement apply here as well