

CONSTRUCTION MANAGEMENT
Board of Trustees
March 3, 2011



UNIVERSITY OF WYOMING

Wyoming Public Works Statutes Prior to 2005

- Resident contractors defined – UW relies on Wyoming Department of Employment Certification
- Bids awarded to lowest responsible and responsive bidder
- Certified responsible resident contractor awarded bid if not more than 5% higher than lowest responsible nonresident
- A successful resident bidder shall not subcontract more than 20% to nonresident bidders
- Preference for Wyoming materials and laborers
 - 5% preference for Wyoming materials of equal quality
 - Laborers must be paid overtime in excess of 40 hours per week
 - Prevailing wage rates paid on contracts in excess of \$25K – wage records retained

Preference statutes do not apply to federal funded projects.



Wyoming Public Works Statutes Prior to 2005 (Continued)

- Projects publicly advertised for three consecutive weeks prior to bid
- Performance and Labor and Material Payment Bonds required on contracts exceeding \$100K
- Joint retainage accounts – no more than 10% withheld until work is 50% complete, if satisfactory work no additional retainage withheld. Retainage placed in joint interest bearing deposit agreement with contractor
- Public Advertisement for final payment
- Life cycle cost analysis required on at least two building systems – available to public
- Accessibility required in all state funded buildings
- Qualification based selection system required for professional services – price may be considered. No preference for resident professionals.



UW Capital Projects Prior to 2005

UW Projects

- Typically design-bid-build delivery method
- Advantages:
 - Most common public construction method – well understood
 - Contractor selected based upon open competitive bidding
 - Transparent - less probability of conflict of interest
 - Apples to Apples comparison due to complete documents and specifications
 - Contract direct with Architect/Engineer
 - Contract direct with General Contractor
 - Well established and understood contract roles
 - Well crafted and understood, legally tested guidelines



UW Capital Projects Prior to 2005 (Continued)

- Design-Bid-Build disadvantages:
 - Project is sequential – design complete prior to bid, bid complete prior to contracting
 - Project delivery ***time*** longer than other methods
 - Funds at greater risk in times of budget reductions
 - Vulnerable to contractor initiated ***change orders*** and claims due to incomplete or erroneous construction documents
 - Best practices in construction, construction technology, or economical construction not always the goal of architect/engineer designing project
 - Estimates performed during design are not complete/accurate
 - Construction periods often established by designer
 - ***University at risk*** for error free and complete construction documents



Wyoming Public Works Statutes

Post 2005 – 2010

Changes to statutes included:

- A successful bidder shall not subcontract more than 30% to nonresident contractors
- Prevailing wages paid on contracts in excess of \$100K
- Public advertisement for two consecutive weeks prior to bid
- Construction contracts material preferences only apply to projects less than \$5M
- Construction payments made in 45 days or subject to 1-1/2% interest per month
- **Alternative Delivery Methods established:**
 - Construction Manager-at-Risk
 - Construction Manager Agency
 - Design- Build
 - Above contractors selected on basis of qualifications, price considered
 - Unclear if residency rules applied to professional services contracts for construction management and design-build services
 - No requirement for Construction Managers or Design-Builders to bid subcontracts.



UW Projects

Post 2005 – 2010

Construction Manager-at-Risk Delivery Method

- **Advantages**

- Early cost estimating and constructability provided by CMAR as early as schematic design
- Integrated process including architect, contractor and UW; chances of misunderstanding are minimized
- CMAR fees and contingencies can be established at RFP/RFQ process. Construction schedules may be established as well
- Construction costs minimized using latest construction methods and technologies
- Process can be parallel with construction starting prior to completion of construction documents = reduction in overall project delivery time
- Adversarial atmosphere reduced if not eliminated because all parties are invested in success of project
- CMAR can better determine qualifications of subcontractors and suppliers due to past experiences
- Clear quality and performance standards established
- CMAR can provide a Guaranteed Maximum Price (GMP) early in the process
- GMP cannot be exceeded without a change in scope or an unforeseen condition such as an underground anomaly or adverse weather
- Subcontracts and material suppliers can be competitively bid
- CMAR can be required to bid on work to be self-performed similar to subcontracts
- High probability of on-time delivery of project; price guaranteed to be within budget



UW Projects

Post 2005 – 2010

Construction Manager-at-Risk Delivery Method (Continued)

- **Disadvantages**
 - UW at risk for additional preconstruction fees of CMAR
 - Earlier in design GMP is delivered, higher risk to UW for incomplete construction documents and higher built-in contingencies
 - Subcontractors may not bid those sections they suspect the CMAR will self-perform
 - Pre-qualifying and pre-selecting subcontractors limits bidding of those portions of the work
 - Bids and subcontract costs can be manipulated by the CMAR through competitive bidding if the owner is not cognizant of costs
 - Project scope can be sacrificed due to expected contingencies in the GMP dependent upon how early the GMP is established
 - If subcontractors are used for design assistance there may be expectation of bidding preferences
 - Subject to dispute over qualifications of contractors



UW Criteria for Successful Completion of Capital Project

- Address programmatic requirements that initiated the capital project (i.e., meet Level 1 program requirements)
- Complete project within the budgeted resources for the project (in some cases, UW has returned appropriated \$s)
- Complete project on schedule
- UW facilities designed to achieve Leadership in Energy and Environmental Design (LEED) standards
 - Design and construct facilities using environmentally responsible methods
 - Design facilities that will be energy efficient once in operation
- Utilize WY contractors whenever possible



Development of Discussions

- After COB was bid in 2007, local contractors began to express concern about lack of participation
- 2010 legislative session – statutes were amended to require that subcontract bids be publicly opened
- Fall 2010 – discussions with contractors/subcontractors about bidding procedures and advertisements
- 2011 legislative session – statutes further amended to clarify application of preferences in ACMs



Issues/Conditions that have Impacted Use of WY Firms

- In middle part of prior decade, State of WY initiated a major school construction effort (i.e., on the order of \$1 billion) that WY contractors were heavily engaged in statewide (limited resident firms' ability to participate in UW projects)
- UW experienced a few projects with no bids
- With declining state construction in neighboring states, outside firms came to WY and established residency (as determined by WY Department of Employment)
- Recently, level of prior construction is not continuing *and* there are greater numbers of in-state firms to participate in UW projects (i.e., significantly enhanced competitive environment)
- Bonding capacity of firms to participate on larger projects
 - Statutory requirement that firms have sufficient bonding capacity
- There are some types of work that are not provided by WY firms (e.g., elevators, architectural pre-cast concrete)



UW Projects Post 2005 – 2010

Project (Chronology as completed)	Method	% In-State	% Out-State
Information Library and Learning Center	CMAR	43	57
Indoor Practice Facility	DB	53	47
Information Technology Facility	CMAR	56	44
Classroom Renovations Phase 1	CMAR	65	35
Law Moot Court	CMAR	30	70
Sustainable Agriculture R & E Center Lab & Residence	DBB	100	0
Police Facility	DBB	92	8
Cheney International Center	CMAR	90	10
Classroom Renovations Phase II	CMAR	65	35
College of Business	CMAR	13	87
East Stadium Club & Suites	CMAR	55	45
Kendall House	CMAR	38	62
Sullivan Education Center	DBB	77	23
Robert & Carol Berry Biodiversity Conservation Center	CMAR	72	28
Downey Hall Renovation	DBB	88	12
Visual Arts	CMAR	70	30
Energy Resource Center	CMAR	Pending	Pending



Statutes 2010 & 2011

Statutory Change Adopted:

- Construction Management Agency, Construction Management-at-Risk and Design-Builders are required to ***publicly open subcontract bids (2010)***.

Recent Statutory Changes:

- Resident Contractor Definition refined requiring principle place of business, resident ownership, resident employees, payment of workers comp, debarment, etc.
- Residency is added as a consideration of professional services procurement
- Construction Management Agency, Construction Management-at-Risk and Design-Builders are ***required to meet the preference rules:***
 - Conduct open bid process including public advertisement
 - Responsible resident Wyoming contractors shall be awarded at least 70% of contract unless specialized and not available in Wyoming
 - Responsible resident Wyoming contractor awarded 105% for equivalent quality out of state providers
 - Enforcement shall not unreasonably delay the project
 - 70% not enforced if insufficient number of responsible Wyoming bidders
 - If 70% is waived, *UW President and BOT President must approve waiver in writing and submit to Governor and Chairs of JAC.*
- Furniture Fixtures and Equipment must be bid with general specification and residency preference rules as above. Waivers must be submitted also as above.
- Any Agency receiving funds on or after July 1, 2008 must conduct a review and report to Department of Employment and Attorney General any non-compliance with preference laws



UW Actions to Promote Use of WY Contractors

- UW promotes compliance on part of contractors re: preferences for materials and labor on projects (i.e., buy materials locally as much as possible and employ local workers)
 - UW project manager conducts periodic review of contractors' labor records
- With recent changes in statutes, UW has revised methods to meet statutory requirements re: employment of in-state contractors
- UW holds public informational meetings in Fall (and perhaps the Spring in 2011) for contractors to make them aware of UW capital plans
- UW requires:
 - Contractors/CMs to **publicly advertise all subcontracts**
 - Casper Star Tribune, Laramie Boomerang, UW Facilities Planning website
 - Contractors to develop subcontractors awareness of upcoming opportunities (*note: if no bids are received from WY firms, UW attempts to identify potential firms and invite them to become involved in projects*)
 - Public bidding process, including **public opening of bids** (no pre-qualifications)
 - Limiting amount of self-performed work by construction manager
 - Extending preference to WY contractors to the extent authorized and required



UW Criteria for Successful Completion of Capital Project

- Address programmatic requirements that initiated the capital project (i.e., meet Level 1 program requirements)
- Complete project within the budgeted resources for the project (in some cases, UW has returned appropriated \$s)
- Complete project on schedule
- UW facilities designed to achieve Leadership in Energy and Environmental Design (LEED) standards
 - Design and construct facilities using environmentally responsible methods
 - Design facilities that will be energy efficient once in operation
- *Utilize WY contractors consistent with recently adopted statutory preference requirements*

