

## Synopsis of Changes to the State of Ohio CM at Risk Contract Documents for 2018

1. Revised public records language to reflect new statutory requirements. (Instructions to Proposers Section 5.8.1)
2. Added tables to permit identification of differing percentages of CM's Contingency and CM's Fee that are applicable to distinct *scopes of Work*. (Agreement Form Sections 3.4 and 3.5 and GMP Amendment Sections 1.1.2 and 1.1.3)
3. Eliminated 'bidding' from the Applicable Law and Contract provisions that a Design-Assist Firm is subject to. (Agreement Form Section 5.2.1)
4. Allows CM to supplement a Subcontractor's forces with Self-Performed Work with prior written permission of the Contracting Authority. (General Conditions ("GC") Section 4.1.1.4)
5. Requires CM to obtain Contracting Authority's written permission before soliciting Subcontract Bids for any Work not the subject of an executed GMP Amendment. (GC Section 4.5.1.1)
6. Requires CM to obtain Contracting Authority's written permission before soliciting a Subcontract Bid from any Bidder not prequalified. (GC Section 4.5.1.2)
7. Creates defined term "Self-Performed Work" and establishes that Self-Performed Work must be performed by CM's *direct employees* or CM Affiliated Entity's *direct employees* and *excludes* Work performed by direct employees of a Subcontractor, except providing materials and supplies and rental of tools or equipment. (Contracting Definitions ("CD") and GC Section 4.7)
8. Removed Subcontractor prompt payment process language. (GC Section 4.12.1)
9. Relocated Subcontractor payment and retainage provisions from General Conditions to the Subcontract Form. (GC Section 4.12.2 and Subcontract Form dated 2016-OCT)
10. Removed statutory interest provision for failure to promptly pay a Subcontractor. (GC Section 4.12.3)
11. Removed process language related to Subcontractors and laborers establishing a claim against future payments. (GC Section 4.12.4 through 4.12.6)
12. Revised timing for commencement of GMP Proposal and Amendment process from 50 percent of scheduled time for Construction Documents Stage to date A/E notifies Contracting Authority, Owner, and CM that Construction Documents are 50 percent complete. (GC Section 5.2.2.7)
13. Revised submitting CM's Opinion of Document Characteristics to a representation by CM for each stage that A/E's provisional submission is consistent with CM's expectations. CM is still required to conduct review of A/E's provisional submission within ten days after receiving it and notify the Contracting Authority, Owner, and A/E if CM is unable to make that representation. (GC Sections 5.3.3.2, 5.3.4.2, 5.4.4.2, 5.4.5.2, 5.5.3.2, 5.5.4.2, 5.6.4.2, and 5.6.5.2)
14. Revises the time for the Contracting Authority, Owner, and A/E's review of the CM's GMP Proposal from "a reasonable period" to "at least five business days." (GC Section 5.7.8)
15. If Contract Sum exceeds CM's pre-GMP estimate of the Construction Cost, CM will *not* be entitled to CM's Fee on the *difference* between Cost of the Work in GMP Amendment and its most recent estimate of Cost of the Work. (GC Section 5.7.9.1)

16. Deleted “Project Coordination” section on premise that CM is motivated to coordinate the Project even without this contractual requirement. (Former GC Section 6.7)
17. Changed RFI from “Request for Interpretation” to “Request for Information.” (CD and GC Section 6.7.2)
18. Relocated “Additional Tests and Inspections” section from former GC Section 6.8 to new Section 6.20.
19. In the prohibition against bringing Hazardous Materials to the Project, introduced an exception for materials specified in the Contract Documents and customary materials and equipment. (GC Section 6.11.4)
20. Created obligation that CM take precautions to prevent Hazardous Materials from causing bodily injury or death, property damage, or environmental damage. (GC Section 6.11.4.1)
21. Increased obligation to correct Defective Work and recover schedule deficiencies from “begin to correct ... and recover” to “promptly commence and diligently pursue correction ... and recovery.” (GC Section 6.22.1.1)
22. Allowed Owner to accept Defective Work after final Contract Completion by giving written notice to CM. (GC Section 6.23.1.2)
23. Established a “Punch List Milestone” 30 days after date of Substantial Completion and schedule of Liquidated Damages for failure to *timely complete* the Punch List. (GMP Amendment Section 2.1, CD, GC Sections 6.26.3.1 and 8.7.1)
24. Revised timing for Partial Occupancy from “prior to Contract Completion” to “prior to Substantial Completion.” (GC Section 6.27.1)
25. Revised obligation to notify insurers providing property insurance for the Project from “A/E with the assistance of the Owner” to “Owner with the assistance of the CM and A/E.” (GC Section 6.27.1.2)
26. Introduced affirmative obligation for CM to notify Contracting Authority, Owner, and A/E when any change in the Project may entitle Owner to a credit from CM or a reduction in time for completion. (GC Section 7.1.7)
27. Established procedure for executing a Change Order if CM does not accept terms of a Change Directive or respond to Change Directive with a Proposal, or if Contracting Authority, Owner, and CM cannot agree on the adjustments to the Contract Sum and Contract Times, signed by Owner and Contracting Authority. (GC Sections 7.4.7 and 7.4.10)
28. Added example related to CM *not* benefitting from double application of charges for overhead or profit. (GC Section 7.7.1.2)
29. Clarified language and added example that Subcontractor overhead and profit is *not* eligible to be paid to CM if CM is Self-Performing or performing as a Subcontractor at any tier. This provision does *not* apply to CM-Affiliated Entity. (GC Section 7.7.2.10.1)
30. Modified required language for certification of a Claim by adding “that the amount of money, time, or both requested is the *entire* amount of money, time, or both for which the CM believes the CM is entitled and the State is liable.” (GC Section 8.5.1.1)
31. Established Liquidated Damages may be assessed based on Contract Sum for Phases of a Project individually, and not in the aggregate, if Phases are *explicitly identified* in the Agreement. (Agreement Form (K-12) Sections 3.2, 3.3, and 3.5; GMP Amendment (K-12) Sections 1.1.2 and 1.1.3; and GC Section 8.7.1)
32. Streamlined section on Alternative Dispute Resolution to a single paragraph by eliminating description of each possible ADR method. Descriptions are retained in Contracting Definitions. (GC Section 8.13.1)

33. Introduced specific reference to failure to timely make submittal of a GMP Proposal in list of items allowing Contracting Authority to withhold payment from CM. (GC Section 9.1.9.1.3)
34. Modified method for paying CM's Fee from "percent-complete progress basis" to "earned Cost of the Work on the basis of the CM's Fee percentage identified in the Agreement." (GC Section 9.2.3.2)
35. Payment of CM's Fee on CM's Contingency requires Contingency to be transferred to a Cost of the Work line item *before* it can be paid. (GC Section 9.2.3.2)
36. Required CM to account for CM's Fee through separate line items for CM's Fee on Cost of the Work and CM's Fee on CM's Contingency. (GC Section 9.2.3.3)
37. Modified method for paying General Conditions from "percent-complete progress basis" to "cost-reimbursable basis" with the ability to request payment on "percent-complete progress basis" subject to *reconciliation* 30 days prior to final payment. (GC Section 9.2.4.2)
38. Clarified adjustment, payment, and accounting of Construction Stage Personnel Costs to be on an "hourly basis ... not to exceed the amount in the GMP Amendment," subject to *reconciliation* 30 days prior to final payment. (GC Section 9.2.5.2)
39. Established that CM's Contingency will be funded on per-Phase basis if the Phases are *explicitly identified* in the Agreement, and that CM will not be entitled to transfer unused CM's Contingency from one Phase to one or more other Phases. (Agreement Form (K-12) Sections 3.2, 3.3, and 3.5; GMP Amendment (K-12) Sections 1.1.2 and 1.1.3; and GC Section 9.2.6.1.1)
40. Clarified that CM's Contingency is the *sole* allowance available for CM to mitigate risks that constitute the permissible uses of CM's Contingency. (GC Section 9.2.6.4)
41. Introduced *specific* prohibition against CM using CM's Contingency to pay Liquidated Damages. (GC Section 9.2.6.5)
42. Introduced requirement that CM develop Alternates during Preconstruction Stages and permits Owner to use 'buy-out savings' to incorporate them into the Project. (GC Section 9.2.9)
43. Established that retainage will be applied on per-Phase basis if the Phases are *explicitly identified* in the Agreement. (Agreement Form (K-12) Sections 3.2, 3.3, and 3.5; GMP Amendment (K-12) Sections 1.1.2 and 1.1.3; and GC Sections 9.2.12.3 and 9.2.14.5)
44. Clarified that penal sum of Performance Bond and Payment Bond after increase of Contract Sum will equal 100 percent of *CM's Total Compensation* (Preconstruction Stage Compensation plus the Contract Sum). (CD and GC Section 10.1.4)
45. Required CM to deliver 'Acknowledgement of Surety' to evidence that affected Surety or Sureties received notice of the increased penal sums to Contracting Authority on a form prescribed by Contracting Authority, as a *condition precedent* to payment of any portion of the Work associated with the increased penal sums. (Acknowledgement of Surety Form and GC Section 10.1.5)
46. Established that CM will *not* be entitled to increase of the Contract Sum, Contract Times, or both if Contracting Authority refuses to accept a Subcontractor's *nonconforming* insurance coverage. (GC Section 10.2.1.2.1)
47. Required that certificates of insurance must *identify* all required additional insureds and Project name. (GC Section 10.2.2.1)

48. Added statutory requirements for workers' compensation coverage if Work involves hazards on or near navigable waterways, including vessels and docks. (GC Section 10.3.1)
49. Added requirement that Commercial General Liability insurance not exclude coverage for property damage to *electronic data*. (GC Section 10.3.3.5)
50. Clarified that Business Automobile coverage definition of 'any auto' include "owned, not owned, leased, rented, hired, or borrowed." (GC Section 10.3.4.1)
51. Added requirement that Business Automobile coverage include *specific endorsement* if transporting hazardous wastes/materials. (GC Section 10.3.4.3)
52. Clarified that CM shall maintain contractor's professional liability insurance for services related to coordination and scheduling of construction activities. (GC Section 10.3.7)
53. Clarified requirements for builder's risk insurance policy, revised structure of the section, and makes Contracting Authority's receipt of an insurance company certified copy of complete insurance policy a *condition precedent* to payment of any portion of Contract Sum. (GC Section 10.4)
54. Clarified CM's duty to defend is subject to written permission and approvals of legal counsel and final settlement. (GC Section 10.6.5)
55. Revised "CM Insolvency" language to more accurately reflect Applicable Law. (GC Section 11.4)

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