

CONTRACT MANUAL
FOR
SSHE-RMP-2019
CENTRALLY-HELD, OPEN-END CONTRACTS
FOR
ROOF MANAGEMENT PROGRAM SERVICES

**Construction Support Office
State System of Higher Education
2986 North Second Street
Harrisburg PA 17110**

January 2, 2020

Table of Contents

Part 1 General Information	page 3
Purpose	
Key Terms and Abbreviations	
Universities and Points of Contact	
Related Contracts	
Part 2 Basics of the Contracts	page 4
Firms Under Contract	
Legal Approvals	
Contract Execution, Duration, and Renewals	
Assignments, Novations, Etc.	
University Coverage	
Scope of Services	
Use of Subconsultants	
Small Businesses (SB) and Small Diverse Businesses (SDB)	
Thresholds and Limits	
Part 3 Costs and Pricing	page 6
Pricing Data	
Renewals and Escalation	
Professional Fee Cost Principles	
Part 4 Utilization of the Contracts	page 8
Selection of Firms for IWOs	
Requests for Approval of IWOs	
Negotiations for an IWO	
Work Order Form	
Changes to IWOs	
Closing Out IWOs	
Part 5 Miscellaneous Information	page 10
System Reference Documents	
Software Applications/Solutions	
Evaluations	
Ethics	
Separate Reference Files	<i>separate files</i>
Document 1, Contract Form	
Document 2, Professional Fee Cost Principles	
Document 3, Individual Work Order Request Form	
Document 4, Individual Work Order Form (<i>template/sample</i>)	
Table 1, University Points of Contact	
Table 2, Firms and Points of Contact	
Table 3, Contract Dates	

Part 1 - General Information

Purpose

This Manual has been prepared for the utilization of the SSHE-RMP-2019 Centrally-Held Open-End Contracts for Roof Management Program Services. The Manual is to be used both by System universities and by firms under contract.

This Manual is written in "lay" terms and is not all inclusive. Any terms and conditions in the actual contracts are binding.

This Manual will be posted on the Construction Support Office public web site, where it will be accessible for both universities and firms.

Information in this Manual will be updated periodically. Most updates will involve the Tables. Updates will be provided to all parties; or, at least, parties will be notified that updates were posted.

Key Terms and Abbreviations

System: State System of Higher Education. The System comprises 14 universities and the Office of the Chancellor. In this Manual, when discussing the administration of the contracts and the policies for utilizing them, the term System refers to the Construction Support Office and/or the System's Contracting Officer for the contracts, as opposed to individual universities, or to a group of universities.

CSO: Construction Support Office. CSO, located at the Office of the Chancellor, is the System office which procured and is administering the base contracts.

IWO: Individual Work Order. IWOs are what are used to procure specific services under these contracts.

RMP Contracts: Throughout this Manual, the SSHE-RMP-2019 contracts will be simply referred to as the RMP contracts, or these RMP contracts.

The terms "contract" and "agreement" may be used interchangeably throughout this Manual.

Universities and Points of Contact

The System's Contracting Officer for the contracts is Steven R. Dupes, Assistant Vice Chancellor for Facilities. CSO is part of his organization.

Each university will have its own contracting officer(s) who will sign IWOs for their own universities. Otherwise, the 14 Universities' primary points of contact for utilization of these contracts are at Table 1.

Related Contracts

CSO also holds four other sets of centrally-held, open-end professional contracts. All sets of contracts operate similar to the way these RMP contracts operate. However, all of these other centrally-held, open-end contracts can run as long as six years (two-year contracts with two options for two-year renewals), as opposed to four years.

- The SSHE-ARCH-2016 and SSHE-ENGR-2016 contracts are for architectural services and engineering services, respectively. They were put in place in early 2017 and they were renewed the

first time in early 2019. There are 28 firms, and 30 firms, respectively, currently holding these contracts.

- The SSHE-CM-2019-CM contracts are for construction management services. These were put in place in the early Fall of 2019. There are 23 firms holding these contracts. These CM-2019 contracts replace the PASSHE-CM-2013 contracts, which expired in the Fall of 2019; however, there may be several IWOs still in place under these older contracts.
- The PASSHE-COMM-2015 contracts are for commissioning services. They were put in place in late 2015, and the second renewals of these contracts were recently executed. There are 17 firms currently under contract.

Part 2 - Basics of the Contracts

Firms Under Contract

The System has entered into RMP contracts with six firms. The contract numbers are ordered alphabetically by the firms' names. Firms' main points of contact are provided in Table 2, Firms and Points of Contact.

Legal Approvals

The base contracts have received the required Commonwealth legal approvals. IWOs do not require legal approvals.

Contract Execution, Duration, and Renewals

Each contract has an Effective Date, or what is also called its Execution Date. The Date is stamped on each contract, usually on the signature page. The Dates are also shown in Table 3, Contract Dates.

The contracts are two-year contracts, and the plan is to renew each contract once. The renewal would provide another two years, for a total possible duration of four years. When contracts are renewed, their Renewal Execution Dates will be entered into Table 3.

Renewals might not be executed for a variety of reasons, including poor performance by the firm, legal or similar problems encountered by the firm, corporate or ownership changes for the firm, etc. The decision to not offer a Renewal is at the discretion of the System. Also, a firm may decide to not renew.

A firm does not need to do anything to prepare for or initiate the Renewal. CSO will announce, about three or four months in advance, the plan and schedule for executing the Renewals, and then at the appropriate time, send the Renewal documents to firms for signatures and processing.

Assignments, Novations, Etc.

Corporate, ownership, or other legal-entity changes usually require the execution of an assignment, novation, or other contract action. These actions usually require all Commonwealth legal approvals. The System has the discretion to not approve assignments or similar changes, but this rarely occurs.

Whenever such changes occur, the firm should notify CSO in a timely manner. Depending on the nature of the corporate change and the contract action required, the lack of a proper contract action having been executed may affect a Renewal, and may prevent the Renewal from being offered and executed.

While the legal approvals of an assignment or novation are taking place, the System may suspend the approval of new IWOs for that firm.

Simple name changes for the firm, without involving corporate changes, are simpler to handle, contract-wise. Nonetheless, firms should notify CSO if a name change is taking place.

University Coverage

The contracts allow all firms to work at all universities. This simplifies things. In practice, firms generally are not going to seek work outside of the regions in which they generally work, and universities generally are not going to seek out firms that are located too far away.

Scope of Services

The scope of services envisioned under these contracts is generally described in Article 5 of the General Conditions. However, IWOs under these contracts are not necessarily limited to those specifically-listed services and tasks. Any service or task that could be reasonably considered as falling within the general scope of roof management program services and/or roof consulting services would be allowed. Similarly, and obviously, all the services and tasks outlined in Article 5 are not relevant to all IWOs. The scope of services and tasks for any IWO should be negotiated and then identified and described in the IWO.

Use of Subconsultants

While subconsultants are not common in this particular set of contracts, CSO does have some required practices for the use of subconsultants.

If a prime firm identified and included a subconsultant in that prime firm's original proposal, that subconsultant is the one that the System expects the prime firm to use, at least in the early years of the contract. The System understands that prime-subconsultant relationships change over time, so changes in subconsultants are allowed.

If a prime firm has an identified subconsultant and is terminating a relationship with that subconsultant and desires to permanently replace that subconsultant, the prime firm should notify CSO. Permanent changes will typically be approved. CSO simply needs to document the change and track the information.

There also may be a temporary change in a subconsultant, wherein a subconsultant is changed for only one IWO. In such a case, the prime firm should notify CSO. Again, CSO will typically approve such a request. However, in such a case, the approval is a one-IWO approval only.

Similarly, if a prime firm did not identify and include a subconsultant in that prime firm's original proposal, and wants to permanently add a subconsultant, or wants to use a subconsultant for a single IWO, the same required practices described above apply.

Small Businesses (SB) and Small Diverse Businesses (SDB)

The System supports the inclusion of, and participation by, small, minority-owned, women-owned, veteran-owned, service-disabled veteran-owned, disability-owned, LGBT-owned, and other diverse and disadvantaged business enterprises.

CSO has identified the following prime firm under contract as an SB:

- Florida Consulting, LLC, Contract SSHE-RMP-2019-04

CSO has not identified any prime firms under contract as being SDBs. Also, CSO has not identified any subconsultants under any prime firms that are SBs or SDBs.

Thresholds and Limits

There is no limit for the dollar value of an IWO. Nor are there any limits for total dollar value of work that a firm can be issued for a calendar year, for a contract or renewal period, or for the life of the contract.

Although there are no such limits and no thresholds, CSO will evaluate the utilization of firms, and will encourage equitable distribution of work. CSO does understand that for high-priority IWOs, universities will most likely select a firm who they know. However, for more routine work, CSO encourages selection of other firms, when possible and appropriate.

Part 3 - Costs and Pricing

Pricing Data

All contracts were required to contain pricing data of some sort. Pricing data could have been of a variety of types, to include hourly billable rates (for staff), unit prices for specific services (such as per square foot of roof), lump sum prices for specific services (such as for tests), and/or other price or cost data. Firms were given wide latitude as to what type of pricing data they wanted to submit for inclusion in their contract. There was no standard set of pricing data.

In the end, all firms' contracts contain billable rates, and some contain a variety of unit prices and/or lump sum prices.

If a firm desires to permanently add additional pricing data to what is in their contract (i.e., for additional billable rates for additional disciplines; for additional unit prices or lump sum prices; etc.), they should submit such information to CSO. Such pricing data will be subject to the same negotiation process that was used for the pricing data already in the contract.

A compilation of all the pricing data for all contracts is being made available to universities on the System's intranet site. Universities should maintain proper control over the pricing data information.

The pricing data that is included in a firm's contract will be expected to be used when that firm prices a proposal for services and/or tasks for a IWO for a university. However, it is anticipated that there may be services and/or tasks that are not part of the contractual pricing data, and, if and when their need arises, the rates/prices for them may be negotiated for that IWO.

Renewals and Escalation

The pricing data in the contracts is for the initial term (two years) of the contracts. The contracts do not contain an automatic escalation clause for Renewals. Therefore, if the contracts are renewed, the pricing data for that Renewal term may be carried over from the initial term, or the firm may request re-negotiation of that pricing data. Such new pricing data will be subject to the same negotiation process as was used for the pricing data already in the contract.

The question sometimes arises as to how new, higher pricing data is applied to ongoing IWOs. While there is no prescribed method, CSO recommends taking a common-sense approach to each situation. A lump sum IWO put in place well before the Renewal probably should be left as is. A lump sum IWO being

put in place closer to the approaching Renewal, and which will extend well into the renewal period, should take increased or escalated pricing data into consideration, and the parties should agree on what that consideration will be when the IWO is negotiated. On the other hand, an IWO with a not-to-exceed fee should probably use the new pricing data for payment when it becomes effective, but, in doing so, the not-to-exceed amount may have to be increased correspondingly. In all cases, however, the university will have the option to address this situation as they please, within reason. Lastly, for any IWOs continuing after the final contract expiration date (at the end of four years), pricing data will not be increased or escalated at the end of those four years.

Professional Fee Cost Principles

For billable rates, the System's Professional Fee Cost Principles apply.

The System's Professional Fee Cost Principles that were used for the negotiation of billable rates for these contracts may be slightly different from what has been used with other professional contracts or by individual universities. The Principles is provided as a reference document to this Manual.

Several sections of the Principles need to be highlighted.

Use of Partners and Principals

Section 4. talks about the use of partners and principals to work on projects. This also applies to other titled positions which are high level and/or have very high rates.

Markup on Subconsultants

Section 4. and Section 11. both address the application of a prime firm's markup on subconsultants' fees. To clarify, for subconsultants on the team in the original proposal, no markup is allowed on those subconsultants' fees; and, for subconsultants not on the team in the original proposal but acquired for a specific IWO, a markup will usually be allowed.

In relation to the second case above, the markup is envisioned to cover the administrative costs of procuring that subconsultant and for administering that subcontract. It is envisioned that much of this is already accomplished for any subconsultants already on the proposed team.

In any case, to be fair and reasonable, the amount of the markup should be inversely proportional to the primacy of that subconsultant's services on that IWO. In other words, if the subconsultant is providing a small-dollar-value service as part of a larger IWO, then a 10 percent markup is fine. On the other hand, if the IWO primarily consists of this subconsultant's services, then the markup should be no more than 5 percent, and maybe less.

Reimbursable Expenses

Section 4. covers reimbursable expenses. Three items are of interest here.

- The mileage reimbursement is for round trips of greater than 200 miles. This is intended to be a general guideline. Universities have different preferred approaches to this. Some desire to use a 100-mile-round-trip basis. Some pay no mileage for routine meetings and visits, but only for special trips. Because these are state-wide contracts, in many cases universities may be located much farther than the 200-mile round trip. Firms who are seeking to work at universities farther than 100 miles away need to be sensitive to this reimbursable expense. The bottom line is that while this item is addressed in the Fee Cost Principles, it is envisioned that it is subject to negotiation in each IWO, as appropriate.
- The mileage reimbursement is for only marginal miles (miles in excess of the 200-mile non-reimbursable standard). However, as in the first point, this is subject to negotiation in each IWO.

- Detailed receipts and/or documentation may be required to support reimbursable expenses. In particular, for projects for which a university is seeking funding reimbursement from the Commonwealth, or as part of a Commonwealth or Federal grant, documentation and/or receipts may be subject to audit and close scrutiny.

Profit

Section 6. addresses profit. The billable rates in the contract include 10 percent profit. Unit prices and lump sum prices should also contain a profit. Additional or less profit is negotiable for an IWO. But it is not anticipated that any university would really be interested in paying more profit, just as it is not anticipated that any firm is interested in accepting less profit.

Negotiations for an IWO

Section 11. provides a process for preparing and negotiating the fee for an IWO. In reality, the firm and the university may negotiate a fee for a IWO in different ways. Section 11. simply provides one method.

Part 4 - Utilization of the Contracts

Selection of Firms for IWOs

Universities will almost always be the ones who select firms for IWOs. In some cases, the university may ask CSO to make recommendations for a firm, or firms, for an IWO. Additionally, universities will sometimes contact other universities to see what their experiences have been with firms.

There are two methods for selection of a firm. These two methods, direct selection and limited competition, are identified in the contract, but they are summarized again here.

Direct Selection. Under Direct Selection, the university will simply select a firm. This is the preferred method for smaller, simpler IWOs.

Limited Competition. Under Limited Competition, the university will identify two or more firms and invite them to submit a letter of interest, to submit a mini-proposal, and/or to interview with the university. Such a limited competition allows the university to compare different firms' approaches to the services, to compare different firms' experience and capabilities relative to those services, and/or to get a better feel for the firms' staff who will actually be providing the services. Based on the process and the results of that process, the university then selects one firm to provide a written proposal describing the services and the fee. Limited Competition is the preferred method for higher-dollar-value and/or complex IWOs.

When using the limited competition method, the following guidance should be considered.

- Firms are not required to respond; firms may decline the offer.
- Review, evaluation, and selection processes used by the university should always follow best practices for the procurement of professional services, but the processes can be relatively informal.
- Pricing data should not be a factor in the selection. However, pricing data and/or a IWO fee may be requested, but only to have it on hand to expedite the process.
- Selection of firms via limited competition is final. There is no appeal process. However, if a firm believes that a selection was arbitrary or capricious, they should notify CSO. If requested, universities should provide feedback, even if limited, to firms not selected.

Requests for Approval of IWOs

The IWO Request Form is provided as a reference document to this manual.

The general process for initiating an IWO is as follows:

- 1) University selects a firm (via either Direct Selection or Limited Competition);
- 2) University negotiates the scope of services and fee with the firm;
- 3) University submits an IWO Request Form to CSO to get approval to use the firm for the specific project and services, and at the agreed-upon fee;
- 4) CSO approves the request for the IWO and assigns an IWO number;
- 5) University issues the IWO.

While this process works fine 99 percent of the time, occasionally something comes up which CSO questions, and the IWO might not be able to be approved. In such cases, if the university has already negotiated a scope of services and fee with the firm, time and effort will have been wasted. If the university has any concerns about how their proposed IWO might be perceived by CSO, the university may want to check with CSO, informally, to get their IWO "pre-approved" before going too far.

Negotiations for an IWO

Section 11. of the Professional Fee Cost Principles describes a process by which the fee for an IWO is developed and negotiated. However, in reality, universities have a lot of leeway as to how they want to go about arriving at a fair and reasonable fee for an IWO. The university may request that the firm provide a breakout of man-hours for each service to be provided. Or, the university may simply choose to negotiate a bottom-line fee, without worrying about how that fee is constructed. The process used may, in all likelihood, depend on the scope of services involved.

Universities may prefer to have the fee included under the IWO in several ways: a lump sum amount, or a not-to-exceed amount, or a combination of those ways. All are acceptable. The lump sum amount might typically be paid as the work is completed, usually as a percentage each month. The not-to-exceed amount would usually require itemized invoices listing hours and rates/prices for the various tasks and services under the IWO. A university may prefer different methods for different IWOs. This should be agreed upon during IWO negotiations, and written into the IWO itself.

Work Order Form

A sample/template IWO Form is provided as a reference document to this Manual. The actual form and format for IWOs used by universities may vary, but it should be similar to the sample/template IWO Form, and/or at least include in it all the contractual entries that are included in the sample/template IWO Form.

Some specifics of the IWO Form to be noted include the following items.

IWO Number. The IWO number should be the one assigned by CSO. However, universities may incorporate some sort of internal project or contract numbering protocol.

Reference to Base Contract (first paragraph on Page 1). After Renewals are executed, information on the Renewal should be included in the paragraph where the base contract and its execution date are referenced. Similarly, any information on any Assignment or Novation actions should be included.

Section 1, Reference Information. This section should provide some title and summary information about the IWO and/or about the services being provided. The specific entries in the IWO template may or may not be applicable, so the university should enter whatever makes sense.

Section 2, Professional's Scope of Services. An easy way to provide necessary information for the scope in Paragraph 2 is to simply attach the firm's proposal for the IWO, assuming it is detailed enough. Information does not need to be repeated. One caution is that firms' standard letter proposals often contain their own standard terms and conditions and a line for a signature by the customer. Such standard terms and conditions that are in conflict with those in the contract will not be binding. Universities should review such terms and conditions, and they should line out any that are in conflict with the contract, or that are not acceptable. When this is done, the firm should be notified that this is going to be done. Similarly, the university should not sign the letter proposal itself; the IWO and its signatures are what is required to bind the IWO.

Signatures. Paragraph 7 refers to signatures. As noted elsewhere, no legal approvals are required for an IWO. This fact is again reflected on the signature page of the IWO Form.

Changes to IWOs

Occasionally a university will have to make changes to an IWO. They might call it an amendment, or they might call it a fiscal adjustment. The change may be to add to or revise the scope of services, and most likely the associated fee and duration, of the IWO. For most such minor changes, CSO does not need to be informed or give approval. However, if the dollar value of the IWO increases by more than approximately 10 percent, CSO needs to know. CSO needs this information primarily for purposes of tracking utilization. E-mail notification is adequate; no form is required. However, the notification should include a brief explanation of what is changing and why, and what the new IWO fee will be.

Closing Out IWOs

The proper process is that universities should inform CSO when an IWO is complete and closed. In reality, though, universities rarely inform CSO of completion, and therefore closing out of IWOs will generally be done on a periodic basis through close-out data calls from CSO.

Part 5 - Miscellaneous Information

System Reference Documents

In the procurement and contracting area, the System must comply with two basic laws: (1) the Commonwealth Procurement Code (62 P.S.), which has its basis in Act 57 of 1998, as amended, and (2) Act 188 of 1982, as amended, which is the System's enabling legislation, and is part of the Education Code (P.S. 24). For construction, other key laws that must be followed are the Separations Act, the Prevailing Wage Act, and the PA e-Verify Act. Below the statutory level, there are no Commonwealth regulations that dictate how the System must conduct its contracts business.

Internally, the System has Board of Governors (BOG) policies. The key policy for procurement is BOG Policy 1998-04-A, Procurement of Goods, Services, Supplies, and Construction. BOG policies are fairly general, and are backed up by more detailed Procedures/Standards documents. There are none that specifically apply to these SSHE-RMP-2019 contracts.

For facilities projects, the System has its own contracts and procedures manuals.

Professional Agreements

The System currently has three basic forms of professional agreements, and two related forms:

- The 2018K120 is for professional services other than full design (i.e., feasibility study, or master plan)

- The 2018K130 is for design professional services for complete design of a single project
- The 2018K140 is for open-end contracts for design professional services
- The 2019K150 is for centrally-held, open-end contracts for construction management services
- The 2019K160 is for these centrally-held, open-end contracts for roof management program services

The “2018” or “2019” portion of the designation may change from year to year, if and when revisions to that agreement form are made.

Supplemental Instructions. In 2018, the System created a Supplemental Instructions for Design Professional Services document, to accompany the 2018K130 and the 2018K140 professional agreements. This document may be relevant to these RMP contracts if, and when, a firm is asked to support a roof replacement project through design, preparation of plans and specifications, and administration of construction.

Construction Contract. The System revised its construction contract and solicitation documents in 2014, and has made minor revisions to them each Spring. The current documents have the number designation 2018K110. The “2018” portion of the designation may change from year to year, if and when revisions are made.

Construction Manual. The Manual for the Procurement & Administration of Construction Contracts was also totally revised in 2014, and it has also received minor revisions each Summer.

Software Applications/Solutions

Neither the System nor its universities utilize standard software applications/solutions for project management, construction management, document control, project scheduling, or project control.

Evaluations

CSO does not intend to implement any type of performance evaluation process for these RMP contracts. Nonetheless, universities and firms should communicate with each other about expectations and provide feedback about performance. Firms should also recognize that universities may discuss among themselves firms' performance on past or ongoing IWOs.

Ethics

Universities and firms under contract are expected to conduct all business ethically.

Public employment is a public trust. University employees must discharge their duties impartially, and must conduct themselves in a manner that fosters public confidence in the integrity of their university's processes. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. Additionally, employees must avoid any conflict of interest or improper use of confidential information.

It also is essential that firms under contract observe high standards of honesty and integrity. Any effort to influence any employee to breach the standards of ethical conduct is also a breach of ethical standards.

Lastly, both parties must recognize that the appearance of improprieties can be considered the same as actual improprieties. Appearance is in the eye of the beholder, who may be a “watchdog” or a competitor.