

Subcontractor Bidding Process: Contract Controls and Auditing

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Today's Presenters



Mr. Plyler is a Principal and one of the founding partners of Fort Hill Associates, LLC. Curt has significant experience in construction contract auditing on large, complex healthcare and higher education projects. Additionally, he has been instrumental in developing and leading Fort Hill's business strategy for construction contract auditing within healthcare and higher education institutions.



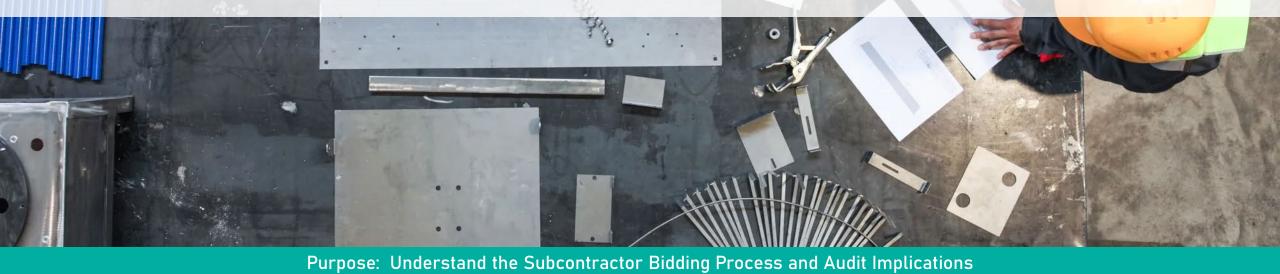
Martin Howell, Fort Hill

Mr. Howell is a Principal and has been instrumental in developing and leading Fort Hill's business strategy for construction contract auditing within the Hospital and Healthcare markets. He has led Fort Hill's relationship with the Group Purchasing Organizations Vizient and Intalare. Martin brings 13 years of experience in construction contract auditing to Fort Hill and is a Certified Construction Auditor.



Subcontractor Bidding Process:

Contract Controls and Auditing (CMaR / Design-Build Delivery Methods)



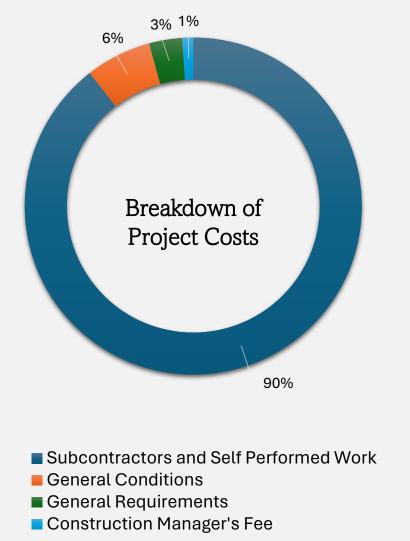
Why are we discussing this topic and why should you, as auditors, review?

Capital Projects are likely some of the largest expenditures at your institution and the Subcontractors or 'Trade Partners' make up 80 – 90% of those costs.

A poorly managed bid process by your Construction Manager runs the risk of delaying projects, or more importantly, exceeding your budgeted costs.



The pie chart below shows a breakdown of project costs on a typical Construction Manager-at-Risk (CMaR) project. The greatest expenditure, by far, is the trade packages for subcontracted work.



What is a Construction Manager?





The Construction Manager serves as the main point of contact for the client and oversees the entire construction project.



They are responsible for managing and coordinating all subcontractors involved in the project.



The Construction Manager ensures the subcontractors are aligned with project goals, meet quality and safety standards, and adhere to the project timeline.



They handle contractual agreements, payments, and overall project management.



A subcontractor is an individual or a company hired by a contractor to perform specific tasks or provide specialized services as part of a larger project. They are not direct employees of the contractor, as they work independently or as a separate entity.



A subcontractor is a skilled professional or a company offering specialized services or performing specific tasks on behalf of a contractor.



They are hired on a project-by-project basis.



Subcontractors may include electricians, plumbers, carpenters, HVAC technicians, painters, and many other specialized tradespeople.



What is the Construction Manager-at-Risk Delivery Method?

- Construction Manager at Risk (CMAR) is a delivery method that entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP) which is based on the construction documents and specifications at the time of the GMP plus any reasonably inferred items or tasks.
- For larger capital projects, CMAR is most likely the delivery method your institution would use. CMAR is typically in place for most projects >\$10M.
- The CM provides professional services and acts as a consultant to the owner in the design development and construction phases. Oftentimes, the CM also provides some of the actual construction of the project depending on the availability of bidders and the expertise the company has. In addition to acting in the owner's interest, the CM must manage and control construction costs to not exceed the GMP because contractually any costs exceeding the GMP that are not change orders are the financial liability of the CM.

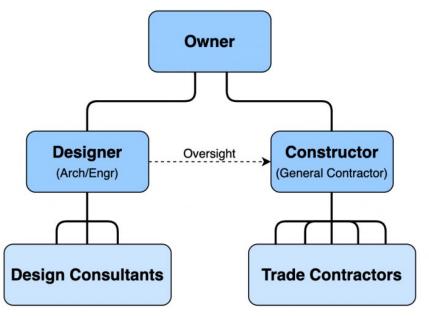
 Generally, the CM will give the Owner a GMP before bidding on the project. Included in this GMP is a contingency line item to take care of bid overages, reasonably inferred items, and other project-related items that may arise during construction. By giving the Owner the GMP before bids, the CM assumes the risk of bids coming in higher, as the CM is contractually bound to deliver the project per the plans and specifications and any additional allowances as defined in the GMP.



Question #1

- Has your organization ever audited subcontractors on a construction project?
 - Yes
 - No
 - I don't know

Relationship of Parties (CMaR)



Notes

Solid Line = Contract between two parties

Dashed Line = Oversight by one party to another party based upon owner contracts

Designers are typically placed on left side of the organizational chart to represent time sequence.

Trade contractors may also be referenced as subcontractors or specialty contractors.

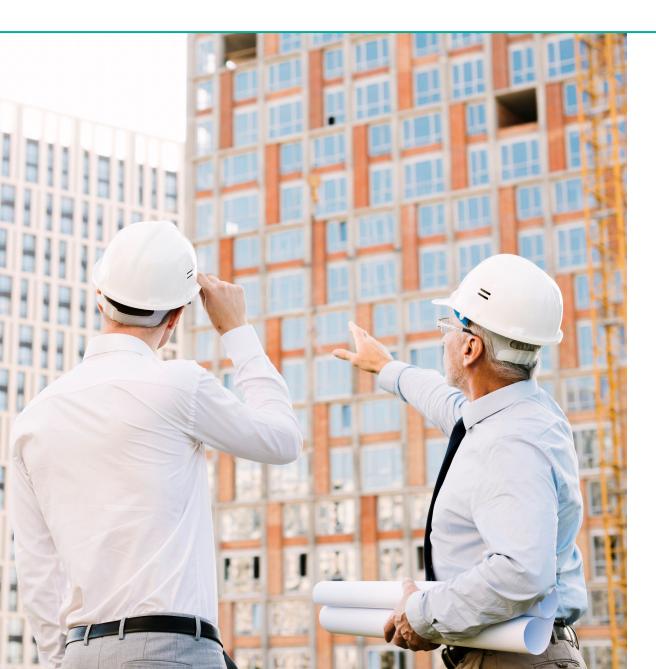
What are the Owner Benefits of a Construction Manager-at-Risk Delivery Method?

- A successful CMAR project would involve hiring the CM before the architect and having the CM help select the architect. During the design process, the CM provides cost estimates at contractually established points. If these cost estimates are in line with the established budget, the architect then moves on to the next phase of design. If not, the CM, Owner, and Architect assess the cost estimate and make design changes to bring the design back into budget alignment. This process ensures budget success as it enables greater cost control from the start.
- The CM can be an Owner's advocate and should manage the project with the Owner's best interest in mind at all times.
- The CM takes the burden off the Owner in managing and coordinating the project.
- The Owner's risk is limited by the CMAR process provided the construction documents are complete, and proper allowances and contingencies are built into the GMP.
- Constructability and value to the Owner are afforded by the Value Engineering expertise brought to the process by the CM.

- Since the CM is at risk and gives the GMP before bid, the CM may not necessarily have to select the low bid. Generally, the thorough prequalification process minimizes the number of low bidders that get disqualified and generally leads to lower long-term costs, higher quality, and fewer claims because only prequalified contractors are performing work.
- CM services are professional services like architectural, engineering, surveying, etc. The CM's main purpose is not to construct the project, but to manage the construction of the project. This management focus adds much value to the project.

As with any delivery method, incomplete and/or inaccurate construction drawings will result in change orders. The misunderstanding associated with the GMP is that this maximum price will not be exceeded in any case. It is important to understand the GMP is based on the plans and specifications at the time of the GMP with some reasonable assumptions made and a reasonable contingency included. Major changes in scope will result in a change order, which increases the GMP contract value. In addition, any Owner changes to the project and scope require a change order. By requiring the documents to be 100% complete before receiving the GMP, the risk of unanticipated change orders is minimized.

Subcontractor Bidding



Experienced owners of high-value construction projects know the subcontractor bidding process is the last and best opportunity to significantly affect the cost of construction to ensure a successful outcome.

To succeed the Owner must be engaged in the subcontractor bidding process by:

- Setting the rules for subcontractor bidding in the contract with the lead construction manager (CM), and by
- Being engaged in the subcontractor bid solicitation, evaluation, selection, and subcontract negotiation process.

The overall goal of the Owner is to establish its leadership position on the construction project (the "Project") to control the Project's cost and maximize the prospect of achieving a finished product that meets the quality and schedule goals.

Generally, the Owner does not contract directly with the Subcontractors (except in multi-prime projects). Therefore, the Owner must work through the CM to accomplish its subcontractor goals. This means that the tools needed by the Owner to influence subcontractors must be embedded in its contract with the CM.

Elements of the Owner's Construction Contract with the Construction Manager

Elements of the Owner's contract with the CM that are critical to the Owner's goals include:

- Subcontractor bidding procedures
 - Ensure your construction contract requires a minimum of 3 bids
 - Owner is present at the opening of the bids
- 2 Special rules regarding self-performed-work and/or subcontracting to related parties.
 - The owner manages the bid process
 - Owner or A/E puts together the work package
- Outlining requirements for the subcontractor's pricing approach:
 - Fixed-price
 - Cost-plus-fee with a Guaranteed Maximum Price (Mini-GMP or Min-Max within the overall GMP) with prior Owner written approval.
 - Time and materials (T&M) with prior Owner written approval

4

Pass through clauses requiring subcontractors to adhere to the same rules required of the CM, such as:

- Records Retention
- Audit Requirements, especially critical in the event of a cost-plus agreement
- Field Reporting Requirements
- Adherence to the Owner's code of conduct language allowing the owner to review the agreement before execution.
- 5

Billing procedures, including requirements for lien waivers, backup documentation, and status reporting.

Question #2

- What is the compensation method for most subcontracted work?
 - Fixed price (Correct answer)
 - T&M
 - Cost plus Fee

How are scopes of work compiled and put together for trade partners/subcontractors to bid on the work?

Typically, once the drawings are complete, the CM will assemble the bid packages. These bid packages are organized into a collection of tasks. The bid package contains project details to enable the Subcontractors to produce an accurate bid, including the key elements of the subcontractor procurement process:

- Develop the work packages for the project

 Work packages function as the building blocks of your project.

 They are a group of related activities that will either be bid on by subcontractors or performed by your in-house crew.
- Writing scopes of work for the work packages

 Example: "Provide all labor, materials, equipment, and supervision necessary to complete Division 26 electrical."

 This scope of work would include all subsections in Division 26, like 26 10 00 Medium-Voltage Electrical Distribution and 26 50 00 Lighting.

Preparing the Bid Packages

The first thing all bid packages should include is an <u>invitation to bid</u>. The invitation to bid requests subcontractors to submit their construction bids on a specific work package. A great invitation to bid will give subs all the information they need to bid on a project.

- General Project information, location, owner, and architect
- Bid due date and time
- Brief description of the project including any unique requirements
- Scope of the work for the work package
- How to get answers to their questions
- How to access the bid documents, including addendums
- Requirements for the bid submission, including how and where to submit the bid
- Statements requiring the bid to comply with the accompanying bid documents.

Other bid documents to include:

- The drawings, and project manual (including the technical specifications
- A copy of the CM Subcontractors agreements
- A preliminary schedule
- Copy of the CM's safety plan that outlines safety requirements

How are scopes of work compiled and put together for trade partners/subcontractors to bid on the work?

Sending the bid packages to the prequalified subcontractors

Selecting the subcontractors' bids to be used in your bid



Before the Bids are Solicited

Before bids are solicited, the CM should provide the owner with a breakdown of how it proposes to categorize the project into the various trades. This breakdown will later serve as the basis for the Project's schedule of values (SOV) and periodic billing forms. The breakdown should include the names of the subcontractors who will receive a request-for-bid ("RFB") from the CM. The Owner should review the CM proposed RFB recipients to confirm the subcontractors listed meet the Owner's pre-qualification requirements.

Why is this important?

The Owner (College or University) may have had a bad experience on a previous project with a particular Subcontractor and may not want to invite the firm to participate in the current project.



Ideally, the Owner will wish to have the CM solicit at least three bids for each major trade. The bid solicitations (request-for-bid or RFBs) should be as thorough as possible to minimize the unknowns faced by the subcontractor. This will reduce the amount of money included in the subcontractor's bid proposal for contingencies. RFBs should be issued early enough to allow the subcontractors time to study the materials provided and to ask questions of the CM, or others on the Owner's team. Keep in mind subcontractors that ask questions are more likely to be serious about the opportunity and to provide the best, most informed, bid proposals.

Subcontractors should be required to bid 100% of the scope of their designated bid solicitation package. Each subcontractor should be provided a breakdown of the categories within its trade that are to be priced separately in the subcontractor's bid. Also, the CM should not be allowed to provide services to, or bill for services in, any of the trade work categories, unless approved in advance by the Owner.

Question #3

- Does your organization allow a Construction Manager to selfperform work?
 - Yes
 - No
 - I don't know

After the Bids are Received

The Owner should attend the bid opening for all major subcontracts, particularly if the Owner allows self-performed work or bids from parties related to the CM.

Bid evaluations should be documented and all bid submittals should be retained for a period coinciding with the Owner's records retention requirements. The bid evaluation sheets should not allow the CM to pencil in contingencies or allowances for charges directly for the CM.

Once the bidders have been evaluated it is up to the CM to select the winning bidder that the CM has identified as the lowest responsive and responsible bidder. At this time, contract negotiations will occur and if successful the subcontract will be executed.



Bid Leveling

Because contractors submit bids in a variety of different formats and with a wide range of prices, the bid solicitor will typically go through a process called 'bid leveling'. During bid leveling, the owner will attempt to standardize the bid formats as much as possible, enabling them to compare the similarities and differences between them. This process enables the owner to compare "apples to apples" to make a more informed decision about the right contractor for the job.

After the bid leveling process, owners and contractors can determine which bid offers the best price while fulfilling all of the project requirements. Historically, owners and contractors used pen and paper or simple spreadsheets to make it easier to compare bids, but now many firms use bid management platforms that automate the leveling process.

Paying attention to the bid leveling process is essential for general contractors and owners who want to ensure they pick cost-effective bids accounting for every aspect of the overall scope of work.



Why is Bid Leveling Important?

Leveling bids is crucial in order to ensure that buyers are able to make accurate comparisons before selecting a bid. Without leveled bids, buyers may be tempted to choose the bid with the lowest cost, not realizing that key items from the scope of work were not included in the bid. As a result, that low-cost bid could end up costing a lot more down the line — in change orders, contract negotiations, schedule delays, and more.

- Compare bids more accurately.
- Identify scope gaps in each bid.
- Avoid problems down the line:

 After leveling bids, buyers can choose a complete bid rather than negotiating missing items during contract formation or worse, costly change orders when construction is already underway.



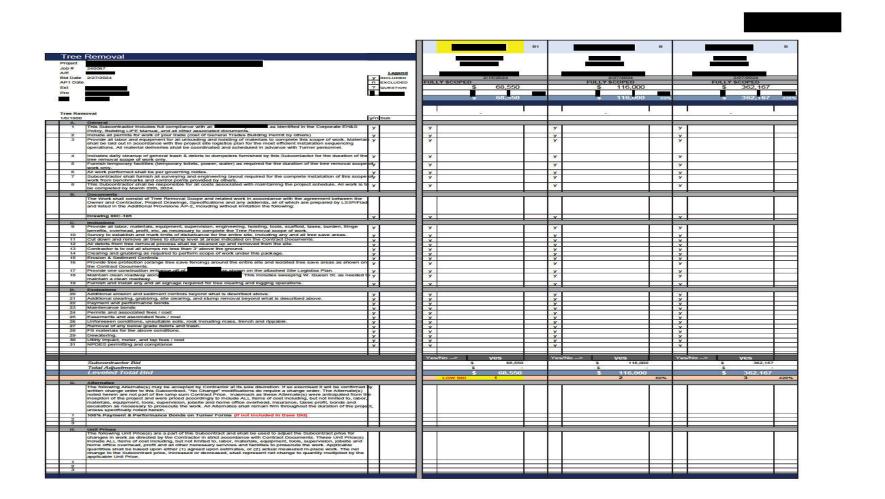
Bid Leveling Example

	2899		STEEL PACKAGE - Mill Order												
roject:				8			1							2 []	
pec:															
								13.							
SEC.	DESCRIPTION														
OXXXXX	METALWORK FAB, MACHINE WRK, & MISC.						Т				T			1	
	STRUCTURAL STEEL														
-	STEEL DECKS	Install Only													
	METAL FABRICATIONS	Future Package													
	BASE BID														
	WRC Scope of Work Per BP0500		Υ		Υ		Υ		Υ			У	6		
MATL	Steel Fabrication		Y	\$14,871,768	Y	\$15,948,700	Y	\$15,628,205	Y	\$20,724,000		Y			
ERECT	Steel Erection		Υ		Y		Y		Υ			Y			
	- Labor		Υ	Included	Y	Included	Υ	Included	Υ	Included		Y	Included		
	- Equipment		Y	Included	Y	Included	Y	Included	Υ	Included		Y	Included		
	Anchor Bolt Verification		Y		Y		Y		N			N			
	OSHA Opening Rails	As Req'd	Υ		Y		Υ		Υ			Y			
	- Guardrail Removal		N	\$14,896	N	\$14,896	N	\$14,896	N	\$14,896		N	\$14,896		
	Touch Paint Steel		Y		Y		Y		N			N			
	Unloading of FOB Items		Ν	\$4,740	Z	\$4,740	N	\$4,740	N	\$4,740		N	\$4,740		
	Testing & Inspections	W/Allowance	N		N		N		N			N			
	Review of Site Logistics & Crane Path		Υ		Y		Y		Y			Y			
	Addendums		Y		Y		Υ		Y			Y			
	WA Prequalification Status		Y		Y		Y		Y			Y			
	Textura Payment Process .0022% Max \$3,750		Y		Y		Y		Y			Y			
	Schedule per WRC SOW			See Below		See Below		See Below		See Below			See Below		
	TOTAL PHASE 1			\$14,891,404		\$15,968,336		\$15,647,841		\$20,743,636		No Bid	\$23,972,278	No Bid	
	PHASE 2														
	WRC Scope of Work Per BP0500														
	Steel Fabrication		Y	\$4,000,812	Y	\$4,466,500	Y	\$4,466,790	Y	Included			Included		
	Steel Erect		Υ	, ,,,	Y	p.,,,,500	Y	,,	Y						
	- Labor		Υ	Included	Y	Included	Y	Included	Υ	Included			Included		
	- Equipment		Y	Included	Y	Included	Y	Included	Y	Included			Included		
												messes o			
	TOTAL PHASE 2			\$4,000,812		\$4,466,500		\$4,466,790		W/Phase 1		No Bid	\$0	No Bid	

Bid Leveling Example

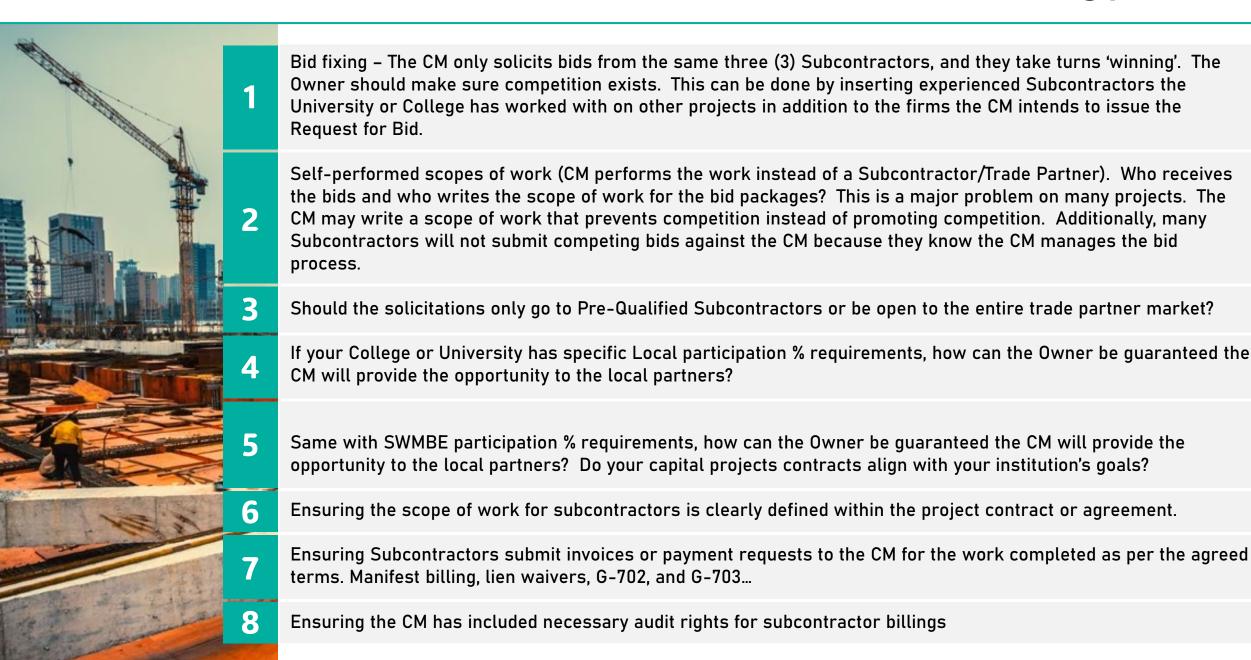
	TOTAL PHASE 1 & 2	\$18,892,216	\$20,434,836	\$20,114,631	\$20,743,636	No Bid	\$23,972,278	No Bid	
					Incomplete		Incomplete		
					Scope		Scope	1.00	
	ALTERNATES								
	Phase 1 & 2								
Alt 1	Provide add alternate for sales tax	\$1,310,500	\$650,000	\$1,114,435	\$1,131,000		\$700,181		
Alt 2	Construct phases 1 & 2 continuously	(\$147,000.00)	No Bid	(\$350,000.00)	No Bid		No Bid		
Alt 3	Provide 60 hour work weeks	\$401,720	\$634,000	\$471,000	\$435,000		\$447,607		
Alt 4	Provide 60 hour work week + 2 Unloading Crews	No Bid	No Bid	No Bid	\$489,000		\$502,510		
Alt 5	Provide 70 hour work weeks	Man Power Concerns	No Bid	\$797,810	No Bid		No Bid		
Alt 6	Add alternate to provide (2) additional girt lines at the main building.	\$285,300	\$290,000	\$277,630	\$265,000		No Bid		
Alt 7	Add alternate to provide (2) additional girt lines at the penthouse.	\$88,200	\$70,000	\$81,660	\$101,000		No Bid		
Alt 8	Add alternate to provide design assist services to work with AE during detailing/shop drawing process and as IFC design is completed.	No Added Cost	\$50,000	\$23,500	No Added Cost		No Bid		
Alt 9	Provide add alternate for fabrication overtime/premium time to improve the start of steel delivery on site.	Included W/60 hr Week Alternate	No Bid	No Bid	No Bid		No Bid		
Alt 10	Cost to mobile an additional erection crew.	Included W/60 hr Week Alternate	No Bid	No Bid	No Bid		No Bid		
	TOTAL PHASE 1 & 2	\$19,667,436	\$21,428,836	\$20,944,921	\$21,544,636	No Bid	\$24,419,885	No Bid	
		425/00//12	722/120/000	V20,5 1.,522	Incomplete		Incomplete		T .
					Scope		Scope	1	
			1		эсоре		Scope		
	ADDITIONAL INFORMATION					-		-	
	Tonnage Phase 1	3,007	TN 3,100	2,925	4,451		Incl		
	Tonnage Phase 2	900		875	Incl		Incl		1
	Tonnage Phase 1 & 2	3,907		3,800	4,451	12	4,387		
	Dollars Per Ton	\$4,835		\$5,293	\$4,660		\$5,464		
	Required NTP	11/29/2021	11/29/2021	11/29/2021	11/29/2021		Not Provided		
	Steel Delivery Assuming Award by 11/29	3/29/2022	5/16/2022	4/25/2022	Not Provided		Not Provided		
	Steel Erection Assuming Award by 11/29 Steel Erection Assuming Award by 11/29	4/4/2022	5/2/2022	5/2/2022	6/1/2022		Not Provided		
		15 Weeks	24 Weeks	16 Weeks	24 Weeks		Not Provided		1
		13 Weeks	Not Provided	Not Provided	Not Provided		Not Provided		
	Steel Erection Duration - Phase 1 (Base Bid)	10 Wooks		Not Flovided	Included		Not Provided Not Provided	100	
	Steel Erection Duration - Phase 1 (Alternate 3)	10 Weeks		[male aland			Not Provided		
	Steel Erection Duration - Phase 1 (Alternate 3) Steel Erection Duration - Phase 2 (Base Bid)	9 Weeks	Included	Included Not Provided			Not Deput de d		
	Steel Erection Duration - Phase 1 (Alternate 3) Steel Erection Duration - Phase 2 (Base Bid) Steel Erection Duration - Phase 2 (Alternate 3)	9 Weeks 8 Weeks	Included Not Provided	Not Provided	Not Provided		Not Provided		
	Steel Erection Duration - Phase 1 (Alternate 3) Steel Erection Duration - Phase 2 (Base Bid) Steel Erection Duration - Phase 2 (Alternate 3) Number of Erections Crews (Base Bid)	9 Weeks 8 Weeks 2	Not Provided 2	Not Provided 2	Not Provided Not Provided		Not Provided		
	Steel Erection Duration - Phase 1 (Alternate 3) Steel Erection Duration - Phase 2 (Base Bid) Steel Erection Duration - Phase 2 (Alternate 3) Number of Erections Crews (Base Bid) Number of Erections Crews (Alternate 3)	9 Weeks 8 Weeks 2	Not Provided Not Provided Not Provided	Not Provided 2 Not Provided	Not Provided Not Provided Not Provided		Not Provided Not Provided		
	Steel Erection Duration - Phase 1 (Alternate 3) Steel Erection Duration - Phase 2 (Base Bid) Steel Erection Duration - Phase 2 (Alternate 3) Number of Erections Crews (Base Bid)	9 Weeks 8 Weeks 2	Not Provided 2	Not Provided 2	Not Provided Not Provided		Not Provided		

Bid Leveling Example (CU VM)



AP-1 Sub:______
Page 1 of 1 P.A.:_____

What are some of the 'Other' Problems with the Subcontractor bidding process?



Other Mistakes to Avoid When Procuring & Managing Subcontractors



1. Not Doing Your Due
Diligence
Who is doing this? Your CM?
Your Planning, Design, and
Construction Dept. Are
references validated on past
projects? Are background
checks skipped? Are

insurances reviewed?



2. Not Getting Multiple Bids

What does your procurement policy state concerning the number of bids? What is the dollar threshold for competition? How does your organization handle sole source bids on construction projects and how do you ensure a competitive price is received?



3. Not Properly Vetting
Subcontractors
Who vets the Subcontractors
performing work on your
projects? The CM? The Owner?
or both?



- detailed contracts
 Clear contracts are the foundation
 for a successful working
 relationship with Subcontractors. A
 well-drafted contract helps
 establish expectations, protects
 both parties' interests, and ensures
 project alignment.
 - Define project scope
 - 2. Payment Terms
 - 3. Change Orders
 - 4. Dispute resolution



3. Subcontractor selection

Does the CM have a metric or
defined process? Back-solving to
get the partner they want? Same
Subcontractor selection every time
(established baseline and weighted
scale for evaluation on
CM/Owner's side), Eliminate
Subjectivity / should be
quantitative...



5. Not Following
Procurement Policies
What are your (Univ. and
College) procurement policies
and procedures? Are the
Facilities Procedures and
procurement policies in line
with your institutional policies?
Do they need to be?



6. Bond Issuance
Is your project funded via a
bond issuance? Do the bond
terms have unique
requirements to qualify for
funding that must be followed?
(May include the bid process)



7. Conflicts in Procurement Dept. Procedures

If conflicts exist between your Procurement Dept. procedures and your Planning, Design, and Construction Dept., utilize the highest and best!

Question #4

- Are you construction bidding policies in alignment with your procurement group's policies?
 - Yes
 - No
 - I don't know

Other Mistakes to Avoid When Procuring & Managing Subcontractors

Keep in Mind

- 1. Your CM's relationship with its Subcontractors will outlive your relationship with your CM.
- 2. The higher the bid from the Subcontractors, the higher the fee for the CM. They are simply not incentivized to limit the size of the bid if anything it's just the opposite.



Additional Resources

- Subcontractor Management: Tips & Best Practices, Kenai Gonzalez https://www.workyard.com/construction-management/subcontractor-management
- Vetting Subcontractors in Construction Management, March Construction Consulting
 https://www.marchassociates.com/2019/2/6/choosing-our-subcontractors-the-construction-management-buyout-process
- The importance of Subcontractor Prequalification, Daniel Gray, Procore <u>https://www.procore.com/library/subcontractor-prequalification</u>
- Subcontractor Selection Checklist, Charles Burkhart, Construction Executive https://www.constructionexec.com/article/subcontractor-selection-checklist
- Subcontractor Bidding Process, ResX, PC Blog <u>https://www.resxpc.com/Blog/Construction-Blogs/Subcontractor-Bidding-Process/</u>



Stay in touch

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Thank you!



Questions?





Announcements

Upcoming ACUA Webinar

July 11th - Succession Planning
To be presented by Joseph Iannini



Early bird registration ends August 2nd, 2024





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- The College and University Auditor is ACUA's official journal. Current and past issues are posted on the ACUA website.
- News relevant to Higher Ed internal audit is posted on the front page. Articles are also archived for your reference under the Resources/ACUA News.

Solve Problems

- Discounts and special offers from ACUA's Strategic Partners
- Kick Starters
- Risk Dictionary
- Mentorship Program
- NCAA Guides
- Resource Library
- Internal Audit Awareness Tools
- Governmental Affairs Updates
- Survey Results
- · Career Center.....and much more.

Get Involved

- The latest Volunteer openings are posted on the front page of the website.
- Visit the listing of Committee Chairs to learn about the various areas where you might participate.
- Nominate one of your colleagues for an ACUA annual award.
- · Submit a conference proposal.
- · Present a webinar.
- · Become a Mentor
- Write an article for the C&U Auditor.
- · Write a Kick Starter.

Connect with Colleagues

- Subscribe to one or more Forums on the Connect ACUA to obtain feedback and share your insights on topics of concern to higher education internal auditors.
- Search the Membership Directory to connect with your peers.
- Share, Like, Tweet & Connect on social media.

Get Educated

- Take advantage of the several FREE webinars held throughout the year.
- Attend ACUA AuditCon (September 15-19)

Contact ACUA Faculty for training needs.

