



# Understanding Public Construction Contracts

# Statutory References

- ▶ Public Works Law – Code of Alabama 1975, Title 39
- ▶ Code of Alabama 1975, Title 41-4-400, Established the Department of Finance – Division of Construction Management which basically was moved from Title 41-9-141 that was called the Alabama Building Commission by Act 2015-435 and added additional authority.
- ▶ And additionally Code of Alabama 1975, Title 34-8-8
- ▶ Acts of Alabama
- ▶ Various State Attorney General Opinions

# Public Works

- ▶ PUBLIC WORKS. The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

# The Team

- ▶ The following groups/individuals should be included early on in the design discussions:
  - ▶ Owner
  - ▶ Architect(s) (along with specialized engineers/consultants if needed)
  - ▶ Appropriate internal staff such as curriculum, construction, finance, maintenance, etc.
  - ▶ Outside stakeholders such as city and community leaders



# Role of the Department of Construction Management

- ▶ Regulatory Agency
  - ▶ Building codes
    - ▶ Compliance with building codes
    - ▶ Compliance with ADA
    - ▶ Compliance with Energy Code
  - ▶ Compliance with State Law
  - ▶ Compliance with Manual of Procedures
    - ▶ Bidding
    - ▶ General Conditions – termination, change orders, delays, dispute resolution
    - ▶ Standard Articles – extra services, billing/invoicing for services

# Role of the Department of Construction Management

- ▶ Review and approval of preliminary and final plans for compliance
- ▶ Conduct pre-construction conference
- ▶ Conduct above-ceiling inspections
- ▶ Final inspection
  - ▶ To issue Certificate of Substantial Completion
  - ▶ Allow occupancy by owner
- ▶ Year-end Inspection

# Roles of the Architect/Engineer

- ▶ Perform work in responsible manner
  - ▶ Design to budget
  - ▶ Design to applicable building codes
  - ▶ Coordinate the design team
  - ▶ Inspections for compliance with design
- ▶ Be familiar with Department of Construction Management's (old ABC) procedures
- ▶ Make recommendations to Owner
- ▶ Administer the construction contract

# Role of the Owner

- ▶ Awarding Authority
- ▶ Selection of the Architect/Engineer
- ▶ Negotiating Agreements
- ▶ Determination of low bidder and award of the contract
- ▶ Funding (allocated, award notification from other source or agreement with 3<sup>rd</sup> party)
- ▶ Identify program/project requirements



# Role of the Contractor

- ▶ Be familiar with Department of Construction's procedures
- ▶ Understand the bid requirements and prepare the bid submission
- ▶ Construction in accordance with plans and contract requirements
- ▶ Coordinate sub-contractors work
- ▶ Communication
  - ▶ Delays
  - ▶ Differing site conditions (above those already identified)
  - ▶ Any other construction issues

# Public Works – Advertising Requirements

- ▶ Projects over \$50K must be publicly advertised (Title 39-2-2)
  - ▶ Once a week for three consecutive weeks in newspaper of general circulation in the county
  - ▶ If over \$500K, once in three (additional) newspapers of statewide circulation
- ▶ Sealed bids taken, opened and read at the place, time and date in the advertisement
  - ▶ If over \$50K, Alabama General Contractors License should be on the outside of the bid or it cannot be accepted (Title 34-8-8)

# Architect/Engineer Agreements

- ▶ Selection of an Architect/Engineer
  - ▶ Experience with school construction a must
  - ▶ Experienced # of staff to design timely and to the budget
  - ▶ Experience with unique requirements needed for schools
- ▶ Fees for normal projects (Type III construction) are set at a maximum
  - ▶ Can be negotiated (for multiple projects, duplication etc.)
  - ▶ Based on Estimated Budget ( can go up or down depending on final)

# The O/A Contract

JAN 30 2018  
ABC Form B-2  
August 2001

B. C. Project No. \_\_\_\_\_  
To be completed using ABC Form B-2, "Checklist for Preparation of Agreement Between Owner and Architect"

**AGREEMENT BETWEEN OWNER AND ARCHITECT**  
Supplemental to ABC Form B-2A, Standard Articles of the Agreement Between Owner and Architect

**DATE of this AGREEMENT:** 10/4/2017

**The OWNER(s):** Baldwin County Board of Education 2600-A North Hand Avenue bay  
Minette AL 36507

The ☒ **ARCHITECT** ☐ **ENGINEER** (substitute "Engineer" for "Architect" hereinafter)  
\_\_\_\_\_  
\_\_\_\_\_  
**FEIN** 63-1050528

**The PROJECT:** (Insert full description of Project, Location, Address and Scope)  
New Middle School in Orange Beach, New K-6 School in Foley, New K-6 School at Eastern Shore

**BUDGET:** The ☒ **Tentative** ☐ **Fixed** amount budgeted by the Owner for the Cost of the Work is Forty-Five Million and 00/100 Dollars (\$ 45,000,000).

**BASIC SERVICES:** Unless otherwise provided in the Special Provisions, the Architect shall render Basic Services A, D, C, D, and L for the above described Project in accordance with the "Standard Articles of the Agreement Between Owner and Architect."

**BASIC FEE:** The Basic Fee to be paid the Architect shall be:  
☐ The Fixed Fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).  
☒ determined as a percentage of the Cost of the Work, at the Basic Fee Rate of 4.7% percent.

**PROJECT CLASSIFICATION:** As defined in the current edition of Chapter 4 – Supplement of the "Manual of Procedures of the Alabama Building Commission" this Project is classified as follows:  
☒ The Project is classified in Building Group III.  
☐ The Project is classified into Building Groups as stated in the Special Provisions of this Agreement.  
☐ The Project does not fall within a Building Group; see the Special Provisions of this Agreement.

**DETERMINATION of the BASIC FEE:**  
☒ The Basic Fee has been determined in accordance with the current edition of Chapter 4 – Supplement of the "Manual of Procedures of the Alabama Building Commission."  
☐ The Project is also classified as Major Renovation and the Basic Fee includes a \_\_\_\_\_ % increase of the "Schedule of Basic Fee Rates" for Major Renovation per Chapter 4 – Supplement, Section D.  
☐ The Basic Fee has been negotiated on the basis stated in the Special Provisions of this Agreement.

Page 1 of 2

# The Construction Contract

- ▶ All Requirements for advertising, prequalification, bid receipt, bid opening required by Public Works Law have been followed.
- ▶ All plans, specifications and addendums have been approved and recognized by the contractor
- ▶ The Board has taken action to award the project to the contractor
- ▶ All requirements have been met by the contractor.
  - ▶ Payment and Performance Bonds
  - ▶ Proof of Insurance in amounts required by the Department of Construction Management (including alternates accepted, change orders)



# The Construction Contract

May 02 2018 ABC Form C-5 August 2007

BC Project No. 2017591

**CONSTRUCTION CONTRACT**

(1) This Construction Contract is entered into this 20<sup>th</sup> day of April in the year of 2018 between the OWNER(s),

(2) Baldwin County Board of Education 2600-A North Hound Avenue Bay Minette, AL 36507

(3) and the CONTRACTOR,

(4) [REDACTED]

(5) for the WORK of the Project, identified as:

(6) [REDACTED]

(7) The CONTRACT DOCUMENTS are dated 3-16-18 and have been amended by ADDENDA One dated 3-6-18, Two dated 3-13-18, Three dated 3-23-18, Four dated 3-30-18, Five dated 4-2-18, Six dated 4-5-18, Seven dated 4-6-18 and Eight dated 4-10-18.

(8) The ARCHITECT is [REDACTED]

(9) The CONTRACT SUM is Eighteen Million, Five Hundred Thirty-Six Thousand, Five Hundred Dollars & 00/100 (\$18,536,500) and is the sum of the Contractor's Base Bid (\$18,498,000) for the Work and the following Alternate (\$38,500):

(10) BID ALTERNATE #1: This Alternate shall be for the furnishing and installation of the door security system as indicated Sheets E4.8 and E4.9 and covered in specification Section 16740. The Airphone system shown on sheet F4.2 shall be in Contractors Base Bid Proposal.

(11) The CONTRACT TIME is all work shall be completed by July 1, 2019.

**THE OWNER AND THE CONTRACTOR AGREE AS FOLLOWS:**

The Contract Documents, as defined in the General Conditions of the Contract (ABC Form C-8), are incorporated herein by reference. The Contractor shall perform the Work in accordance with the Contract Documents. The Owner will pay and the Contractor will accept as full compensation for such performance of the Work, the Contract Sum subject to additions and deductions (including liquidated damages) as provided in the Contract Documents. The Work shall be commenced on a date to be specified in a Notice to Proceed issued by the Owner or the Director, Technical Staff, Alabama Building Commission, and shall then be substantially completed within the Contract Time.

(12) LIQUIDATED DAMAGES for which the Contractor and its Surety (if any) shall be liable and may be required to pay the Owner in accordance with the Contract Documents shall be equal to six percent interest per annum on the total Contract Sum unless a dollar amount is stipulated in the following space, in which case liquidated damages will be assessed at a rate of 6% per annum.

Page 1 of 2

# Payment and Performance Bonds

- ▶ Bonds Should be in the forms available on the Dept. of Construction Management website
  - ▶ Dates on both should be the same as the date of the Construction Contract
  - ▶ Dollar amounts should be the same as those of the base bid and any alternates awarded.
  - ▶ Should be issued by someone licensed in Alabama

# Miscellaneous Contract Related

- ▶ Immediately upon review and signature of the Construction Contract a Sales Tax Exemption Certificate should be applied for.
  - ▶ You will need the following to apply:
    - ▶ Name of Project
    - ▶ Copy of the Executed Contract
    - ▶ Sales tax rate applicable to project location
    - ▶ Dollar amount of Material Cost
    - ▶ Estimated dollar savings

# Contract Performance

- ▶ Obtain ADEM Permit (over 1 acre) (usually done by Civil Engineer)
- ▶ Comply with BMP plan
- ▶ Assure that inspections are performed as required
- ▶ Assure corrective action is taken when required
- ▶ Assure that the proper reporting with ADEM is done in a timely manner before, during and after construction

# Payment

- ▶ Act No 2014-404 – the Prompt Payment Act
- ▶ If pay request is accepted (not disputed by owner) by owner, payment to contractor to be made within 35 days or interest could be due.
- ▶ Hold Contractor's Retainage until all work is performed as required
- ▶ Document delays, inferior work and work not performed as required in the plans and specifications



# Contract Performance

- ▶ Monitor progress throughout construction
- ▶ Means and methods of construction are contractor responsibility
- ▶ Be cautious when approving change orders

# Questions

Tom Waters  
251-580-1913  
[Twaters@bcbe.org](mailto:Twaters@bcbe.org)