



**Oversight Procedures for the Management of Construction Change Order Costs
and Contractor Progress Payments**



FHA Job Number: 1392

March 12, 2021

Executive Summary

Enclosed are suggested oversight procedures for the management of construction Change Order costs and contractor Progress Payments. Separate procedures are provided for both Fixed Price and Construction Management contracts.

To the extent practical, the procedures reflect the applicable contract language included in the Smoke Rise Elementary School Replacement project (Fixed Price) and Cross Keys North Elementary School project (Construction Management). It should be noted however, that some of the language included in these contracts appears ambiguous and "non-standard" which may contribute to a lack of understanding as well as inconsistent compliance by the contract parties. Where noted based on a review of the two contracts referenced above, potential issues with the contract language are listed with the applicable procedure.

Upon DCSD review of these procedures, it is recommended that these or similar procedures be incorporated into the applicable sections of the Program Procedures Manual (PPM). As these procedures attempt to tie directly to applicable requirements set forth in the contract language, they should be considered as supplemental to the current PPM procedures which appear to be more general in nature.

Oversight Procedures for the Management of Construction Change Order Costs Fixed Price Construction Contracts

Applicable Documentation:

1. Standardize and specify a Construction Change Directive form (recommend AIA G714-2017).
2. Confirm the use of the Dekalb County Board of Education Construction Contract Change Order form and include the form as an Exhibit to the construction contract.

Review/Approval Process:

1. Confirm that the cost proposals submitted by the Construction Manager contain sufficient detail and backup support to allow for an evaluation of proposed costs.
2. Based on a thorough understanding of the scope associated with the “change in the work”, confirm the direct costs being proposed by the Construction Manager as being both appropriate and allowable.
3. Identify and reject any proposed direct costs that are expected to be covered by the Construction Manager’s markup for Overhead and Profit.
4. Confirm the proper application of proposed markups for Overhead and Profit as noted below.
 - a. Contractor – 10% on self-performed work, 5% on work performed by Subcontractors and/or Sub-subcontractors
 - b. Subcontractor – 5% on self-performed work
 - c. Sub-subcontractor – 5% on self-performed work
5. Confirm no additional markup for OH&P by a Subcontractor on work performed by a Sub-subcontractor.

Existing Contract Language Issues and Recommendations (Contract):

Article 14.1.3.2(b) – Confirm whether Article 14.1.3.2(a) was deleted from the referenced contract or if the “(b)” at the end of the Article number is an error.

Article 14.1.3.2(b) – Confirm the contract’s intent to compensate only “reasonable actual costs incurred” as this could be interpreted to mean that all change orders are to be compensated as Time and Materials.

Oversight Procedures for the Management of Change Order Costs

Construction Management Contracts

Applicable Documentation:

1. Standardize and specify a Construction Change Directive form (recommend AIA G714-2017).
2. Confirm use of the Dekalb County Board of Education Construction Contract Change Order form and include the form as an Exhibit to the construction contract.

Review/Approval Process:

1. Confirm that the cost proposals submitted by the Construction Manager contain sufficient detail and backup support to allow for an evaluation of proposed costs.
2. Based on a thorough understanding of the scope associated with the “change in the work”, confirm the direct costs being proposed by the Construction Manager as being both appropriate and allowable.
3. Identify and reject any proposed direct costs that are expected to be covered by the Construction Manager’s markup for Overhead and Profit.
4. Determine any appropriate and allowable General Conditions expenses for change directives that include an extension of contract time.
5. Confirm the proper application of proposed markups for Overhead and Profit as noted below.
 - a. Construction Manager – allowable markup should be defined in Article 2.8 of the GMP Amendment (Exhibit M of the Cross Keys North Elementary School project contract)
 - b. Subcontractor – maximum of 10% on direct costs only.
 - c. Sub-subcontractor – maximum of 10% on direct costs only.
6. Confirm no additional markup for OH&P by a Subcontractor on work performed by a Sub-subcontractor.
7. Confirm no markup for OH&P by the Construction Manager on individual change directives. In accordance with the language in Article 2.8 of the GMP Amendment, a

specified markup by the Construction Manager may be applied at final payment for cumulative change order costs which exceed the original GMP by a specified amount.

8. Confirm no additional markup for General Conditions by the Construction Manager. Pending applicable language in Article 2.3 of the GMP Amendment, additional General Conditions costs from the Construction Manager may be considered once cumulative change order costs exceed the original GMP by \$500,000.00.

Existing Contract Language Issues and Recommendations (General Terms and Conditions):

Article 12.1.2 – Develop or adopt a standard Construction Change Directive form that can be specifically referenced in the contract language and included as an Exhibit to the contract.

Article 12.2 – Clarify that the language is intended to result in a fixed price adjustment to the GMP. Existing language appears to suggest that an approved change order will be compensated as a fixed amount.

Article 12.4 – For fixed price adjustments to the GMP, the change order pricing is typically developed by the contractor and then submitted for review and approval prior to performing the work. As such, the reference to the change order amount being based on contractor’s “actual and reasonable” costs is confusing. Unless the existing language is intended to reflect change order pricing that is to be established on a time and material basis, the language should be modified and the reference to “actual and reasonable” costs changed to “projected costs as approved by the Design Professional and Owner”.

Article 12.4 – Proposed subcontractor General Conditions expenses should be itemized on each change directive and, if approved, billed as direct subcontractor costs. Percentage markups for subcontractor General Conditions expenses should not be accepted under any circumstances.

Article 12.4 – Include language to indicate that the \$500,000.00 threshold for a CM Fee increase may be modified by applicable language in Article 2.8 of Exhibit M.

Article 12.4 – As contractor General Conditions expenses are typically tied to the construction schedule duration, indicate whether or not the \$500,000.00 threshold for an increase in General Conditions expenses is still applicable if there is an approved time extension.

Article 12.5 – To avoid potential confusion with Section 13 of Exhibit A, replace the word “claim” with “proposal”.

Oversight Procedures for the Management of Contractor Progress Payments

Fixed Price Construction Contracts

Applicable Documentation:

1. Standardize the Application/Certificate for Payment and Schedule of Values (SOV) formwork (recommend AIA G702 and G703).
2. Confirm requirements for backup documentation in accordance with Article 6.3 of the contract.
3. Upon execution of the construction contract, Construction Manager to develop the SOV for Owner and A/E approval based on the CSI Division amounts listed on the Bid Form. Expand the number of SOV line items within each CSI Division to facilitate the ongoing review and approval of completed work.

Approval of the Schedule of Values

1. Confirm Owner and Architect approval of the Schedule of Values prior to submission of the initial Application for Payment.

Application/Certification Process

1. Confirm Application/Certification form (AIA G702) has been properly signed/notarized by the Construction Manager and signed by the Design Professional.
2. Confirm the accuracy of the information recorded on the AIA G702 including, but not limited to:
 - a. Application No.
 - b. Period To
 - c. Project Name and No.
 - d. Change Order Summary
 - e. Original Contract Amount
 - f. Net Change By Change Orders
 - g. Contract Sum to Date
3. Review the percent complete for each line item as proposed by the contractor and certified by the Design Professional.

4. Confirm the percent complete for General Conditions, Insurances and Bonds aligns with contract terms.
5. Confirm the proper application of retainage as required by Article 6.3 of the contract.
6. Confirm accurate transfer of the amount from the G703 to the G702 for the Total Completed and Stored to Date.
7. Confirm G702 calculations for:
 - a. Retainage
 - b. Total Earned Less Retainage
 - c. Less Previous Certificates for Payment
 - d. Current Amount Due
 - e. Balance to Finish, Including Retainage
8. If/as applicable, confirm receipt and review the other documentation required in Article 6 of the contract to be submitted with each Application for Payment.

Oversight Procedures for the Management of Contractor Progress Payments Construction Management Contracts

Applicable Documentation (Preconstruction Phase):

1. Standardize the Application/Certificate for Payment and Schedule of Values (SOV) formwork (recommend AIA G702 and G703).
2. Construction Manager to develop initial SOV breakdown to align with the Pre-Construction Phase Services required by Section 8 of Exhibit A – General Terms and Conditions. Owner and Design Professional to review and approve proposed SOV.

Approval of the Schedule of Values (Preconstruction Phase)

1. Confirm Owner and Architect approval of the Schedule of Values prior to submission of the initial Application for Payment for Preconstruction Phase services.

Applicable Documentation (Construction Phase):

1. Upon execution of the GMP Amendment, Construction Manager to expand the SOV breakdown to add the line items on the GMP Cost Summary. The GMP Cost Summary, which should be an Attachment to the GMP Amendment, should be developed using the CSI format and include the following line items:
 - a. Division 1A - General Conditions
 - b. Division 1B - General Requirements
 - c. Divisions 2 through 33 - Separate SOV line items for each CSI Division as well as each Trades Package within the CSI Division (ex. Division 9A Exterior Framing, Division 9B Drywall, Division 9C Painting, etc.).
 - d. GMP Allowances (separate SOV line item for each Allowance listed in the GMP Amendment)
 - e. Owner's Contingency
 - f. Contractor's Contingency
 - g. Insurances (separate SOV line item for each Insurance required by contract)
 - h. Bonds
 - i. Construction Manager's Fee
 - j. Change Orders (each Change Order should be a separate line item in the SOV which is added once a Change Orders is formally approved by the Owner)

2. Identify any SOV line items that are not compensated as actual costs and determine/confirm payment methodology for those line items (i.e. Construction Manager's Fee, General Conditions Expenses, etc.).
3. Standardize the backup documentation to be provided with each Application for Payment. In addition to the documentation required in Section 4 of Exhibit A – General Terms and Conditions, require backup documentation to support the Construction Manager's proposed charges for all line items that are to be paid as actual costs. Such documentation should include the following:
 - a. Cost Summary Sheet listing all charges for the Pay Period. Each charge should identify the specific SOV line item in which the charge is located.
 - b. For any Construction Manager direct labor charges that are not included in the fixed General Conditions Expenses, provide a Labor Report listing all Construction Manager employees charging time to the project during the Pay Period. Include dates, names, positions, # of hours, rate per hour, total amount, etc.
 - c. For any Construction Manager direct purchase of materials, equipment and/or services that are not part of the fixed General Conditions Expenses, provide an excerpt from Construction Manager Job Cost Report listing all such purchases charged during the Pay Period. Provide a copy of the Invoice for each charge listed in the Job Cost Report.
 - d. Subcontractor monthly Applications for Payment.
 - e. Updated Allowances Log to substantiate Owner approval of charges during the Pay Period.
 - f. Updated Owner's Contingency Log to substantiate Owner approval of charges during the Pay Period.
 - g. Updated Contractor's Contingency Log to substantiate Owner approval of charges during the Pay Period.

Approval of the Schedule of Values (Construction Phase):

1. Confirm Owner and Architect approval of the Schedule of Values prior to submission of the initial Application for Payment for Construction Phase services.

Application/Certification Process

1. Confirm Application/Certification form (AIA G702) has been properly signed/notarized by the Construction Manager and signed by the Design Professional.
2. Confirm the accuracy of the information recorded on the AIA G702 including, but not limited to:
 - a. Application No.
 - b. Period To
 - c. Project Name and No.
 - d. Change Order Summary
 - e. Original Contract Amount
 - f. Net Change By Change Orders
 - g. Contract Sum to Date
3. Confirm the receipt of the Cost Summary Sheet and all required backup documentation to support each charge from the Construction Manager that is to be paid as an actual cost.
4. Reconcile the amounts listed in the backup documentation with the amounts listed on the Cost Summary Sheet.
5. Reconcile the amounts listed on the Cost Summary Sheet with the amounts charged on the Schedule of Values (AIA G703).
6. Confirm the amounts charged on the Schedule of Values (AIA G703) for those line items not compensated as actual costs.
7. Confirm the proper application of retainage as required by Section 4.5 of Exhibit A – General Terms and Conditions.
8. Confirm accurate transfer of the amount from the G703 to the G702 for the Total Completed and Stored to Date.
9. Confirm G702 calculations for:
 - a. Retainage
 - b. Total Earned Less Retainage
 - c. Less Previous Certificates for Payment
 - d. Current Amount Due
 - e. Balance to Finish, Including Retainage

10. If/as applicable, confirm receipt and review the other documentation required in Section 4 of Exhibit A – General Terms and Conditions to be submitted with each Application for Payment.

Existing Contract Language Issues and Recommendations (General Terms and Conditions):

Section 4.7 – Item (c) requires a written consent from the surety for the payment being requested. The basis for the requirement as well as a surety’s willingness to provide such a document with each Payment Application is unclear. This requirement is not typical and none of the Payment Applications reviewed by FHA included such a document.

Section 4.7 -Item (d) does not identify any specific documentation to be provided with each Payment Application. This lack of specificity increases the risk of not receiving all of the documentation that is needed to adequately review of the proposed charges. Recommend specifying Construction Phase documentation as noted above.



FORT | HILL
Associates, LLC

Review of Contracts, Change Orders and Payment Applications



FHA Job Number: 1392

March 12, 2021

Scope of Review

Fort Hill Associates, LLC (FHA) completed a review of the following documentation provided by the DeKalb County School District (DCSD).

Standard Form of Construction Management Contract

- Cross Keys North Elementary School
- New Indian Creek Elementary School

Standard Form of Fixed Price Construction Contract

- Smoke Rise Elementary School Replacement

Construction Contract Change Orders

- Cross Keys North Elementary School – Change Orders #1 through #7
- New Indian Creek Elementary School – Change Order #3
- Smoke Rise Elementary School Replacement – Change Order #1

Payment Applications

- Cross Keys North Elementary School – Pay Apps #1, #8, #13, #15, #22 and #29
- New Indian Creek Elementary School – Pay Apps #1, #8 and #15
- Smoke Rise Elementary School Replacement – Pay Apps #1, #8 and #13

Program Procedures Manual (PPM)

- Sections applicable to Contract Change Orders and Payment Applications

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II.	Contract Change Order Review A. Cross Keys North Elementary School B. New Indian Creek Elementry School C. Smoke Rise Elementary School Replacement
III.	Payment Application Review A. Cross Keys North Elementary School B. New Indian Creek Elementry School C. Smoke Rise Elementary School Replacement

I. Contract Language Review

A. Standard Form of Construction Management Contract

Contract Section 4.K.

“Construction Phase Services. *With respect to the Construction Phase Services to be provided by Construction Contractor hereunder, Owner shall reimburse Construction Contractor for the Cost of the Work (hereunder defined), and pay Construction Contractor a fixed Construction Management Fee calculated as a percentage based on the estimated Cost of the Work. The Construction Management Fee and Cost of Work shall be estimated at the time the GMP (hereinafter defined) is initially adopted by the parties. The Construction Management Fee shall be Construction Contractor’s total compensation for all overhead not reimbursable as Cost of the Work under Section 5.A. below, as well as Construction Contractor’s total profit for Construction Phase Services.....”*

Issue: Establishing the Construction Management Fee (or Fee percentage) at the time of the GMP may mitigate the Owner’s ability to obtain a more favorable Fee amount or Fee percentage.

Recommendation: Require the Construction Managers to propose their Construction Management Fee amount (or Fee percentage) as part of their response to the Owner’s initial Request for Proposal. Include the Fee amount (or percentage) as a component of the overall selection criteria to take advantage of the competitive environment of the Construction Manager selection process.

Contract Section 5.A.1.d.

The parties hereby establish the fixed markup rate of TBD at time of GMP percent (%) for all labor burden, including all taxes, insurance (except workers compensation and general liability), contributions, assessments and benefits required by law and collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under Subsections 5.A.1.a through A.1.c, above. Further, such labor burden shall not include amounts for items specified in Subsection 5.8.3 that are to be excluded from the Cost of the Work.

Issue: As the contract stipulates that General Conditions costs are to be compensated as a fixed amount, the intent for establishing the fixed markup rate for labor burden at the time of the GMP is unclear. Further, there is no reference to the fixed markup rate in the contract Exhibit M (GMP Amendment).

Recommendation: Establish the fixed markup rate for labor burden prior to the development of the GMP. Base the markup rate on the actual amounts paid by the Construction Manager for the applicable labor burden costs of the employees that are assigned to the project. List the approved “fixed markup rate” in Exhibit M. Also, consider a modification to the contract language providing for the General Conditions costs to be compensated as a reimbursable cost versus a fixed amount.

Contract Section 5.A.5.a.

*That portion of any separate premiums for (i) bonds directly attributable to the Contract, and (ii) any **additional insurance coverages** which are purchased by Construction Contractor. with Owner's prior written approval, **beyond the level of coverage specified herein.***

Issue: The language above is unclear with respect to the Construction Manager’s specific insurance costs which are to be reimbursed as Cost of the Work versus those insurance costs, if any, which are considered to be an overhead expense and therefore covered by the Construction Management Fee. As such, it is likely that all Construction Manager Insurance costs are being billed to the Owner as a Cost of the Work.

Recommendation: Modify the contract language to clearly articulate the Owner’s intent. If the insurance coverages “specified in the contract” are to be covered by the Fee and any (Owner approved) “additional” coverages reimbursed as a Cost of the Work, add language to clearly convey this requirement.

General Terms and Conditions – Section 4.7

*Each Application for Payment shall be accompanied by: (a) properly executed and notarized (i) Release and Affidavit, in the form attached to the Agreement as Exhibit H, and (ii) waiver of Right to Claim Against the Payment Bond (Progress Payment) in form prescribed by applicable law, showing that all materials, labor, equipment and other bills associated with that portion of the Work for which payment has been requested have been paid in full through the previous month's Application for Payment, from Construction Contractor and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner: provided, however, Owner, in its sole discretion, may require such Releases and Affidavits and Waivers of Right to Claim Against the Payment Bond (Progress Payment) from all lower tier subcontractors and suppliers and, if so required Contractor shall, as a condition precedent to payment provide same: (b) updated Schedule(s) required by the Contract Documents, (c) **a written consent from the surety for the payment being requested; and (d) such other information, documentation, and materials as Owner or Design Professional may reasonably require (e.g. payrolls, petty cash accounts, an invoices).** Owner shall not be required to make payment until and unless these affidavits, waivers, reports and other information, documentation and materials are furnished by Construction Contractor. Further, if Construction Contractor is withholding any portion of a payment to any subcontractor or supplier for any labor, services, or materials for which Owner*

has paid Construction Contractor, Construction Contractor agrees to refund such money to Owner.

Issue: Item (c) requires a written consent from the surety for the payment being requested. The basis for the requirement as well as a surety's willingness to provide such a document with each Payment Application is unclear. This requirement is not typical and none of the Payment Applications reviewed by FHA included such a document.

Recommendation: Delete this requirement from the contract language.

Issue: Item (d) does not identify any specific documentation to be provided with each Payment Application. This lack of specificity increases the risk of not receiving all of the documentation that is needed to adequately review of the proposed charges. In addition, by allowing each project team to independently determine what documentation will be required, there will likely be inconsistencies in the documentation received between projects.

Recommendation: With the exception of those SOV lines items that are compensated as a lump sum amount or previously approved rate, each Payment Application on a Construction Manager at Risk project should include backup cost documentation to align with and fully support all charges for a particular month. At a minimum, the backup should include separate Payment Applications from each subcontractor who is billing for the month and an itemization of the Construction Manager's direct costs for any labor, materials, equipment and/or 3rd party services that are being billed. Specific payroll records that substantiate the labor charges as well as source documents for each material, equipment and 3rd party services charge may also be requested.

General Terms and Conditions – Section 12

12.2 A Change Order, in the form attached as Exhibit J to the Agreement, shall be prepared by Construction Contractor, reviewed by Design Professional and Owner, and executed promptly by the parties after an agreement is reached between Construction Contractor and Owner concerning requested changes. Construction Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Contractor shall mutually agree. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Amount and the Contract Time.

12.5 Owner shall have the right to conduct an audit of Construction Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Contractor's claim with respect to Construction Contractor's costs associated with any Change Order or Construction Change Directive.

Issue: Collectively, the language above can be interpreted to mean that Change Orders will be compensated as a fixed amount, subject to an audit of costs if later pursued by the Owner. For Construction Manager at Risk contracts, construction phase change orders are typically intended to be adjustments to the GMP amount for which actual compensation is determined by applicable language elsewhere in the contract.

Recommendation: Confirm the Owner's intent relative to the language above and modify the contract language if/as appropriate.

Exhibit M

Article 1 – Attachments

Issue: The Attachments listed in Exhibit M should be expanded to include additional documentation/information to more clearly articulate the Owner's intent and expectations associated with the GMP Amendment

Recommendation: Add the following Attachments to those currently listed in Exhibit M:

- Itemized GMP Cost Summary indicating the cost basis (actual cost, rate, etc.) of each line item
- Itemized list of General Requirements to be compensated as a not-to-exceed amount (*if list not provided by the Owner*)
- Statement of any/all work, if any, which the Owner has previously approved to be self-performed by the Contractor and/or a party having an existing business relationship with the Contractor, including the basis for compensation of such work.
- Unit Prices, if any

Article 2.5 *In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in Subsection 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of _____ and ____/100 Dollars (\$ _____) ("Owner's Contingency"). Owners Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the construction documents. Construction Contractor shall not proceed with any portion or the Work which it intends to charge against the Owner's Contingency without first obtaining Owner's express written authorization to proceed. Construction Contractor acknowledges and agrees that any portion or the Work which is to be charged against the Owner's Contingency that does not receive such prior written approval from Owner shall be deemed to be part of Construction Contractor's Work compensated within the GMP and not chargeable against Owner's Contingency. Owner reserves the right, at its sole discretion, to withhold its consent on Owner's Contingency expenditures. Further, the work that is the subject of any Owner's Contingency expenditures*

shall be deemed part of the Work. The GMP shall be reduced by unused Owner's Contingency remaining at the completion of the Work. Construction Contractor has no entitlement to any portion of any unused Owner's Contingency.

Article 2.6 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in Subsection 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed _____ and ___/100 Dollars (\$_____) ("**Contractor's Contingency**"). Construction Contractor shall not proceed with any portion of the Work which it intends to charge against the Contractor's Contingency without first obtaining Owner's express written authorization to proceed. Construction Contractor acknowledges and agrees that any portion of Work which is to be charged against the Contractor's Contingency that does not receive such prior written approval from Owner shall be deemed to be part of Construction Contractor's Work compensated within the GMP and not chargeable against Contractor's Contingency. Owner reserves the right, at its sole discretion, to withhold its consent on Contractor's Contingency expenditures. Further, the work that is the subject of any **Owner's Contingency** expenditures shall be deemed part of the Work. The GMP shall be reduced by unused Contractor's Contingency remaining at the completion of the Work. Construction Contractor has no entitlement to any portion or any unused Contractor's Contingency. **Construction Contractor shall be entitled to an increase in the Construction Management Fee in the amount of ____% of the Cost or the Work charged against the Contractor's Contingency.**

Issue: As noted in Articles 2.5 and 2.6 above, Exhibit M identifies both an Owner's Contingency and a Contractor's Contingency that is to be included within the GMP amount. As defined, the application of each contingency is very similar so the use of one contingency versus the other is unclear. While Owner Contingency is often a component of the Owner's overall project budget, this contingency is typically not included within the GMP amount.

Recommendation: Confirm the need/value of having two separate contingencies within the GMP. If both contingencies are determined to be a requirement for DCSD CMAR projects, modify the language associated with each contingency to clearly define its application and use.

Article 2.10 At the completion of the Work, should the actual amount of "**General Requirements**" expenses be less than the amount included therefor in the Schedule of Values approved by Owner, the resulting "savings" shall accrue to the benefit of Owner and a deductive Change Order or Construction Change Directive shall be issued reducing the GMP by the amount of such savings. For the avoidance of doubt, **any savings obtained General Requirements expenses may not be moved to contingency or be used to offset cost overruns in other items within the GMP.** Further, the line item for General Requirements expenses in the Schedule of Values constitutes a separate guaranteed maximum price for such expenses and any overruns in General Requirements expenses shall be borne by Construction Contractor without reimbursement from Owner.

Issue: Within the construction industry, “General Requirements” is a somewhat generic term that may or may not include the same scope/costs on every project. Absent a definitive list of items from the Owner, separately identifying and accounting for “General Requirements” costs across projects can be very challenging (the Cross Keys North Elementary School project did not identify any “General Requirements” costs in the GMP).

Recommendation: Within Article 2.10, clearly define the items of work that the Owner’s identifies as “General Requirements”. Alternatively, delete Article 2.10 in its entirety from Exhibit M.

B. Standard Form of Fixed Price Construction Contract

Article 6.3

*“Payment Procedures. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Article 6. On or before the 5th day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the last day of the previous month. **Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect, the Owner, or both.** Therein, the Contractor may request payment for ninety percent (90%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Moreover, any sums approved for stored materials shall be at actual cost and shall not include markup by subcontractor or Contractor. Actual cost means costs charged by the manufacturer or the distributor for the manufacturer and the Payment Request shall include copies of invoices from the manufacturer or the distributor.”*

*Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. **Each Payment Request shall be accompanied by 8" x 10" photographs of good quality and digital copies on cd depicting the then- current status of the Project and including such views, including without limitation aerial views, as the Architect or the Owner may reasonably require. With each payment request, Contractor will provide a fully updated, detailed construction schedule for use by the Architect and Owner in determining the actual progress of the project with respect to the payment application.***

Issue: For fixed price contracts, the amount of a monthly Payment Application is typically a calculated amount based on the overall percent-complete of the various line items in the Schedule of Values (SOV). While contract language allows Owner's to require backup documentation with each Payment Application, Contractors generally resist providing any documentation of their actual costs. To avoid overpayment, Owner's typically rely on such documentation as noted above to substantiate the status of the work at the time a payment is requested.

Recommendation: If DCSD requires documentation to support the actual costs incurred by the Contractor, the language above should be modified to specifically include separate Payment Applications from each subcontractor who is billing for the month and an itemization of the Contractor's direct costs for any labor, materials, equipment and/or 3rd party services that are being billed.

II. Change Order Review

A. Cross Keys North Elementary School

1. Change Order #3

Change Order #3 includes the Construction Manager's full Guaranteed Maximum Price proposal less the amounts previously approved in Change Order #1 and Change Order #2. The backup documentation affixed to Change Order #3 consisted solely of the GMP cost breakdown. **An unsigned Exhibit M with several Attachments was provided for audit review under separate cover. It is unclear how (or if) this document has been formally incorporated into the Agreement.**

Issue: Exhibit M serves as the GMP Amendment to the Agreement between the Owner and the Construction Manager. The Exhibit includes important and consequential contract language that is not included elsewhere in the Agreement. In addition, the Exhibit incorporates several Attachments that are specific to the Guaranteed Maximum Price proposal on which the Exhibit is based. Formally incorporating this Exhibit into the overall Agreement is paramount relative to codifying the contractual obligations of the Construction Manager.

Recommendation: Confirm the documentation by which Exhibit M has been incorporated into the Cross Keys North Elementary School project. Confirm/develop the applicable section(s) of the Program Procedures Manual to ensure that the Exhibit is appropriately and consistently incorporated into the Agreements of all applicable DCSD projects.

2. Exhibit M

- in calculating the Construction Management Fee, the Fee percentage of 2.75% was applied to the full amount of both the Owner Contingency and the Contractor Contingency. It is assumed that no additional markup for Construction Management Fee will be applied as these funds are disbursed
- Article 2.8 was effectively deleted from the Exhibit. The resulting application of Section 12.4 of the Agreement is unclear
- are the "Site Services" costs included in the GMP cost summary being accounted for as "General Requirements" costs as referenced in Article 2.10?
- Article 3.1 established the Substantial Completion Date as "April of 2020"
- Article 4 was not completed
- the Assumptions and Clarifications included the following exceptions to the Agreement:
 - Subcontractor Default Insurance was included in the GMP at a rate of 1.20% of the subcontract cost

- P&P Bond cost was included in the GMP at a rate of 0.606% of the total contract amount
 - Insurance costs was included in the GMP at a rate of 0.865% of the total contract amount
 - Miscellaneous construction labor will be provided by a subsidiary of the Construction Manager at a burdened rate of \$36.00/HR
 - Retainage will not be held on the Construction Manager's billings for General Conditions
- Article 6 (Itemized General Conditions Expenses) was designated "N/A"

Issue: As listed above, multiple exceptions and questionable compliance to the contract language of both the Agreement and Exhibit M were noted during the review.

Recommendation: Confirm/develop the applicable section(s) of the Program Procedures Manual to ensure that the Exhibit is appropriately and consistently incorporated into the Agreements of all applicable DCSD projects. Include procedures that ensure appropriate DCSD Management approval is formally obtained prior to execution of the Exhibit.

2. Change Orders - Miscellaneous

Issue: Construction Manager included markups for the following:

- Subcontractor Default Insurance
- GL Insurance
- Builder's Risk Insurance
- Payment and Performance Bond
- CM Fee

Recommendation: Confirm contractual basis for each markup. For future projects, modify the contract language as appropriate to better articulate the Owner's intent and expectations with respect to these markups.

B. **New Indian Creek Elementary School**

1. Exhibit M

Issue: The copy of Exhibit M which was included in Change Order #3 was not signed by the Owner.

Recommendation: Confirm the Owner's intent and expectation regarding the formal execution of the GMP Amendment, as well as how the GMP Amendment is incorporated

into the contract (Does incorporation require a contract Change Order?). Update the applicable section(s) of the Program Procedures Manual as appropriate.

C. Smoke Rise Elementary School Replacement

1. General:

Issue: The change order amount for Sewer Storage Vault significantly exceeded Alternate price included in the initial bid.

Recommendation: Confirm the basis for the price increase.

III. Payment Application Review

A. Cross Keys North Elementary School

1. Payment Application #21

Issue: The Construction Manager adjusted the Schedule of Values to move budget from CM Contingency and CM Buyout Savings line items to subcontractor line items. While this is a somewhat common practice pending prior Owner approval of the disbursement of these funds, the process may not have been effectively communicated to the entire project team.

Recommendation: Update the Program Procedures Manual to include procedures for approving, billing and tracking disbursements from the CM Contingency and Allowance(s) line items in the Schedule of Values.

2. General

Issue: The cumulative billings for lump sum General Conditions exceeded overall project % complete.

Recommendation: Withhold payment for General Conditions charges pending contract compliance with Section 5.A.1.d of the Contract.

B. New Indian Creek Elementary School

1. General:

Issue: With the exception of those SOV lines items that are compensated as a lump sum amount or previously approved rate, each Payment Application on a Construction Manager at Risk project should include backup cost documentation to support all charges for a particular month. The reviewed Payment Applications for this project did not provide backup documentation to support the Construction Manager's reimbursable/direct costs for labor, materials and equipment.

Recommendation: Modify **Section 4.7** of the *General Terms and Conditions* to clearly specify the content and format of backup documentation required with each Payment Application.

Issue: While the Construction Manager did include individual subcontractor Payment Applications as backup documentation, the subcontractor Payment Applications could not be directly reconciled to the SOV line items.

Recommendation: Modify **Section 4.7** of the *General Terms and Conditions* to clearly specify the content and format of backup documentation required with each Payment Application. Require that each subcontract amount be listed as a separate SOV line item.

Issue: The cumulative billings for lump sum General Conditions exceeded overall project % complete.

Recommendation: Withhold payment for General Conditions charges pending contract compliance with Section 5.A.1.d of the Contract.

C. Smoke Rise Elementary School Replacement

1. General:

Issue: The billing for stored materials did not include the backup support required by the contract

Recommendation: Withhold future payments for stored materials pending full compliance with Article 6.3 which requires that the following be included with the Payment Request when requesting payment for stored material:

- a. Written proof that the Owner has title to such stored materials
- b. Written proof that the stored materials are insured against loss or damage
- c. Copies of invoices from manufacturer or distributor indicating actual costs of the stored materials