



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

**Request for Proposals for
Construction Management / General Contractor Services**

Value Based Selection Method

July 10, 2007

**ST. GEORGE FIFTH DISTRICT
COURT**

**ADMINISTRATIVE OFFICE OF THE
COURTS
ST. GEORGE, UTAH**

DFCM Project No. 06281150

TABLE OF CONTENTS

	<u>Page Number</u>
Title Sheet	1
Table of Contents	2
Notice to Contractors	3
Description of the Work	4
Procurement Process	5
Project Schedule	17
Cost Proposal Form	18
Bid Bond	21
Contractors Sublist Form	22
CM/GC Agreement	25
Performance Bond	41
Payment Bond	42
Certificate of Substantial Completion	43
General Contractor Past Performance Rating Form	

Current copies of the following documents are hereby made part of these contract documents by reference. These documents are available on the DFCM web site at <http://dfcm.utah.gov> or are available upon request from DFCM.

DFCM General Conditions dated May 25, 2005
DFCM Application and Certificate of Payment dated May 25, 2005.

The Agreement and General Conditions dated May 25, 2005 have been updated from versions that were formally adopted and in use prior to this date. The changes made to the General Conditions are identified in a document entitled Revisions to General Conditions that is available on DFCM's web site at <http://dfcm.utah.gov>

NOTICE TO CONTRACTORS

The State of Utah - Division of Facilities Construction and Management (DFCM) is requesting proposals for the construction of the following project:

ST. GEORGE FIFTH DISTRICT COURT
ADMINISTRATIVE OFFICE OF THE COURTS – ST. GEORGE, UTAH
DFCM PROJECT NO. 06281150

This Construction Management/General Contractor (CM/GC) project includes, the design period services and construction management/general construction services to construct a new state courthouse with eight finished courtrooms and support space, including secure holding, a clerk area, judge's chambers, administrative offices, meeting rooms, and building support totaling 95,550 – 98,000 SF. The FLCC is limited to \$23,422,529.

The Request for Proposals (RFP) documents, including the selection requirements and the selection schedule, will be available at 9:00 AM on Tuesday, July 10, 2007 from DFCM, in electronic format only, at 4110 State Office Building, Salt Lake City, Utah 84114 or on the DFCM web page at <http://dfcm.utah.gov>. For questions regarding this project, please contact Lynn Hinrichs, DFCM, at (801) 538-3018. No others are to be contacted regarding this project.

The procurement shall be under the Value Based Selection RFP method. A **MANDATORY** Pre-Proposal Meeting and site visit will be held at 10:00 AM on Friday, July 20, 2007 at the Fifth District Courts Building, 220 North 200 East, St. George, Utah. All prime contractors wishing to submit on this project must attend this meeting.

Proposals, including a cost proposal, management plan, references and statements of qualifications, must be submitted by 12:00 Noon on Wednesday, August 1, 2007 to DFCM at 4110 State Office Building, Salt Lake City, Utah 84114. Additional information will be required as stated on the Project Schedule. Note: Submittals must be received at 4110 State Office Building by the specified times.

The Contractor for the project must be a Utah licensed General Contractor. Association with other individuals or firms having appropriate professional expertise is acceptable. The State will enter into a single agreement with the successful Contractor.

A Bid Bond in the amount of five percent (5%) of the FLCC, made payable to the Division of Facilities Construction and Management on DFCM's bid bond form, shall accompany the cost proposal.

The Division of Facilities Construction & Management reserves the right to reject any or all proposals or to waive any formality or technicality in any proposal in the interest of the State.

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
MARLA WORKMAN, CONTRACT COORDINATOR
4110 State Office Bldg., Salt Lake City, Utah 84114

DESCRIPTION OF WORK

This project includes the design and construction administration of a new state courthouse with eight finished courtrooms and support space, including secure holding, a clerk area, judge's chambers, administrative offices, meeting rooms, and building support totaling 95,550 – 98,000 SF. The FLCC is limited to \$23,422,529.

This project will be built on a site that currently houses an elementary school between 200 West and 300 West Tabernacle Street, St. George, Utah. This site was part of a three-way property trade with the City of St. George, the school district, and the state which allowed for the school district to construct a new elementary school at a different location and for the state to obtain this property. The school district will not be able to vacate the existing property until the holiday break in December of 2007. Commencement of construction activities is anticipated to begin by January 1, 2008. A design competition was previously conducted where VCBO Architect was selected to refine the program and design the facility so that bidding of the site bid package can be conducted in December of 2007, and construction can commence in January of 2008. An ALTA survey and geotechnical study are presently being commissioned by the state on this property.

A program for the courthouse has previously been performed. A copy of the program will be available at the Pre-Proposal Meeting. This program was written around development at the old site, which is no longer the case. However, the room numbers and sizes are substantially the same. The architect is presently working on updating the program to the new site and space revisions that are necessary since it was completed approximately four years ago.

As part of the property trade, the state agreed to be sensitive to the historical design aspect that is being encouraged by the city in the proximity of this new location. The exterior of the courthouse is required to employ red sandstone as a predominant feature, with a sloped roof and traditional detailing in harmony with other buildings on Tabernacle Street. Additionally, the city is in the process of developing the block directly south of the site into a community plaza and has requested that the new courthouse be sensitive to that plan in accommodating coordinated access points for pedestrians and vehicles as well as the design features of the plaza. The city has also expressed a keen interest in saving as many of the existing trees as possible on the new site, and more especially, those presently along the street.

The delivery of the project has been determined to be CM/GC at risk. The CM/GC will be part of the design team and will advise on constructability and cost of the project. The CM/GC and the A/E will collaborate together to insure that the project is designed within the available budget. This budget amount will be referred to as the Fixed Limit of Construction Cost (FLCC) in the CM/GC process.

Project Risk Factors

1. CM/GC is able to deliver the project within a competitive schedule.
2. CM/GC is able to attract qualified subcontractors to construct the project.
3. CM/GC has effective design phase services.
4. CM/GC has understanding of State's CM/GC process.
5. Contingency plan in the case that the school district is late exiting their building.

PROCUREMENT PROCESS

1. Request for Proposal Documents

The Request for Proposal (RFP) documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this RFP by reference.

2. Availability of Requests for Proposals

RFP documents will be available free of charge at DFCM, 4110 State Office Building, Salt Lake City, Utah and at DFCM's internet web site at <http://dfcm.utah.gov>.

3. Contact Information

Except as authorized by the DFCM Representative or as otherwise stated in the RFP or the pre-proposal meeting, communication during the selection process shall be directed to the specified DFCM's Representative. In order to maintain the fair and equitable treatment of everyone, Contractors shall not unduly contact or offer gifts or gratuities to DFCM, any Board officer, employee or agent of the State of Utah, users or selection committee members in an effort to influence the selection process or in a manner that gives the appearance of influencing the selection process. This prohibition applies before the RFP is issued as the project is developed, and extends through the award of a contract. Failure to comply with this requirement may result in a disqualification in the selection process. Contractors should be aware that selection committee members will be required to certify that they have not been contacted by any of the Contractors in an attempt to influence the selection process.

4. Requests for Information

All requests for information regarding this project shall be in writing and directed to:

Lynn Hinrichs, DFCM Representative
Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114
E-mail: lynnhinrichs@utah.gov
Phone: (801)-538-3018
Facsimile: (801)-538-3267

5. Project Schedule

The Project Schedule lists the important events, dates, times and locations of meetings and submittals that must be met by the Contractor.

6. Mandatory Pre-Proposal Meeting & Registration

A mandatory pre-proposal meeting will be held on the date and time and at the location listed on the Project Schedule.

A representative from each interested prime contractor is required to attend. During the meeting, a presentation will be made to describe the overall scope of work and intended schedule. Interested prime contractors may ask questions and request clarification about the project and the procurement process.

Subcontractors and suppliers are invited to attend this meeting but it is not mandatory for them.

THE PRIME CONTRACTOR'S ABSENCE FROM THE PRE-PROPOSAL MEETING AND/OR FAILURE TO REGISTER PRECLUDES PARTICIPATION AS A PROPOSER ON THIS PROJECT.

7. Submittal Due Dates and Times

All required submittals must be delivered to, and be received by, the Division of Facilities Construction and Management previous to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery. If using a courier service, the submitting firm is responsible for ensuring that delivery will be made directly to the required location. It is your responsibility to allow for the time needed to park on Capitol Hill as recent construction activity has made the parking more difficult. Identification is required to enter the building.

8. Last Day to Submit Questions

All questions must be received at the office of DFCM no later than the time and date listed on the Project Schedule. Questions must be submitted in writing to Lynn Hinrichs at DFCM.

9. Addendum

All responses to questions and requests for clarification will be in writing and issued as addenda to the Request for Proposals. The addenda will be posted on DFCM's web site.

Any addenda issued prior to the submittal deadline shall become part of the Request for Proposals and any information required shall be included in your proposal.

10. Past Performance and References

As a contractor completes each DFCM project, DFCM will evaluate the Contractor with input from the A/E and using agency. It is the intent of DFCM that this process will be the major source for evaluating past performance. A sample rating form is attached to this package.

Contractors shall submit past performance and reference information for all DFCM and non-DFCM projects by the time indicated on the Project Schedule.

For all DFCM projects completed in the last five years identify the project by name, number and DFCM project manager. Each Contractor wishing to compete for this project that has not completed at least three DFCM projects in the last five years, will be required to provide one copy of a list of references on additional similar projects for a total of three projects.

For non-DFCM projects provide the following information:

Point of Contact: Person who will be able to answer any customer satisfaction questions.

Phone Number: Phone number of the contact we will be surveying.

User Name: Name of the Company / Institution that purchased the construction work.

Project Name: Name of the project.

Date Completed: Date of when the work was completed.

Address: Street, city and state where the work was performed.

Size: Size of project in dollars.

Duration: Duration of the project / construction in months.

Type: Type of the project (i.e.: School, Offices, Warehouse, etc.)

11. CM/GC Work Phases

The CM/GC Work for the project consists of two phases: Preconstruction and Construction.

- A. **Preconstruction Phase.** This phase of the Work includes but is not limited to attending design meetings, estimating and cost control, schedule development, and drawing and constructability reviews. The Contractor shall assist DFCM and A/E in maintaining the cost of construction within the FLCC and the duration of the construction within the project's schedule.
- B. **Construction Phase.** This phase of the Work consists of the Contractor furnishing and installing all Work as required in the Contract Documents. Please note that the Work of the Construction Phase may be bid in several packages, such as excavation, footings and foundations, structural steel, etc.

12. FLCC and GMP

- A. **FLCC.** The Fixed Limit of Construction Cost or FLCC is the project's construction budget as listed in the Notice to Contractors and this RFP's Description of Work section. The DFCM, the design team and the CM/GC Contractor agree to work together to keep the cost of construction as represented in the design within the FLCC.

- B. **Guaranteed Maximum Price (GMP).** The Guaranteed Maximum Price is the final price that the Contractor agrees to accept in full performance of the attached Construction Manager / General Contractor Agreement (CM/GC Agreement) and is based on the final contract drawings and specifications. The GMP shall include all fees and percentages required by this RFP, as well as the costs for general conditions and all work as required in the Contract Documents. Please reference Articles 5, 6, and 7 of the CM/GC Agreement.

Please note that since the Work may be completed in project phases and bid packages, the successful Contractor will be required to submit a GMP for each of these phases and packages of the Work. The sum or total of all the GMP's for these phases of the Work shall be the final GMP. Except for the Preconstruction Fee, all other GMPs for the phases of the Work shall become part of the CM/GC Agreement by modification. The final GMP is normally determined at the completion of the contract documents and receipt of subcontractors bids. However a GMP may be negotiated at an earlier point as may be needed by the State.

13. Cost Proposal, Fees, and Markups

Before submitting a Cost Proposal, each Contractor shall carefully examine the RFP, shall visit the site of the Work, shall fully inform themselves as to all existing conditions and limitations, and shall include in the proposal the cost of all items required by the RFP. If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations or contain obvious erroneous or uncoordinated information, the Contractor shall promptly notify the specified DFCM Representative and the necessary changes shall be accomplished by Addendum.

The Cost Proposal, bearing original signatures, must be typed or handwritten in ink on the Cost Proposal Form provided in the procurement documents and submitted in a sealed envelope at the location specified below prior to the deadline for submission of cost proposals indicated on the Project Schedule.

Bid bond security, in the amount of five percent (5%) of the Fixed Limit of Construction Cost, made payable to the Division of Facilities Construction and Management, shall accompany proposal. **THE BID BOND MUST BE ON THE BID BOND FORM PROVIDED IN THE PROCUREMENT DOCUMENTS IN ORDER TO BE CONSIDERED AN ACCEPTABLE PROPOSAL.**

If the bid bond security is submitted on a bid bond form other than the DFCM's required bid bond form, and the bid security meets all other legal requirements, the Contractor will be allowed to provide an acceptable bid bond by the close of business on the next business day following notification by DFCM of submission of a defective bid bond security. NOTE: A cashier's check cannot be used as a substitute for a bid bond.

Cost Proposals will be accepted at the office of DFCM, 4110 State Office Building, Salt Lake City, UT 84114. Late proposals will be disqualified and returned to the proposer unopened. One copy of the cost proposal is required.

All Contractors shall furnish the following fees and markups as part of the Cost Proposal.

- A. **Preconstruction Fee.** This lump sum fee consists of all costs for the CM/GC to provide the required services of the Preconstruction Phase except pre-authorized out-of-state travel. No other reimbursable costs will be allowed or considered in addition to this fee.
- B. **Construction Management Fee.** This lump sum fee shall consist of and include overhead (e.g. home office), profit for the entire job based on the defined scope of work, represented by the FLCC, and home office personnel who will be managing the project during bidding, construction, and closeout, including the warranty period. This fee does not include general conditions.
- C. **Contractors Modification Factor.** Provide the insurance modification factor for the prime firm.
- D. **Construction Supervision Cost.** This is a per month cost to the project from notice to proceed to final completion for the CM/GC's on-site management/supervision team (e.g. project manager, superintendent, etc.). All services and personnel not specifically identified as a Construction Supervision Cost will be considered to be part of the lump sum Construction Management Fee. This includes receptionists, accountants, safety officers, expeditors, commissioning agents etc. This cost does not include general conditions or people performing the actual construction activities.
- E. **Self Performed Work Markup.** This is a fixed percentage markup that will be applied to the cost for the CM/GC's actual labor plus burden cost, material costs, and equipment costs for self performed work.

14. **Self Performed Work**

The Contractor will be allowed to self perform work. This work must be billed for at actual cost incurred plus the Self-Performed Work Markup. Actual costs for self performed work will be subject to audit. No billing rates will be allowed. The Contractor must specifically state in the Management Plan proposal what self performed work that they intend to execute. The Contractor must bid its self-performed work.

The Contractor's bid will then be evaluated by DFCM and the A/E and must be determined to be the best value bid for the work to be awarded to the Contractor. The Contractor can propose to self-perform work that was not proposed in the Management Plan, provided that this work is competed in a competitive bid or value based selection process and advertised as would normally be required. The cost of any work that is self-performed will be part of the established GMP.

15. Management Plan

The Contractor shall provide seven copies of the Management Plan by the time indicated on the Project Schedule. The Management Plan should contain the following information:

- A. How the construction will be managed including items such as security and safety controls, staging areas, delivery routes, crane locations and interfaces required at the site with the using agency.
- B. Your proposed project schedule. Indicate critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable.
- C. Please provide as a separate section in your Management Plan which portions of the work you plan on self-performing.
- D. Address project specific criteria, risks that have been identified by the RFP, and additional risks that the team has identified. State how those risks will be mitigated.
- E. Indicate all services that will be provided during the Preconstruction Phase of this project and the individuals who will be performing these services. Provide an organizational chart to clarify the Contractor's supervision and support structure during this phase.
- F. Indicate all services that will be provided during the Construction Phase and the individuals who will be performing these services. Provide a comprehensive organizational chart to clarify the Contractor's supervision and support structure during this phase. Clearly identify all personnel that will be considered as a Construction Supervision Cost under the GMP. Any personnel not identified in this management plan to be a Construction Supervision Cost, will be considered a part of the lump sum Construction Management Fee and will not be allowed as either a future general conditions or Construction Supervision Cost except for those that are actually performing the construction activities. For those personnel identified as a Construction Supervision Cost, provide the following information in tabular form as part of the Management Plan:

- Description of the position (e.g. project manager, project superintendent, safety officers, commissioning agents, clerks, accountants, etc.).
- The positions reimbursable monthly rate.
- Based on the Project Schedule, the billing duration for the position

The Management Plan should be concise yet contain sufficient information for evaluation by the selection committee.

16. Statements of Qualifications

The CM/GC shall provide seven copies of the statement of qualifications. The statement of qualifications is a short document that indicates the experience and qualifications of the Contractor, and the project team key individuals as identified in the management plan. It should include information on similar projects that have been completed by the Contractor, and the project team individuals. When listing similar projects include information to indicate the dates, size, firm worked for at the time and what the responsibility of the individual was on the project. Include the experience and special qualifications of the team that are applicable to this project and/or are part of the project specific selection criteria.

17. Listing of Subcontractors

Listing of Subcontractors shall be as required by the Request for Proposals and as summarized in the “Instructions and Subcontractor’s List Form”, which are included as part of this RFP. The Subcontractors List shall be delivered or faxed to DFCM as subcontractors are selected and will be included in the Contract. Requirements for listing additional subcontractors are as follows: **NO ADDITIONAL REQUIREMENTS**

DFCM retains the right to audit or take other steps necessary to confirm compliance with requirements for the listing and changing of subcontractors. Any Contractor who is found to not be in compliance with these requirements is subject to a debarment hearing and may be debarred from consideration for award of contracts for a period of up to three years.

18. Schedule

The contract schedule will be evaluated as part of the Project Management Approach Criteria. Contractor will include in the Management Plan the schedule for completing the work including any items required by DFCM or the A/E.

An early completion date is encouraged unless otherwise stated in the Description of Work. The actual completion date will be based on the contractors proposed schedule. All plans, schedules, and the cost proposals are required to reflect the project construction time. Non-compliance with the

schedule will not result in automatic disqualification; it will be evaluated by the selection committee in determining the final selection.

Of particular interest and concern are the management team and the ability of the prime contractors to deliver the project within the construction time. Contractors will need to demonstrate the method of delivery and the competency of the individuals who will manage its successful completion.

19. Termination or Debarment Certifications

The Contractor must submit a certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from soliciting work by any governmental department or agency. The Contractor must also certify that neither it nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the Contractor cannot certify these two statements the firm shall submit a written explanation of the circumstances for review by DFCM. These certifications are to be submitted with the Statement of Qualifications.

20. Selection Committee

The Selection Committee will be composed of individuals from the Utah State Building Board, DFCM, the User Agency / Institution, representatives from the design and construction disciplines, and others deemed appropriate by DFCM.

21. Interviews.

Interviews will be conducted with all responsive and responsible contractors except as follows. If more than four contractors submit proposals and meet other requirements, DFCM may convene the selection committee to develop a short list of contractors to be invited to interviews. This evaluation will be made using the selection criteria noted below except that cost will not be considered. The information provided by the past performance/references, performance plan and statement of qualifications will be the basis for this evaluation.

The purpose of the interview is to allow the Contractor to present its qualifications, past performance, management plan, schedule and general plan for constructing the project. It will also provide an opportunity for the selection committee to seek clarification of the Contractor's proposal.

The proposed primary project management personnel, including the project manager and superintendent, should be in attendance. The project superintendent is the contractor's representative who will be in daily control of the construction site. The project manager has overall job authority,

will be in attendance at all job meetings, and is authorized by the Contractor to negotiate and sign any and all change orders in the field, if necessary. Unless otherwise noted, the attendance of sub-contractors is at the discretion of the Contractor.

The method of presentation is at the discretion of the Contractor. The interviews will be held on the date and at the place specified in the Project Schedule.

22. Selection Criteria for VBS Construction

The following criteria will be used in ranking each of the Contractors. The Contractor that is ranked the highest will represent the best value for the state. The criteria are not listed in any priority order. The selection committee will consider all criteria in performing a comprehensive evaluation of the proposal. Weights have been assigned to each criteria in the form of points.

- A. **Cost. 20 Points.** The Contractor's Cost Proposal will be scored by the selection committee taking into account the total of all costs within the proposal. The more competitive overall cost will achieve a higher score. A summary of each cost proposal will be made available to the selection committee just prior to the interviews.
- B. **DFCM Past Performance Rating. 15 Points.** Each construction firm will be given a past performance rating. The rating will be based first on how well the firm did on past projects with DFCM within the last five years. If a minimum of three DFCM past performance ratings are not available, a rating will be established using any DFCM past performance ratings that are available, supplemented by non-DFCM owner references supplied by the contractor at the time the proposals are submitted. This score will be mathematically generated with the criteria points being determined by factoring the points available by the average performance percentage of the firm.
- C. **Strength of Contractor's Team. 25 Points.** Based on the statements of qualifications, the interview, and management plan, the selection team shall evaluate the expertise and experience of the construction firm the project manager and the superintendent as it relates to this project in size, complexity, quality and duration. Key personnel assigned to which task and their commitment to each phase of the work will be evaluated.
- D. **Project Management Approach. 25 Points.** Based on the information provided in the construction and management plan and information presented in the interview the selection team shall evaluate how each team has planned the project and determined how to construct the project in the location and in the time frames presented. The firm should present how they plan to move material and people into and out of the site, how they plan to adequately staff the project, keep the site safe, and minimize disruption to the facility etc. The construction firm shall also discuss what portions of the project they plan to self perform. The selection team will also evaluate the degree to which risks to the success of the project have been identified and a reasonable solution has been presented.

The following criteria are project specific. They are added to the above criteria in determining the selection that represents the best value for the state.

Qualified Project Experience. **15 Points.** Based on the information provided in the construction and management plan and information presented in the interview, the selection team shall evaluate the experience each team has as it relates to projects of a similar size and complexity, including high-end finish work, prisoner holding systems, security systems, audio/visual control systems, etc.

TOTAL POINTS POSSIBLE: 100 POINTS

23. Scoring and Justification

The selection committee will provide a unitary score per criteria for each firm. The firm with the highest total of points will represent the best value for the state and will be selected for the project. The selection committee will provide a justification statement that details conclusions supporting the selection.

24. Award of Agreement

The award of the CM/GC Agreement shall be in accordance with the criteria set forth in the Request for Proposals (RFP). The State of Utah intends to enter into an agreement with the prime Contractor to construct the project as outlined. Individual contractors or alliances between two or more contractors are allowed in this process. The State will contract with only one legal entity.

25. Agreement and Bond

The Contractor's Agreement will be the form attached to this RFP. The contract time will be as indicated in the proposal. The selected Contractor, simultaneously with the execution of the GMP, will be required to furnish a performance bond and a payment bond, both bearing original signatures, upon the forms provided in the RFP. The performance and payment bonds shall be for an amount equal to one hundred percent (100%) of the contract sum and secured from a company that meets the requirements specified in the requisite forms. Any bonding requirements for subcontractors will be specified in the Supplementary General Conditions.

26. Interpretation of Drawings and Specifications

If any person or entity contemplating submitting a proposal is in doubt as to the meaning of any part of the drawings, specifications or other contract documents, such person shall submit to the specified DFCM representative a request for an interpretation thereof. The person or entity submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by addenda duly issued and a copy of such addenda will be mailed or delivered to each person or entity receiving a set of documents. Neither DFCM nor the A/E will be responsible for any other explanations or interpretations of the proposed documents.

27. Licensure

The Contractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

28. Permits

In concurrence with the requirements for permitting in the General Conditions, it is the responsibility of the Contractor to obtain the fugitive dust plan requirements from the Utah Division of Air Quality and the SWPPP requirements from the Utah Department of Environmental Quality and submit the completed forms and pay any permit fee that may be required for this specific project. Failure to obtain the required permit may result in work stoppage and/or fines from the regulating authority that will be the sole responsibility of the Contractor. Any delay to the project as a result of any such failure to obtain the permit or noncompliance with the permit shall not be eligible for any extension in the contract time.

29. Financial Responsibility of Contractors, Subcontractors and Sub-subcontractors

Contractors shall respond promptly to any inquiry in writing by DFCM to any concern of financial responsibility of the contractor, subcontractor or sub-subcontractor.

30. Withdrawal of Proposals

Proposals may be withdrawn on written request received from proposer until the notice of selection is issued.

31. Time is of the Essence

Time is of the essence in regard to all the requirements of the contract documents.

32. Right to Reject Proposals

The DFCM reserves the right to reject any or all proposals.



PROJECT SCHEDULE

PROJECT NAME:		ST. GEORGE FIFTH DISTRICT COURT		CM/GC
		ADMINISTRATIVE OFFICE OF THE COURTS – ST. GEORGE, UTAH		
DFCM PROJECT NO. 06281150				
Event	Day	Date	Time	Place
Request for Proposals Available	Tuesday	July 10, 2007	9:00 AM	DFCM 4110 State Office Bldg SLC, UT and DFCM web site*
Mandatory Pre-Proposal Site Meeting	Friday	July 20, 2007	10:00 AM	Fifth District Courts 220 North 200 East St. George, UT
Last Day to Submit Questions	Thursday	July 26, 2007	4:00 PM	Lynn Hinrichs – DFCM E-mail lynnhinrichs@utah.gov
Addendum Deadline (exception for proposal delays)	Monday	July 30, 2007	2:00 PM	DFCM web site *
Cost Proposals, Management Plans, References, Statements of Qualifications, and Termination/Debarment Certifications Due	Wednesday	August 1, 2007	12:00 NOON	DFCM 4110 State Office Bldg SLC, UT 84114
Short Listing by Selection Committee, if applicable.	Wednesday	August 8, 2007		Fax & DFCM web site *
Interviews	Wednesday	August 15, 2007		To be determined
Announcement	Thursday	August 16, 2007		DFCM web site *
Requested Substantial Completion Date	Friday	May 1, 2009		

* Deck's web site address is <http://dfcm.utah.gov>



COST PROPOSAL FORM

NAME OF PROPOSER _____ DATE _____

To the Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114

The undersigned, responsive to the "Notice to General Contractors/Construction Managers" and in accordance with the "Request for Proposals" for the **ST. GEORGE FIFTH DISTRICT COURT - ADMINISTRATIVE OFFICE OF THE COURTS – ST. GEORGE, UTAH - DFCM PROJECT NO. 06281150**, propose a pre-construction fee at the price stated below. This price is to cover all expenses incurred in performing the pre-construction services as outlined in our proposal of which this proposal is a part:

I/We acknowledge receipt of the following Addenda: _____

A. **Preconstruction Fee** - For all work during the pre-construction period, I/we agree to perform for the lump sum of:

_____ DOLLARS (\$_____)
(In case of discrepancy, written amount shall govern)

B. **Construction Management Fee (including overhead and profit)** - For all work during the construction phase of the contract for the management of the project, I/we agree to perform for the lump sum of:

_____ DOLLARS (\$_____)
(In case of discrepancy, written amount shall govern)

C. **Contractors Modification Factor** - The contractors insurance modification factor as currently rated is: _____

D. **Construction Supervision Cost** - For project supervision and support team costs not covered in the above management fee, I/we agree to perform for the sum of _____ per month.

E. **Self Performed Work Markup** - For all self performed work, I/we agree to add no more than ___% to our labor and material costs to perform the work.

Contractor Change Order Markup - For all work added to the contract by change order above and beyond the FLCC, I/we agree to add not more than 5% to the subcontractor/supplier costs for the additional work. (For clarification, please review Section 5.2 of the CM/GC Agreement.)

I/We guarantee that the Work will be Complete, including punchlist items, within the negotiated time frame after receipt of the Notice to Proceed, should I/we be the successful proposer, and agree to pay liquidated damages in the amount of **\$1,000.00** per day for each day after expiration of the Contract Time as stated in Article 1.4 of the CM/GC Agreement.

The FLCC for this project is **\$23,422,529**. Enclosed is a bid bond in the amount of 5% of the FLCC.

With the cooperation of DFCM and A/E, the undersigned will continue to work with due diligence to provide a Guaranteed Maximum Price (GMP) within the FLCC.

The undersigned Contractor's License Number for Utah is _____.

This bid shall be good for 45 days after bid submission.

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within fifteen (15) days, unless a shorter time is specified in the Contract Documents, and deliver acceptable Performance and Payment bonds in the prescribed form in the amount of 100% of the Contract Sum for faithful performance of the contract upon final agreement of the GMP. The Bid Bond attached, in the amount not less than five percent (5%) of the FLCC shall become the property of the Division of Facilities Construction and Management as liquidated damages for delay and additional expense caused thereby in the event that the contract is not executed and/or acceptable 100% Performance and Payment bonds are not delivered within the time set forth.

Type of Organization:

(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

Respectfully submitted,

Name of Proposer

ADDRESS:

Authorized Signature

BID BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ hereinafter referred to as the "Principal," and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed, (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the STATE OF UTAH, hereinafter referred to as the "Obligee," in the amount of \$_____ (5% of the accompanying bid), being the sum of this Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for the _____ Project.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said principal does not execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the principal, then the sum of the amount stated above will be forfeited to the State of Utah as liquidated damages and not as a penalty; if the said principal shall execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the Principal, then this obligation shall be null and void. It is expressly understood and agreed that the liability of the Surety for any and all defaults of the Principal hereunder shall be the full penal sum of this Bond. The Surety, for value received, hereby stipulates and agrees that obligations of the Surety under this Bond shall be for a term of sixty (60) days from actual date of the bid opening.

PROVIDED, HOWEVER, that this Bond is executed pursuant to provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated below, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

DATED this _____ day of _____, 20_____ .

Principal's name and address (if other than a corporation):

By: _____

Title: _____

Principal's name and address (if a corporation):

By: _____

Title: _____

(Affix Corporate Seal)

Surety's name and address:

By: _____

Attorney-in-Fact (Affix Corporate Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On this ___ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20_____.

My Commission Expires: _____

Resides at: _____

Agency: _____
Agent: _____
Address: _____
Phone: _____

NOTARY PUBLIC

Approved As To Form: May 25, 2005
By Alan S. Bachman, Asst Attorney General



INSTRUCTIONS AND SUBCONTRACTORS LIST FORM (VBS)

All proposers shall submit a list of **ALL** first-tier subcontractors, meeting the following criteria, including the subcontractor's name, bid amount and other information required by these Contract Documents, on the following basis:

PROJECTS UNDER \$500,000 - ALL SUBS \$20,000 OR OVER MUST BE LISTED
PROJECTS \$500,000 OR MORE - ALL SUBS \$35,000 OR OVER MUST BE LISTED

- Any additional subcontractors identified in the Request for Proposals shall also be listed.
- The DFCM Director may not consider any proposal submitted by a proposer if the proposer fails to submit a subcontractor list meeting the requirements of State law.
- List subcontractors for base bid as well as the impact on the list that the selection of any alternate may have.
- Proposer may not list more than one subcontractor to perform the same work.
- Proposer must list "Self" if performing work itself.

LICENSURE:

The subcontractor's name, the type of work, the subcontractor's bid amount, and the subcontractor's license number as issued by DOPL, if such license is required under Utah Law, shall be listed. Proposer shall certify that all subcontractors, required to be licensed, are licensed as required by State law. A subcontractor includes a trade contractor or specialty contractor and does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

PROPOSER LISTING 'SELF' AS PERFORMING THE WORK:

Any proposer that is properly licensed for the particular work and intends to perform that work itself in lieu of a subcontractor that would otherwise be required to be on the subcontractor list, must insert the term 'Self' for that category on the subcontractor list form. Any listing of 'Self' on the sublist form shall also include the amount allocated for that work.

'SPECIAL EXCEPTION':

A proposer may list 'Special Exception' in place of a subcontractor when the proposer intends to obtain a subcontractor to perform the work at a later date because the proposer was unable to obtain a qualified or reasonable proposal under the provisions of U.C.A. Section 63A-5-208(4). The proposer shall insert the term 'Special Exception' for that category of work, and shall provide documentation with the subcontractor list describing the proposer's efforts to obtain a bid of a qualified subcontractor at a reasonable cost and why the proposer was unable to obtain a qualified subcontractor bid. The Director must find that the proposer complied in good faith with State law requirements for any 'Special Exception' designation, in order for the proposal to be considered. If awarded the contract, the Director shall supervise the proposer's efforts to obtain a qualified subcontractor bid. The amount of the awarded contract may not be adjusted to reflect the actual amount of the subcontractor's bid. Any listing of 'Special Exception' on the sublist form shall also include amount allocated for that work.

INSTRUCTIONS AND SUBCONTRACTORS LIST FORM

Page No. 2

GROUNDS FOR DISQUALIFICATION:

The Director may not consider any proposal submitted by a proposer if the proposer fails to submit a subcontractor list meeting the requirements of State law. Director may withhold awarding the contract to a particular proposer if one or more of the proposed subcontractors are considered by the Director to be unqualified to do the Work or for such other reason in the best interest of the State of Utah. Notwithstanding any other provision in these instructions, if there is a good faith error on the sublist form, at the sole discretion of Director, the Director may provide notice to the proposer and the proposer shall have 24 hours to submit the correction to the Director. If such correction is submitted timely, then the sublist requirements shall be considered met.

CHANGES OF SUBCONTRACTORS SPECIFICALLY IDENTIFIED ON SUBLIST FORM:

Subsequent to submission of the subcontractors list, the contractor may change its listed subcontractors only after receiving written permission from the Director based on complying with all of the following criteria.

- (1) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but not is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, and/or the subcontractor has requested in writing to be released.
- (2) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors.
- (3) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping.
- (4) Any increase in the cost of the subject subcontractor work is borne by the contractor.
- (5) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.
- (6) The Director will give substantial weight to whether the subcontractor has consented in writing to being removed unless the contractor establishes that the subcontractor is not qualified for the work.

EXAMPLE:

Example of a list where there are only four subcontractors

TYPE OF WORK	SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION"	SUBCONTRACTOR BID AMOUNT	CONT. LICENSE #
ELECTRICAL	ABCD Electric Inc.	\$350,000.00	123456789000
LANDSCAPING	"Self"	300,000.00	123456789000
CONCRETE (ALTERNATE #1)	XYZ Concrete Inc	298,000.00	987654321000
MECHANICAL	"Special Exception" (attach documentation)	Fixed at: 350,000.00	(TO BE PROVIDED AFTER OBTAINING SUBCONTRACTOR)

SUBCONTRACTOR BID AMOUNTS CONTAINED IN THIS SUBCONTRACTOR LIST SHALL NOT BE DISCLOSED UNTIL THE CONTRACT HAS BEEN AWARDED.

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR AGREEMENT**

for

THIS AGREEMENT, made and entered into this ____ day of _____, 20__ by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called "DFCM", and _____, a corporation of the State of Utah, authorized to do business in the State of Utah, hereinafter called the "Construction Manager/General Contractor" or "CM/GC", whose address is _____.

WITNESSETH: WHEREAS, DFCM intends to have built the _____, and _____,

WHEREAS, the CM/GC agrees to perform construction management (including General Contractor) services for the sum herein stated.

THEREFORE, DFCM and the CM/GC for the consideration hereinafter provided, agree as follows:

ARTICLE 1.
**CONSTRUCTION MANAGER'S SERVICE AND
RESPONSIBILITIES**

The CM/GC covenants with DFCM to further the interests of DFCM by furnishing the CM/GC's skill and judgment in cooperation with, and in reliance upon, the services of _____ (**DESIGN FIRM**), hereinafter referred to as the A/E. The CM/GC agrees to furnish business, administrative, management and construction services and to perform in an expeditious and economical manner consistent with the interests of DFCM. In performing its obligations hereunder, CM/GC shall be deemed an independent contractor and not an agent or employee of DFCM. CM/GC shall have exclusive authority to manage, direct, and control the Work. The term "CM/GC" as used in this Agreement is deemed to include all the duties of a General Contractor, including those described in the DFCM General Conditions dated May 25, 2005, which are a part of the Contract Documents and hereby incorporated by reference as part of this Agreement as well as the professional services of a business, administrative and management consultant to DFCM. Unless specifically defined in this Agreement, all terms used in this Agreement shall be as defined in said General Conditions. The term "A/E" shall be the designer hired by DFCM for the subject project, including the A/E's consultants at all tiers.

The services of CM/GC and all those for whom the CM/GC is liable at any tier shall be performed in accordance with and judged solely by the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The CM/GC shall be liable to DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. an A/E claim against DFCM or the State of Utah), to the extent caused by wrongful or negligent acts, errors or omissions that do not meet this standard of care.

BASIC SERVICES

The CM/GC's Basic Services consist of the two phases described below and any other services included in this Agreement as Basic Services.

1.1 PRECONSTRUCTION PHASE The CM/GC shall perform the following:

- 1.1.1 Provide for DFCM's review and acceptance, and periodically update a Project schedule that coordinates and integrates the CM/GC's services, the A/E's services and DFCM's responsibilities with anticipated construction schedules.
- 1.1.2 Prepare for DFCM's approval a detailed estimate of Construction Cost, as defined in Article 3 below, developed by using estimating techniques which anticipate the various elements of the Project, and based on schematic design documents prepared by the A/E. Provide in CSI or other DFCM approved format, including SF cost analysis of each trade. Update and refine this estimate for each document submittal by the A/E, typically SD, DD & CD phases. Provide a final cost estimate based upon approved final documents, divide the estimate into bid packages as an aid during bidding. Advise DFCM and the A/E if it appears that the Construction Cost may exceed the Fixed Limit Construction Cost. Make recommendations for corrective action.

If the estimate exceeds the approved FLCC, then the CM/GC shall value engineer the project back within the construction budget at its own cost in collaboration with the A/E.

- 1.1.3 Without assuming the A/E's responsibility for coordinating Construction Documents, consult with DFCM and the A/E regarding drawings and specifications as they are being prepared, and recommend alternative solutions whenever design details are identified which significantly affect construction feasibility, costs or schedules.
 - 1.1.3.1 Provide recommendations and information to DFCM and the A/E regarding the assignment of responsibilities for safety precautions and programs; temporary Project facilities; and equipment, materials and services for common use of Subcontractors. Verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.
 - 1.1.3.2 Advise on the separation of the Project into phases for various categories of Work. Develop the method to be used for selecting Subcontractors and awarding contracts in accordance with applicable law.
 - 1.1.3.3 Develop a Project construction schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each separate Subcontractor. Provide the Project construction schedule for each set of bidding documents.
 - 1.1.3.4 Investigate and recommend a schedule of DFCM's purchases of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the A/E. Expedite and coordinate delivery of these purchases.

- 1.1.3.5 Conduct a quality control evaluation of the various construction document submittals prepared by the A/E at SD, DD & CD reviews. Evaluate constructability of details, errors, omissions, coordination of components from the various trades on the project. Prepare a summary review of each submittal that documents the CM/GC's recommendations for constructability and component coordination improvement for the project team.
- 1.1.4 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases.
- 1.1.5 For purposes of this Agreement, the term "bid" and other terms based on that word used in the invitation to bid process shall be deemed to refer to "proposal" and the corollary words related to the request for proposal process, when the request for proposal process is used in lieu of an invitation for bids. Prepare prequalification criteria for bidders and develop Subcontractor interest in the Project or any phase or segment thereof to be separately let. Recommend bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials or methods.
- 1.1.6 All procurements recommended and conducted by the Construction Manager/General Contractor shall be in accordance with one of the source selection methods provided for in the Utah Procurement Code, UCA 63-56, "Part 4, Source Selections and Contract Formation," and the applicable rules of the Utah State Building Board in Utah Administrative Code R23 in the same manner as if the subcontract work was procured directly by DFCM.
- 1.1.7 With the A/E's assistance, receive bids, prepare bid analyses and make recommendations to DFCM for award of subcontracts or rejection of bids. Per UCA 63-56-501(2) and applicable Utah law, the CM/GC may make recommendations that it be allowed to self-perform portions of the work for the benefit of the Project but shall procure subcontracted work in a manner that would have been allowable if DFCM were procuring the subcontract work directly. The CM/GC shall not self-perform any portion of the Work without advance written approval of DFCM.
- 1.1.8 With the A/E's assistance, conduct pre-award conferences with successful bidders. Prepare Subcontractor agreements subject to DFCM's approval and advise DFCM on the acceptability of Subcontractors and materials suppliers proposed by Subcontractors. CM/GC shall accept assignment of any bids awarded and shall be fully responsible for the performance of its Subcontractors and suppliers at any tier similarly to a General Contractor under the DFCM General Conditions.
- 1.1.9 If it is reasonably determined by the DFCM Director or designee that the CM/GC has not provided satisfactory preconstruction services, the DFCM Director or designee may determine to terminate this Agreement upon ten (10) days notice to the CM/GC and may use another CM/GC to complete the preconstruction phase and/or perform the construction phase services. All items required to be transferred or delivered to DFCM under the General Conditions for a termination for cause shall be so transferred or delivered promptly by the CM/GC to DFCM. Upon such termination, the CM/GC sole remedy shall be payment for properly performed services up to the date of such termination. The CM/GC shall be liable to DFCM for all damages and liabilities provided for in this Agreement.

1.2 CONSTRUCTION PHASE

The CM/GC shall complete construction in accordance with Contract Documents prepared by the A/E and approved by DFCM. After such approval by DFCM, the construction phase will commence with the awarding and signing contracts and purchase orders with Subcontractors and suppliers for labor and materials.

- 1.2.1 Provide administrative, management and related services as required to coordinate Work of the Subcontractors with each other and with the activities and responsibilities of the CM/GC, DFCM and the A/E to complete the Project in accordance with DFCM's objectives for cost, time and quality. The CM/GC shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. The CM/GC shall provide competent supervision of all phases or segments of the Work and shall cause the Work to be performed in strict and complete accordance with the Contract Documents and all matters indicated or implied therefrom. The CM/GC's Project Superintendent for the Project shall be designated in writing prior to commencement of Construction Phase of this Agreement; such designated individual shall be subject to the approval of DFCM and shall not be reassigned or otherwise removed as the Project Superintendent unless said individual shall leave the employ of CM/GC or unless DFCM shall request or approve a change in the designated Project Superintendent. Any replaced Project Superintendent shall also be subject to approval of DFCM and the same requirements for reassignment or removal stated herein shall apply. DFCM shall similarly have the right to approve all other top level supervisory and administrative personnel assigned to this Project and same shall not be changed without the prior consent of DFCM.
- 1.2.2 Schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Prepare and promptly distribute minutes of all such meetings. Said minutes shall not be considered official minutes until approved by DFCM.
 - 1.2.2.1 CM/GC shall provide the critical path scheduling and periodic updating thereof and other necessary schedules in the interest of completing the improvements in the most expeditious and economical manner. The critical path is required to be identified on the schedule, or a separate schedule which only indicates the critical path activities shall be provided. This schedule is subject to DFCM evaluation and approval. (Progress Schedules) The Schedule shall include the activities of Subcontractors on the Project, including activity sequences and durations, allocations of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time procurement and DFCM's occupancy requirements showing portions of the Project having occupancy priority. The CM/GC shall update and reissue the Project construction schedule as required to show current conditions and revisions required by actual experience. The schedule shall be prepared and updated by the CM/GC as provided for in the General Conditions.
 - 1.2.2.2 The CM/GC shall revise and refine the approved estimate of Construction Cost, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed.

- 1.2.3 Provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for uncompleted tasks. Identify variances between actual and budgeted or estimated costs, and advise DFCM and the A/E whenever projected costs exceed budgets or estimates. The CM/GC shall:
 - 1.2.3.1 Maintain cost accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.
 - 1.2.3.2 Recommend necessary or desirable changes to DFCM, review requests for changes, assist in negotiating Subcontractors' bids/proposals, submit recommendations to DFCM, and if they are accepted, prepare and sign Change Orders for the A/E's signature and DFCM's signature.
 - 1.2.3.3 Develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments. Make recommendations to the A/E for certification to DFCM for payment.
- 1.2.4 Be responsible for the overall safety of the Project and shall review the safety programs developed by each of the Subcontractors as required by the Contract Documents. CM/GC shall fulfill the safety responsibilities provided for in the General Conditions.
- 1.2.5 If required by DFCM or the Contract Documents, assist DFCM in selecting and retaining the professional services of surveyors, special consultants and testing laboratories and coordinate their services.
- 1.2.6 Determine that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. Guard DFCM against defects and deficiencies in the Work. The CM/GC is solely responsible for the performance of all subcontractors at any tier. The CM/GC shall timely recommend to DFCM all special inspections or testing needed to assure compliance with the Contract Documents. Upon receiving DFCM's approval of such testing or inspection request, the CM/GC shall arrange for such testing or inspection to occur in a timely manner. Subject to review by the A/E, reject Work which does not conform to the requirements of the Contract Documents.
- 1.2.7 Promptly submit to the A/E and DFCM, any Subcontractor requests for interpretations of the meaning and intent of the drawings and specifications, and promptly assist in the resolution of questions when may arise.
- 1.2.8 Receive Certificates of Insurance from the Subcontractors, and upon specific request, forward to DFCM and/or A/E.
- 1.2.9 Receive from the Subcontractors and review all shop drawings, product data, samples and other submittals and review such for conformance with the Contract Documents and transmit such to the A/E for approval. Establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals.

- 1.2.10 Record the progress of the Project. Submit written progress reports to DFCM including information on each Subcontractor and each Subcontractor's Work. Also show percentages of completion and the number and amounts of change orders. Keep a daily log containing a record of weather, Subcontractors' Work on the site, number of workers, work accomplished, all necessary data for verification of Subcontractor performance, including, but not limited to unit quantities, performed subject to Unit Prices, problems encountered, and other similar relevant data as DFCM may require. Make the log available to DFCM and the A/E promptly upon request.

Maintain at the Project site, on a current basis: a record copy of all contracts, drawings, specifications, addenda, change orders and other Modifications, in good order and marked to record all changes made during construction; all shop drawings, product data; samples; submittals; purchases; materials; equipment; applicable hand books; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the contracts or work. Make all records promptly available to DFCM upon request. At the completion of Project, promptly deliver all such records to DFCM.

- 1.2.11 Arrange for delivery and storage, protection and security for DFCM purchased materials, systems and equipment which are a part of the Project, until such items are incorporated into the Project.
- 1.2.12 With the A/E and DFCM's maintenance personnel, observe the Subcontractors' checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing.
- 1.2.13 Determine when the Project, or a portion thereof, is ready for a Substantial Completion inspection and shall accomplish the completion of punch list items as provided for in the General Conditions.
- 1.2.14 The extent of the duties, responsibilities and limitations of authority of the CM/GC as a representative of DFCM during construction shall not be modified or extended without the written consent of DFCM.

1.3 ADDITIONAL SERVICES

The following Additional Services shall be performed by the CM/GC upon authorization in advance and in writing from DFCM and shall be paid for as provided in this Agreement:

- 1.3.1 Services related to DFCM-provided furnishings and equipment not specified in the Contract Documents.
- 1.3.2 Consultation on replacement of Work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such Work.
- 1.3.3 Recruiting or training maintenance personnel.
- 1.3.4 Inspections of, and services related to, the Project after the end of the warranty phase.

1.4 TIME AND DELAY REMEDY

Time is of the essence for any and all the performance required by this Agreement. The CM/GC shall perform basic and additional services as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project. "Reasonable skill" shall be the skill that would be customarily expected from a CM/GC for the subject project, given its complexity and scope and is considered to be no less than above-average performance for CM/GC services. At the time a bid date is set for a particular subcontract, DFCM and CM/GC will jointly establish a completion date (or dates) for the Work of that subcontract which shall apply to the CM/GC and all of the Subcontractors for that particular subcontract. The completion date shall be established by an amendment to this Agreement executed by DFCM and the CM/GC.

The CM/GC agrees to pay liquidated damages in the amount of \$_____ per day for each day after expiration of the Contract Time until the CM/GC achieves Substantial Completion in accordance with the Contract Documents, if CM/GC's delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate DFCM for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Agreement; (c) is not a penalty; and (d) shall not prevent DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No PRE, Claim or action shall be maintained by the CM/GC, Subcontractors or suppliers at any tier, against DFCM for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of DFCM or its officers, employees or agents, except as expressly provided in the General Conditions. The CM/GC may receive a written extension of time, signed by DFCM, in which to complete the Work under this Agreement in accordance with the General Conditions.

ARTICLE 2. **THE DFCM'S RESPONSIBILITIES**

- 2.1 The DFCM shall provide information regarding DFCM's requirements of the Project.
- 2.2 The DFCM shall provide a budget for the Project after consultation with the CM/GC and the A/E, which shall include contingencies for bidding, changes during construction and other costs which are the responsibility of DFCM.
- 2.3 The DFCM shall designate a representative authorized to act in DFCM's behalf with respect to the Project. The DFCM, or such authorized representative, shall examine documents submitted by the CM/GC and shall render decisions pertaining thereto in a timely manner in order to avoid unreasonable delay in the progress of the CM/GC's services.
- 2.4 The DFCM may furnish structural, mechanical, chemical and other laboratory tests, inspections and reports if required by site conditions.
- 2.5 The DFCM shall furnish such legal, accounting and insurance counseling services as DFCM deems appropriate, including such auditing services as DFCM may require to verify the Project applications for payments or to ascertain how or for what purposes the Subcontractors have used the monies paid by or on behalf of DFCM.
- 2.6 The DFCM shall furnish to the CM/GC a compact disc containing the Construction Documents and sufficient hard copies to meet the needs of the Project for bidding and construction management.

- 2.7 The DFCM reserves the right to perform Work related to the Project with DFCM's own forces, and to award contracts to other entities in connection with the Project which are not part of the CM/GC's responsibilities under this Agreement. The CM/GC shall coordinate the CMGC's Work with work of DFCM's separate contractors as required by the Contract Documents. The CM/GC shall promptly notify DFCM if any such independent action will in any way compromise the CM/GC's ability to meet the CM/GC's responsibilities under this Agreement.

ARTICLE 3. **CONSTRUCTION COST**

- 3.1 Construction Cost shall be the total of the final contract sums of all of the separate subcontracts, actual reimbursable costs relating to the construction phase as defined in Article 5 of this Agreement, and the CM/GC's fees. The proposed GMP must be less than or equal to the FLCC and must include a reasonable contingency. By executing this Agreement, the CM/GC represents its expert opinion that the requirements of the Project can be met.
- 3.2 Construction Cost does not include the compensation of the A/E and its consultants, or the cost of inspections or testing provided for by DFCM.
- 3.3 Evaluations of DFCM's Project budget and cost estimates prepared by the CM/GC represent the CM/GC's best judgment as a professional familiar with the construction industry. It is recognized, however, that neither the CM/GC nor DFCM has control over the cost of labor, materials or equipment, Subcontractors' methods of determining bid prices or other competitive bidding or negotiating conditions. Accordingly, the CM/GC cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by DFCM, or from any cost estimate or evaluation prepared by the CM/GC. However, this does not excuse the CM/GC from the standard of care as a professional provided for in this Agreement and if it is determined that the CM/GC breached this standard of care in providing budget and cost estimates, DFCM reserves the right to seek all available appropriate remedies from the CM/GC.
- 3.4 The CM/GC shall include contingencies during design for design, bidding and price escalation, and shall consult with the A/E to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest alternate bids in the Construction Documents as needed to adjust the Construction Cost to the fixed limit. The Contractor shall continue to reduce this contingency throughout the design process.
- 3.5 When requested by DFCM, the CM/GC shall establish a Guaranteed Maximum Price (GMP). At the point the GMP is established, the Contractor will be allowed to carry a contingency commensurate with its risk. If the CM/GC is not required to establish a GMP until the completion of Contract Documents and the bidding process, then a maximum contingency of 2% of the Fixed Limit of Construction Costs (FLCC) amount will be allowed as a construction contingency amount.

Any use of the contingency funds within the GMP shall be recommended by the Contractor and approved by both DFCM and the Contractor, however DFCM approval of contingency fund use shall not be unreasonably withheld. This contingency fund can only be used for the following types of work and for only direct cost of construction:

- cost escalation in order to establish the GMP
- construction errors by the CM
- replacement of defective work self-performed by the CM
- items included in the Contract Documents, but missed by the CM in establishing the GMP

This contingency cannot cover items such as:

- errors by subcontractors at any tier
- coordination issues between subcontractors at any tier
- replacement of defective work installed by subcontractors at any tier

If the entire 2% contingency fund is used during construction, any additional funds must be provided at 100% by the CM/GC.

If the GMP is established prior to bidding, any dollars remaining in the project contingency shall be divided with 65% returning to the State and 35% going to the CM/GC. If the GMP is established after bidding, all dollars remaining in the contingency shall return to the State.

Design errors and omissions, unforeseen site conditions, and scope changes do not apply to this contingency fund and will be funded from other sources.

The FLCC may only be increased in advance and in writing by DFCM. Prior to establishing the GMP, if the FLCC is exceeded by the sum of the lowest figures from bona fide bids or negotiated proposals plus the CM/GC's estimate of other elements of Construction Cost for the Project, DFCM shall in DFCM's sole discretion (1) give written approval of an increase in such limit; (2) authorize rebidding or renegotiation of the Project or portions of the Project within a reasonable time; (3) cooperate in revising the scope or quality of the Work as required to reduce the Construction Cost; and/or (4) terminate the Project. The CM/GC, without additional compensation, shall collaborate with the A/E as necessary to bring the Construction Cost within the fixed limit.

ARTICLE 4. **PAYMENTS TO THE CM/GC**

4.1 PAYMENTS FOR BASIC SERVICES.

- 4.1.1 Subject to the applicable provisions of the General Conditions, payments for Basic Services, upon proper invoicing, justification and documentation, shall be made monthly and shall be in proportion to services performed within each phase of services on the basis set forth in Article 5 of this Agreement.
- 4.1.2 Retainage in the amount of 5% of the amount due to Subcontractors shall be withheld from each payment until completion of the Work as provided in paragraph 4.3 of this Agreement and under Utah law.

4.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE COSTS

Payments on account of the CM/GC's additional services, as defined in Paragraph 1.3, and for Reimbursable costs, as defined in Article 5, shall be made monthly upon proper invoicing, justification and documentation.

4.3 GENERAL PAYMENT, RETAINAGE AND ACCOUNTING PROVISIONS

All applicable provisions of the General Conditions regarding payment, withholding of payment, certification of payment and other payment requirements and rights of DFCM and CM/GC shall apply. The CM/GC shall provide DFCM within thirty (30) days of request by DFCM, a schedule of accounts and budgets for Work which will be a basis for applications for payment. The DFCM agrees to pay the CM/GC for the construction Work from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the A/E as approved by DFCM which approval may not unreasonably be withheld, for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The CM/GC agrees to furnish DFCM invoices for materials purchased and on site but not installed, for which CM/GC requests payment and agrees to safeguard and protect such equipment or materials and is responsible for the safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as DFCM may responsibly require shall be supplied by the CM/GC at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without DFCM's written approval. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with UCA 13-8-5 as amended. CM/GC shall also comply with the requirements of UCA 13-8-5 as amended, including restrictions of retainage regarding Subcontractors and the distribution of interest earned on the retention proceeds. The DFCM shall not be responsible for enforcing the CM/GC's obligations under State law in fulfilling the retention law requirements with Subcontractors at any tier.

Notwithstanding the above, retention requirements shall not apply to Preconstruction Services, Design or Construction Management fees, or "general conditions" costs. Retention funds shall be held by DFCM, in an interest bearing account with said interest to accrue to the account of the CM/GC. Said interest shall be distributed by DFCM to CM/GC upon release of retention funds.

ARTICLE 5. **BASIS OF COMPENSATION**

(USE ONLY ON AGREEMENTS FOR PRE-CONSTRUCTION SERVICES ONLY) This Agreement shall initially include only the scope of work and compensation for the pre-construction phase for an initial contract agreement of _____ DOLLARS (\$_____). Compensation and scope of work may be authorized as provided for in this Agreement within the timeframe set forth in this request for proposals. Concurrent with the authorization to proceed with the Construction Phase, CM/GC shall provide 100% Payment and Performance Bonds for the amount of the Fixed Limit of Construction Costs and meeting the requirements contained in the Contract Documents. CM/GC shall have no authority to proceed to the Construction Phase without written authorization from DFCM.

The Fixed Limit of Construction Costs (FLCC) for this Agreement is \$_____, including the CM/GC's fees. The parties shall work together to adjust the scope of work to stay within the FLCC. The FLCC may only be increased by change order properly executed by the parties, and issued only when the GMP is exceeded and the change order meets the requirements of this Agreement and/or the DFCM General Conditions. The DFCM shall compensate the CM/GC for the scope of services provided, in accordance with Article 4 of this Agreement, payments to the CM/GC, and the other terms and conditions of this Agreement as follows:

- 5.1 **PRE-CONSTRUCTION PHASE COMPENSATION.** For work performed as described in section 1.1, the Construction Management firm will be compensated \$_____. This shall include the cost of all labor, salaries along with consumable materials required to perform the services. It shall include insurance, benefits, employment taxes, overhead and profit.
- 5.2 **CONSTRUCTION PHASE COMPENSATION.** The Construction Phase will be based on the final agreed upon scope of Work as shown on the approved drawings and specifications. After the final drawings and specification are approved, DFCM shall modify this Agreement to reflect a Guaranteed Maximum Price based on the CM/GC's final cost estimate. Agreement to a Guaranteed Maximum Price shall be evidenced by a Modification to this Agreement. Notwithstanding the provisions of Article 3, once the Agreement has been modified to incorporate a Guaranteed Maximum Price, the CM/GC guarantees that the construction cost for the agreed to scope of work will not exceed the Guaranteed Maximum Price. The Guaranteed Maximum Price may only be increased by a duly executed Change Order, fully executed by DFCM, to this Agreement resulting from a change in the scope of work.

The CM/GC's Construction Management Fee for Work performed during the entire construction phase duration including punch list completion will be \$_____. This includes the cost as outlined in the _____ Management Plan dated _____, which is hereby made part of this Agreement by reference. This includes overhead (e.g. home office), profit for the entire job based on the scope of work as defined, and home office personnel who will be managing the project during bidding, construction and closeout, including the warranty period. This fee does not include general conditions, but does include employment taxes, insurance, workers compensation, and benefits for the salaries covered by this subparagraph. This fee is subject to modification by DFCM only as the scope of the work changes, and can be adjusted appropriately as size of the building changes or the duration of the project is affected by DFCM. Following the establishment of the GMP, the CM/GC change order markup described below will compensate the CM/GC for the additional overhead and profit associated with a change in scope, however; a decrease in scope prior to or after the establishment of the GMP may result in a decrease in the amount of the CM Fee, at the percentage rate established in the original proposal. In no case shall additional CM/GC Fee be due a CM where material or labor cost escalations affect this project.

The monthly construction supervision cost, per the proposal, is \$_____ per month for the approved duration of the construction work on the project. This is a maximum, not-to-exceed amount based on the scope of work and FLCC. This cost shall be paid at the actual cost, submitted with back-up materials in the monthly pay request and is subject to audit. No billing rates will be allowed. This cost shall not apply to work following substantial completion or for work done later than the approved schedule. Supervision costs in excess of the monthly construction supervision amount will be at the CM/GC's expense.

For additional Work performed by Subcontractors above the GMP, the CM/GC will be compensated 5% of the subcontract or material price in lieu of the markups otherwise provided for in the General Conditions. This compensation is for coordination and supervision of the subcontract work.

If DFCM authorizes the CM/GC to self-perform portions of the Work, said Work shall be compensated as a Cost of the Work and reimbursed at actual cost incurred (direct personnel expense, including labor burden, materials, equipment, etc.) plus a ___% self-performed work fee. Self performed work eligible for said fee shall only include labor, materials, and equipment provided directly by the CM/GC and not by related subcontractors nor items furnished by the CM/GC as a general conditions item for the benefit of more than one trade/subcontractor, even if the provision of such benefits the CM/GC's self-performed cause. Actual costs of self performed work will be subject to audit. No billing rates will be allowed. The CM/GC must bid its self performed work. The bid is subject to approval by the A/E and DFCM prior to

being awarded to the CM/GC. This bid will serve as a not-to-exceed amount, with savings returning to the State and additional costs to be covered by an approved amount of CM/GC contingency.

The CM/GC shall be compensated as a Cost of the Work and reimbursed at actual cost incurred up to the Guaranteed Maximum Price for items required for the construction of the project that are shared by more than one Subcontractor. Items included are such things as cranes, power, water, heat, temporary toilets, and safety precautions including site items such as snow removal, fencing, and security.

- 5.3 CM/GC shall cooperate with DFCM in providing all necessary information for any audit requested under the contract by DFCM or its contracted service provider.

ARTICLE 6.
OTHER CONDITIONS OF COST

- 6.1 The term Cost of the Work shall mean the actual costs necessarily incurred in the proper performance of the Work and paid by the CM/GC. Such costs shall be at rates not higher than those submitted with the attached schedule, which is hereby made part of this Agreement by reference, and shall include the items set forth below in Article 6.
- 6.2 The following other conditions of cost apply to costs other than the CM/GC's fee. Compensation for these items is not included in CM/GC's fee but is part of the Cost of the Work.
- 6.2.1 Salaries and wages for personnel in the direct employ of the CM/GC, other than those included in the CM/GC's fee as provided for in Article 5 of this Agreement, and to the extent required to accomplish the Work. Reimbursement shall be made under a salary or wage schedule agreed upon by DFCM and CM/GC and incorporated into this Agreement and shall include any costs for taxes, benefits, and workers compensation insurance.
- 6.2.2 Cost of all materials, supplies, temporary facilities, services, and equipment to the extent required to accomplish the work, including costs of transportation.
- 6.2.3 Payments made by the CM/GC to Subcontractors for work performed pursuant to subcontracts under this Agreement.
- 6.2.4 Rental charges of all necessary machinery and equipment exclusive of hand tools, used at the site of the work, whether rented from the CM/GC or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, shall be at rental charges consistent with prevailing "R.S. Means Construction Cost Data", edition from year that work was bid.
- 6.2.5 Sales, use or similar taxes related to the work and for which the CM/GC is liable and imposed by any governmental authority.
- 6.2.6 Other than for those matters caused by the fault or negligence of the CM/GC, royalties, damages for infringement of patents and costs of defending suits related thereto.
- 6.2.7 Cost of removal of all debris.

- 6.2.8 Costs incurred due to an emergency affecting the safety of persons and property.
- 6.2.9 Other costs incurred in the performance of the Work if and to the extent approved in advance and in writing by DFCM.
- 6.2.10 Cost of premiums for insurance which the CM/GC is required by the Contract Documents to purchase and maintain based on the amount of the FLCC.
- 6.2.11 Cost of payment and performance bonds based on the amount of the FLCC.
- 6.3 The following other conditions of cost apply to the CM/GC's fee. Compensation for these items is included in the CM/GC's fee and not subject to any additional payment by DFCM.
 - 6.3.1 Losses and expenses, sustained by the CM/GC in connection with the Work, to the extent they have resulted from the act, fault or negligence of the CM/GC, any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable, including but not limited to any loss or expense related to securing the property as required by this Agreement or to prevent injury to persons.
 - 6.3.3 Legal and consultant expenses reasonably and properly resulting from prosecution of the Project for DFCM to the extent they have resulted from the act, fault or negligence of the CM/GC, any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable, including but not limited to any such expense relating to securing the property as required by this Agreement or to prevent injury to persons.
 - 6.3.4 Notwithstanding any other provision of this Agreement, CM/GC shall reimburse DFCM for the portion of any expenses paid by DFCM to CM/GC which is attributable to the CM/GC's breach of its duties under this Agreement, including the breach of any duty by any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable.

ARTICLE 7.
COSTS NOT TO BE REIMBURSED

- 7.1 The following items, which is not conclusive, shall not be included in the Cost of the Work except to the extent they are included in the CM/GC's fee.
 - 7.1.1 Expenses of the CM/GC's principal and branch offices.
 - 7.1.2 Any part of the CM/GC's capital expenses, including interest on the CM/GC's capital employed for the work.
 - 7.1.3 Overhead or general expenses of any kind, except as may be expressly included in Article 6 of this Agreement.
 - 7.1.4 Costs due to the act, fault or negligence of the CM/GC and Subcontractors or suppliers at any tier, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.

- 7.1.5 The cost of any item not specifically and expressly included in the items described in Article 6 of this Agreement.
- 7.1.6 Food and refreshments for construction meetings or in association with the project execution.
- 7.1.7 Incentive awards of any kind.
- 7.1.8 Training costs either associated or not associated with the project execution.

ARTICLE 8.
TERMINATION, SUSPENSION OR ABANDONMENT

This Agreement may be terminated, suspended or abandoned in accordance with the General Conditions.

ARTICLE 9.
DISPUTE RESOLUTION

Any dispute, PRE or Claim between the parties shall be subject to the provisions of Article 7 of the General Conditions. DFCM reserves all rights to pursue its rights and remedies as provided in the General Conditions.

ARTICLE 10.
SUCCESSORS AND ASSIGNS

The DFCM and CM/GC, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Agreement. The CM/GC shall not assign this Agreement without the prior written consent of DFCM, nor shall the CM/GC assign any moneys due or to become due as well as any rights under this Agreement, without prior written consent of DFCM.

ARTICLE 11.
EXTENT OF AGREEMENT

This Agreement includes this Agreement, the Request for Proposals for this Project, said General Conditions, Supplemental General Conditions, final drawings as approved by DFCM for this Project, the CMGC's Proposal for this project, the CM/GC's bonds submitted to DFCM, and the attached schedules; all of which are hereby incorporated by reference as a part of this Agreement. This Agreement represents the entire and integrated Agreement between DFCM and the CM/GC and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both DFCM and the CM/GC.

The following documents shall be read together with the provisions of this Agreement, and in case of irreconcilable conflict between any provisions of the various documents, the first mentioned document in the following list shall control: this Agreement, the final drawings and specifications (as approved by DFCM), the CMGC's Proposal for this Project as may be modified as required by attachment to this Agreement, the DFCM's Request for Proposal for this Project, the Supplemental General Conditions, General Conditions, the CM/GC's bonds submitted to DFCM, and the schedules attached to this Agreement.

The CM/GC shall be deemed the "Contractor" as referred to in said General Conditions. The DFCM and CM/GC ("Contractor" as referred to in said General Conditions) shall be bound by all the requirements and provisions of said General Conditions.

It is intended that this CM/GC's Agreement not reiterate all the applicable provisions of said General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated.

ARTICLE 12.
AUTHORITY TO EXECUTE AND PERFORM AGREEMENT

CM/GC and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers. Each signatory below represents that he/she is duly authorized by their respective entity to execute this Agreement on behalf of their respective entity.

ARTICLE 13.
ATTORNEY FEES AND COSTS

Except as otherwise provided in the dispute resolution provisions of the General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in any court of competent jurisdiction and/or appellate body to enforce this Agreement or recover damages or any other action as a result of a breach thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CM/GC: _____

Signature Date

Title: _____

State of _____)

_____)

County of _____)

Please type/print name clearly

On this ____ day of _____, 20____, personally appeared before me, _____, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the _____ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

Notary Public

(SEAL)

My Commission Expires _____

APPROVED AS TO FORM:
ATTORNEY GENERAL
June 27, 2007
By Alan S. Bachman
Asst Attorney General

**DIVISION OF FACILITIES
CONSTRUCTION AND MANAGEMENT**

_____, Manager Date
Capital Development

Approved for Expenditure:

Approved as to availability of funds:

Division of Finance Date

David D. Williams, Jr. Date
DFCM Administrative Services Director

PERFORMANCE BOND
(Title 63, Chapter 56, U. C. A. 1953, as Amended)

That _____ hereinafter referred to as the "Principal" and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah, hereinafter referred to as the "Obligee," in the amount of _____ DOLLARS (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 20____, to construct _____ in the County of _____, State of Utah, Project No. _____, for the approximate sum of _____ Dollars (\$ _____), which Contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the Contract in accordance with the Contract Documents including, but not limited to, the Plans, Specifications and conditions thereof, the one year performance warranty, and the terms of the Contract as said Contract may be subject to Modifications or changes, then this obligation shall be void; otherwise it shall remain in full force and effect.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the state named herein or the heirs, executors, administrators or successors of the Owner.

The parties agree that the dispute provisions provided in the Contract Documents apply and shall constitute the sole dispute procedures of the parties.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the Provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

WITNESS OR ATTESTATION:

PRINCIPAL:

By: _____
(Seal)

Title: _____

WITNESS OR ATTESTATION:

SURETY:

By: _____
Attorney-in-Fact (Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney in-fact of the above-named Surety Company and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20____.

My commission expires: _____
Resides at: _____

NOTARY PUBLIC

Agency: _____
Agent: _____
Address: _____
Phone: _____

Approved As To Form: May 25, 20050
By Alan S. Bachman, Asst Attorney General

PAYMENT BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ hereinafter referred to as the "Principal," and _____ a corporation organized and existing under the laws of the State of _____ authorized to do business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); with its principal office in the City of _____, hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah hereinafter referred to as the "Obligee," in the amount of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 20____, to construct _____ in the County of _____, State of Utah, Project No. _____ for the approximate sum of _____ Dollars (\$ _____), which contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay all claimants supplying labor or materials to Principal or Principal's Subcontractors in compliance with the provisions of Title 63, Chapter 56, of Utah Code Annotated, 1953, as amended, and in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise it shall remain in full force and effect.

That said Surety to this Bond, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any way affect its obligation on this Bond, and does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Work or to the specifications or drawings and agrees that they shall become part of the Contract Documents.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

WITNESS OR ATTESTATION:

PRINCIPAL:

By: _____

(Seal)

Title: _____

WITNESS OR ATTESTATION:

SURETY:

By: _____

Attorney-in-Fact (Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20____.

My commission expires: _____

Resides at: _____

NOTARY PUBLIC

Agency: _____
Agent: _____
Address: _____
Phone: _____

Approved As To Form: May 25, 2005
By Alan S. Bachman, Asst Attorney General



CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT _____ PROJECT NO: _____

AGENCY/INSTITUTION _____

AREA ACCEPTED _____

The Work performed under the subject Contract has been reviewed on this date and found to be Substantially Completed as defined in the General Conditions; including that the construction is sufficiently completed in accordance with the Contract Documents, as modified by any change orders agreed to by the parties, so that the State of Utah can occupy the Project or specified area of the Project for the use for which it is intended.

The Owner accepts the Project or specified area of the Project as Substantially Complete and will assume full possession of the Project or specified area of the Project at _____ (time) on _____ (date).

The Owner accepts the Project for occupancy and agrees to assume full responsibility for maintenance and operation, including utilities and insurance, of the Project subject to the itemized responsibilities and/or exceptions noted below:

A list of items to be completed or corrected is attached hereto. The failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents, including authorized changes thereof.

The Contractor shall complete or correct the Work on the list of items appended hereto within _____ calendar days from the above date of issuance of this Certificate. The amount withheld pending completion of the list of items noted and agreed to shall be: \$_____.

CONTRACTOR (include name of firm) by: _____ DATE

A/E by: _____ DATE

USING INSTITUTION OR AGENCY by: _____ DATE

DFCM by: _____ DATE

cc: Parties Noted
DFCM, Director

**General Contractor Performance Rating Form**

Project Name:		DFCM Project#	
Contractor: (ABC Construction, John Doe, 111-111-1111)	A/E: (ABC Architects, Jane Doe, 222-222-2222)	Original Contract Amount:	Final Contract Amount:
DFCM Project Manager:		Contract Date:	
Completion Date:		Date of Rating:	

Rating Guideline	QUALITY OF PRODUCT OR SERVICES	COST CONTROL	TIMELINESS OF PERFORMANCE	BUSINESS RELATIONS
5-Exceptional	Contractor has demonstrated an exceptional performance level in any of the above four categories that justifies adding a point to the score. Contractor performance clearly exceeds the performance levels described as "Very Good"			
4-Very Good	Contractor is in compliance with contract requirements and/or delivers quality product/service.	Contractor is effective in managing costs and submits current, accurate, and complete billings	Contractor is effective in meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is effective
3-Satisfactory	Minor inefficiencies/errors have been identified	Contractor is usually effective in managing cost	Contractor is usually effective in meeting milestones and delivery schedules	Response to inquires technical/service/administrative issues is somewhat effective
2-Marginal	Major problems have been encountered	Contractor is having major difficulty managing cost effectively	Contractor is having major difficulty meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is marginally effective
1-Unsatisfactory	Contractor is not in compliance and is jeopardizing achievement of contract objectives	Contractor is unable to manage costs effectively	Contractor delays are jeopardizing performance of contract objectives	Response to inquiries, technical/service/administrative issues is not effective

1. Rate Contractors quality of workmanship, management of sub contractor performance, project cleanliness, organization and safety requirement.	Score
<u>Agency Comments:</u>	
<u>A & E Comments:</u>	
<u>DFCM Project Manager Comments:</u>	

2. Rate Contractor administration of project costs, change orders and financial management of the project budget.	Score
<u>Agency Comments:</u>	
<u>A & E Comments:</u>	
<u>DFCM Project Manager Comments:</u>	

3. Rate Contractor's performance and adherence to Project Schedule, delay procedures and requirements of substantial completion, inspection and punch-list performance.	Score
<u>Agency Comments:</u>	
<u>A & E Comments:</u>	
<u>DFCM Project Manager Comments:</u>	

4. Evaluate performance of contractor management team including project manager, engineer and superintendent also include in the rating team's ability to work well with owner, user agency and consultants.	Score
<u>Agency Comments:</u>	
<u>A & E Comments:</u>	
<u>DFCM Project Manager Comments:</u>	

5. Rate success of Contractor's management plan, completion of the plans mitigation of project risks and performance of value engineering concepts.	Score
<u>Agency Comments:</u>	
<u>A & E Comments:</u>	
<u>DFCM Project Manager Comments:</u>	

Signed by:	Date:	Mean Score
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Additional Comments: