

MEMORANDUM No. 9

TO: Kentucky School Architects

FROM: Timothy K. Lucas; tim.lucas@education.ky.gov
Planning Branch Manager, Division of Facilities Management

DATE: July 16, 2009

RE: Revised Construction Regulation 702 KAR 4:160 – Summary of Changes

As noted in Memorandum No. 8, for some time this office has been revising 702 KAR 4:160. We have finally passed the last hurdle, the Interim Education Committee review. The regulation is now in effect. We are awaiting a clean copy to be posted by the Legislative Research Commission to allow distribution.

The major purpose of this amendment is to adopt the 2007 editions of AIA Documents;

- AIA A101, Owner-Contractor Agreement
- AIA A201-General Conditions of the Contract for Construction
- AIA B101, Owner-Architect Agreement
- Update the Department amendments to fit the 2007 AIA documents.

A summary of the changes are as follows;

Preamble:

- *“KRS 323.033 requires the services of an architect for new buildings and additions or alterations to existing buildings classified as educational use group, including the administration of construction contracts”* was added to help define the requirements of the regulation.

Section 1.

- Construction Managers shall have experience on projects of \$2,000,000, in lieu of \$1,000,000.
- Definitions of “Contract Documents” and “Record Drawings” were added.

Section 2. Construction Project Application

- The provision and language, *“If a project exceeds \$250,000, the superintendent shall submit the BG #1 to the division, and shall review the project scope and financing plan with the division”* has been eliminated. (Note that this provision meant that the superintendent was to submit BG#1s on projects over \$250,000 in person to our office. On projects that were less than \$250,000 the superintendents were to simply mail the BG#1s to the division. This language, as shown has been eliminated.)

Section 3. Local Board Oversight Responsibilities

- Limit gross area of new schools to a maximum 110% and 115% of Model Program Space for elementary and middle/high schools respectively.
- Include consideration of minority owned business during the bid review process.
- Eliminate the following requirement; *“Review any bid package which receives only one (1) bid to ensure specifications allowed open competition. The board may approve the contract if the bid does not exceed 110 percent of the bid estimate and is within the budget for the project”*
- In addition to the other requirements, during the planning and bidding phase of the construction project, prior to executing the construction contract, the board shall;
 - Have in its possession a Property insurance policy.
- The Superintendent or his/her representative, known as the owner’s representative, may act on behalf of the board.
- At least once per month the local board shall receive and review written on-site observation and progress reports provided by the architect

- Substantial Completion is as defined in AIA A201-2007.
 - It will no longer be required for, “the division to issued a written approval either to reduce the contract retainage or to make final payment on the contract”
- If a lien is filed with a court and the board is given notice of the lien, the board shall stop partial payments on the contract *in the amount of the lien* and contact the division.

Section 4. Architectural Services

- Include consideration of minority owned business during the RFP process.
- Advertisement or RFP for architectural services not required for projects estimated at less than \$1,000,000, in lieu of \$500,000.
- Allows letter of agreement for architectural services for projects estimated at less than \$50,000, in lieu of \$25,000.
- Omits redundant requirement for errors and omissions insurance.
- Increases minimum professional liability insurance requirements and omits deductible maximums.
- Omits retainage on construction phase fees because of the Section 12 penalties for malfeasance or nonfeasance.
- Request approval by the *owner’s representative* for any reimbursement or additional service prior to the service being rendered or expenditure being made.
- Allows additional payment for services extending beyond scheduled construction contract completion date under certain conditions.
- Omits erroneous criteria for change order fees.

Section 5. Construction Management Services

- Raises to \$2,000,000 the estimated cost of projects for the use of CM services.
- Omits deductible maximums on professional liability insurance.
- Allows additional payment for services extending beyond scheduled construction contract completion date under certain conditions.
- Omits retainage on construction phase fees because of the Section 12 penalties for malfeasance or nonfeasance.

Section 6. Plans and Specifications

- Limits gross area of new schools to a maximum 110% and 115% of Model Program Space for elementary and middle/high schools respectively.
- Requires the Owner (*not the contractor*) to carry property insurance written on a builder’s risk “all-risk” policy, unless provided otherwise.

Section 8. Contract Change Orders

- Prior to execution by the owner, requires division approval of proposed change orders exceeding \$7,500, in lieu of \$5,000.

Section 9. Construction Contract Retainage.

- Revises construction contract retainage to comply with Kentucky Fairness in Construction Act
- Omits the final on-site review by the division
- Transfers to the local board the final approval for payment to the contractor.

Section 10. Construction Dispute Resolution

- Establishes rules for mediation, *which shall be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the contract, and, if the parties fail to resolve their disputes through mediation, to binding dispute resolution*
- Removes the Mediation Center of Kentucky from the regulation.

Section 11. Construction Contract Closeout Process

- Transfers from the division to the owner the final approval for payment to the contractor.

Section 13. Documents Incorporated By Reference

- Section 13. Incorporates revised BG forms, Non-Collusion Affidavit, and AIA Documents.

Amendments to AIA Documents were necessary to conform to the above revisions and continue the normal capital construction practices in the Commonwealth.

- Draft Revision of 702 KAR 4:160, dated 10/21/08
- AIA B101-2007, Standard Form of Agreement Between Owner and Architect, and the KDE Amendment thereto.
- AIA A101-2007, Standard Form of Agreement Between Owner and Contractor, and the KDE Amendment thereto.
- AIA A201-2007, General Conditions of the Contract for Construction, and the KDE Amendment thereto.
- Revised BG Forms and Non-Collusion Affidavit

We have adjusted the form in which the list of those individuals that are receiving this memo is presented. By including the e-mail addresses it is our hope that you we can begin to form a communication network to allow the discussion of the issues in school construction that we all face. If you have any questions, please do not hesitate to contact me at 502-564-4326 or e-mail me at tim.lucas@education.ky.us .