

MEMORANDUM No. 29

TO: Kentucky School Architects

FROM: Greg Dunbar, Manager
District Facilities Branch

DATE: September 18, 2013

RE: **702 KAR 4:160 Roll Out**

In 2010 what started as a minor change to 702 KAR 4:160 Capital Construction Process to incorporate the 2009 AIA Construction Manager Documents into regulation became a three year review process resulting in a major restructuring of the regulation. During this time the Commissioner of Education empaneled a committee consisting of school officials (superintendents and facilities managers) and architects to review the current regulation. In addition, KDE invited other stakeholders including AIA Kentucky, contractors, construction managers, engineers, performance contractors, and others concerned with school construction in the Commonwealth. From these meetings, changes were directed to be made to the regulation that have now been incorporated, the revised regulation became effective September 6, 2013.

New documents have been developed with the American Institute of Architects to be specific to school construction in Kentucky. The documents incorporate what had previously been amendments to the AIA documents into the body of the forms. These forms have been developed and are currently being vetted by AIA and will shortly be distributed through AIA's Documents on Demand website. Because the regulation will be in effect before the AIA documents are complete, current documents are to be used for a little while longer, but we will be phasing in the use of the new AIA documents as they become available with projects as they come online.

An interim version of the revised regulation is on the KDE website:

<http://education.ky.gov/districts/fac/Pages/Construction.aspx>

Overview of Revisions to 702 KAR 4:160, Capital Construction Process

General note: The "new" regulation in regards to submissions requiring board approval. Board orders are not required to be submitted, except for submission of a BG-1 Project Application declaring an emergency project. However, the local district should develop a dedicated file for each project and include a copy of the board order in that file and the department may request a copy of the board order at any time as needed for approvals and all submissions requiring board approval will have been approved by the board prior to submission to KDE.

Section 1 - Definitions

- Added: change event; construction documents; contractor; design professional; GESC; KBE; major renovation; minor project; qualified provider
- Removed (utilize statute definitions): architect; contract documents; division; KERA; moveable equipment
- Expanded: emergency; fixed equipment; record documents.

Section 2 - Project Application

- Added:
 - Guaranteed Energy Savings Contract (GESC) as a defined project.

- BG-1 is required when qualified provider is selected and proposal is accepted by district.
- Removed:
 - Items to send to KDE and justification information to streamline process
- Revoking BG-1 for inactivity
- Reworded eligible projects from DFP
- KDE process BG-1 in 30 days (instead of 60 days)
- Minor & major project
- Superintendent can notify KDE for emergencies

Section 3 – Local Board Oversight

- Added: site acquisition; lease information (from plans & specs section); certificate of liability insurance (from architectural services); GESC oversight.
- Reformatted list of responsibilities for clarity.

Section 4 – Architectural Services

- Added: KDE Version of AIA contracts – these incorporate KDE required language into contract
- Eliminates need for KDE amendments to AIA contracts.

Section 5 – Construction Management Services

- Added: KDE Version of AIA contracts - these incorporate KDE required language into contract
- Eliminates need for KDE amendments to AIA contracts
- See “Best Practices Manual” for details regarding alternate forms of Construction Management services which may be considered by submission of a Waiver to the Commissioner of Education or KBE.

Section 6 – Plans and Specs

- Increased maximum gross areas of Model Program Space
 - 115% for elementary (previously 110%)
 - 120% for middle & high (previously 115%)

Section 7 – Guaranteed Energy Savings Contracts

- New section added to regulation with these basic steps:
 - Letter of Intent is submitted to KDE when district sends out Request For Proposal to ensure building is eligible, based on DFP
 - District advertises for Qualified Providers to submit proposal
 - District negotiates contract with Qualified Provider
 - District submits BG-1 Form to KDE for approval, along with proposal
 - Qualified Provider prepares scope documents and BG-2 Form for KDE approval
 - Qualified Provider prepares project documents, including drawings and specs and revised BG-1 Form for KDE approval

Section 8 – Construction Bidding, Bond Sale, & Contracting

- Added: Written rationale is submitted to KDE if accepted bid exceeds BG-3 cost estimate by 10% or more
- Removed: Bid specific directions
- Reworded: List of document submissions for all projects and additional list of document submissions for projects that are bid
- Note: GESC projects are not bid

Section 9 – Contract Change Orders

- Added: KDE approval is based on contingency amount available
- Increased change order approval amount to \$25,000 (from \$7,500)

Section 10 – Construction Contract Retainage

- Added: Reference to statutes

Section 11 – Construction Dispute Resolution

- Updated: utilize contract language

Section 12 – Construction Contract Closeout Process

- Added:
 - BG-5 Project Close Out
 - Form for Summary of all purchase orders and change orders for each contract
- Reworded: BG-4 as Contract Close Out (instead of project close out)

Section 13 – Penalties for Malfeasance or Nonfeasance

- No change

Section 14 – Incorporation by Reference

- Added:
 - KDE Versions of AIA documents
 - RFP for GESC
 - KDE Purchase Order Summary Form
- Removed: AIA documents and KDE Amendments to AIA documents

Best Practices Manual

- To be developed as procedures document for K-12 school construction projects
- Includes Construction Manager – As Advisor – As Constructor
- Allows KDE to update specific procedures, when needed
- KDE to form Committee of Stakeholders for annual review

Overview of Revisions to Forms

Form: BG-1

- Added:
 - Project Name and Site Address
 - Construction Delivery Method
 - District's Procurement Standard
- Removed:
 - Page 2 – Program Space Square Footage
 - Board Order Attachment Not Required (district to maintain in project file)

Form: BG-2

- Added:
 - Project Type Section
 - Energy Efficient Design Section (KRS 157.450 and KRS 157.455)
 - Energy Efficient Design Features Lists Selection List
- Removed: board order attachment not required (district to maintain in project file)

Form: BG-3

- Added: Board of Education Designee Signature
- Removed: board order attachment not required (district to maintain in project file)

Form: BG-4

- Added:
 - Page 2 – Project Closeout
 - Section D – Project Completion & Inventory Update
 - Section E – Reconciliation of Final Project Cost
- Removed: board order attachment not required (district to maintain in project file)

Form: BG-5

- New form added.

Form: A/E Max Fee Guidelines

- Added: Ranges for larger projects, up to \$60M (was \$11M)

Form: CM Max Fee Guidelines

- Added: Ranges for larger projects, up to \$60M (was \$10M)
- Removed: Range for projects starting at \$1M- \$2M
- Reworded to condense ranges, retaining higher percentages

Form: Change Order Supplemental Info

- Added:
 - Cost tracking table, including contingency balance
 - Cost breakdown table for labor, materials, profit, overhead
 - Signatures of District Finance Officer, Architect, & CM
- Reworded:
 - Cost breakdown detail to be included for Change Orders => \$25K (used to be for all Change Orders)

Form: Form of Proposal

- Removed:
 - KDE Material Supplier Authorization Form as attachment
 - Purchase Order Form as attachment
 - Do not allow additional supplemental pages to be included
- Reworded:
 - Allows submission of 10 alternate bids (was 4)
 - Allows submission of 40 subcontractors, suppliers/manufacturers, and unit prices (was 10)
 - Allows submission of 50 purchase orders

Form: Material Supplier Authorization

- Removed: The document is no utilized.

Form: KDE Non-Collusion Affidavit

- Added notary signature line
- Reworded to be generic for use by A/E, CM, and GESC Qualified Provider

Form: Purchase Order

- Added:
 - Specification Section
 - Vendor Phone and Email
 - Bill To Information
 - Contact Information for Delivery to Jobsite
 - Purchase Order Terms & Conditions

Form: KDE Purchase Order Summary

- New form that provides list of all Direct Purchase Orders (DPOs) made by district

Form: RFP For A/E Services

- Added:
 - Additional firm identification info
 - Experience with KDE
 - School Funding
 - Documents Utilized with Contract
 - Certification with signature
- Removed:
 - Appendix and attachments (documents are referenced)
 - AIA specific document numbers
- Reworded; to clarify professional liability insurance requirement

Form: RFP For CM Services

- Added:
 - Additional firm identification info, including overview of firm
 - Experience with KDE
 - School Funding
 - Documents Utilized with Contract
- Removed:
 - Appendix and attachments (documents are referenced)
 - AIA specific document numbers
- Reworded; to clarify professional liability insurance requirement

Form: RFP for GESC Services

- New form added that provides districts with standard RFP document to request GESC project proposals

If you have any questions or comments, please do not hesitate to call me or Tim Lucas at 502-564-4326 or send an email to Greg.Dunbar@education.ky.gov or Tim.Lucas@education.ky.gov.