

Project 2020-148
Pierce College, Puyallup STEM Building

Attachment 1:
Proposed Contract

**Pierce College, Puyallup Campus
STEM Building Design-Build Services
Project #2020-148**

**Contract
Between Owner, DES, and Design-Builder**

This **CONTRACT** is made and entered into by and between the following parties, for services in connection with the Project identified below. This Contract shall be effective on the date of the last signature.

OWNER: Pierce College

DEPARTMENT OF ENTERPRISE SERVICES (DES):

1500 Jefferson Street SE
Olympia, WA 98501
P.O. Box 41476
Olympia, Washington 98504-1476

DESIGN-BUILDER: TBD

PROJECT: STEM Building Design-Build Services
Project # 2020-148

In consideration of the mutual covenants and obligations contained herein, Owner and DES (jointly referred to as Owner/DES) and Design-Builder agree as set forth herein.

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INTRODUCTION

The Project consists of the Work described in the Owner's/DES' Project Criteria and the Basis of Design Documents, as applicable, and is a single contract with two phases. Phase 1 of the project will generally include design and other services culminating in the Design-Builder providing to the Owner/DES a Guaranteed Maximum Price (GMP) Proposal. Provided the parties agree to the terms, Phase 2 shall begin when the Parties enter into the GMP Amendment. The Scope of Work for Phase 2 shall be set forth in the GMP Amendment; however, at a minimum, such scope shall include the completion of design, construction, coordination with commissioning agent, performance guarantees, GMP, and other aspects of scope and terms sufficient to complete the project.

ARTICLE 1 – GENERAL

- 1.1 **Duty to Cooperate.** Owner/DES and Design-Builder (Parties) commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Contract.
- 1.2 **Definitions.** Terms, words and phrases used in this Contract shall have the meanings given them in the “General Conditions of Contract Between Owner/DES and Design-Builder” (General Conditions), (Attachment A).
- 1.3 **Diverse Business Participation.** The state of Washington encourages participation in all of its contracts by Diverse Businesses. DES is committed to providing the maximum practicable opportunity for participation by Diverse Businesses through direct contracts with DES, subcontracts, sub-consulting, and supplier participation. Particular requirements are contained in the General Conditions.

ARTICLE 2 – INTERPRETATION AND INTENT

- 2.1 **Contract Documents.** The Contract Documents are comprised of the following which are incorporated by reference, and are in order of precedence:
 - A. All written modifications, amendments, and change orders to the Contract, including but not limited to the GMP Amendment and its attachments, the most recent take precedence over previous documents;
 - B. The Contract;
 - C. The General Conditions;
 - D. The Owner's/DES' Project Criteria, including but not limited to, Request for Qualifications, Request for Proposals and any Addenda;
 - E. Design-Builder's Statement of Qualifications and its Proposal submitted in response to the Owner's/DES' Request for Proposals, and Design-Builder's GMP Proposal, submitted in Phase 1 of this Contract, as accepted by Owner/DES;
 - F. Construction Documents prepared and approved in accordance with Section 2.3.F of the General Conditions; and
 - G. Attachment B Scope of DB Services.

The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or

ambiguities between or among the Contract Documents are discovered after execution of the Contract, Design-Builder and Owner/DES shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed

- 2.2 Terms, words and phrases used in the Contract Documents, including this Contract, shall have the meanings given them in the General Conditions.
- 2.3 The Contract Documents form the entire Contract and are fully binding on the parties. No oral representations or other Contracts have been made by the Parties except as specifically stated in the Contract Documents.

ARTICLE 3 – DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

3.1 Phase 1 – Validation and GMP Development Period

- A. **Scope of Work for Phase 1.** Phase 1 shall commence upon a written Notice to Proceed from the Owner/DES and shall end on the Phase 1 Completion Date as set forth below. The services to be provided by the Design Builder during the Phase 1 are set forth in Attachment B “Phase 1 and Phase 2 Scope of Services”.
- B. **Phase 1 Not to Exceed Amount.** Design Builder guarantees that during Phase 1, Design Builder’s Compensation shall not exceed the Phase 1 Not to Exceed Amount (“Phase 1 NTE”) of _____ Dollars (\$_____). Design Builder agrees that it will be responsible for paying all costs of completing the Phase 1 Work which exceed the Phase 1 NTE and shall not seek reimbursement from the Owner/DES for any costs that exceed the Phase 1 NTE, as adjusted in accordance with the Contract Documents including by written Change Order.
- C. **Phase 1 Completion Date.** The Phase 1 Completion Date is _____.
- D. **Maximum Allowable Design and Construction Cost.** The Maximum Allowable Design and Construction Cost (“MADCC”) is Thirty Five Million, Seventy Nine Thousand, Nine Hundred, and Ninety Four Dollars (\$35,030,000.00).
- E. **Design Builder’s Phase 1 Compensation.** Design Builder’s compensation for Work performed in Phase 1 shall consist of the following:
 - 1. The Cost of the Work as set forth in Section 6.5 of the General Conditions, for Work performed in Phase 1; and.
 - 2. The Design-Builder’s Fee Percentage, which shall be multiplied by the Cost of the Work for Phase 1.
- F. **GMP Proposal.** At the conclusion of Phase 1, the Design Builder will submit a GMP Proposal pursuant to the requirements set forth in Attachment B. Unless the Parties agree otherwise, the GMP Proposal shall include the deliverables set forth in Attachment B, including but not limited to the following:
 - 1. A proposed GMP for the cost of completing all remaining Work on the Project, up to and including Final Completion of the Project. The GMP shall be less than or equal to the MADCC, unless the Parties agree in writing otherwise. Unless the parties agree otherwise, the GMP Proposal shall include the documents listed in Section 1.07.C of Attachment B:
- G. **Owner’s/DES’ Option to Enter Into Phase 2**
 - 1. After submission of the GMP Proposal, Design Builder and Owner/DES shall meet to

discuss and review the GMP Proposal. The Owner/DES shall make its best efforts to provide such comments within thirty (30) days of the Owner's/DES' receipt of the GMP Proposal, unless the Owner/DES provides notification that it requires additional time for review. If Owner/DES has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice to Design Builder of such comments or findings in a reasonably prompt manner. If appropriate, Design Builder shall, upon receipt of Owner's/DES' notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner's/DES' review of the GMP Proposal, the Design Builder shall, upon the Owner's/DES' Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner/DES shall make its best efforts to review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

2. The Owner/DES, at its sole discretion, may exercise its option to enter into Phase 2 of the Contract and accept the GMP Proposal.
 - a. The Owner/DES shall notify the Design Builder within thirty (30) days of receipt of the GMP Proposal of its decision whether or not to exercise its option to enter into Phase 2.
 - b. If the Owner/DES accepts the GMP Proposal, the parties shall enter into the GMP Amendment. The total compensation paid to Design Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract.
 - c. The Owner/DES may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design Builder, the GMP Proposal shall be deemed accepted and the Parties shall proceed in accordance with Section 3.1.F.1.a. above.
 - d. If Owner/DES decides not to exercise its option to enter into Phase 2 and notifies Design Builder in writing or rejects the GMP Proposal, then the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner/DES and Design Builder shall meet and confer as to how the Project will proceed, with Owner/DES having the following options:
 - i. The Owner/DES may authorize Design Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 3.1.E. above as supported by Design-Builder's Payment Applications and subject to the Phase 1 Not to Exceed Amount; or
 - ii. If the Owner/DES elects not to exercise its option to enter into Phase 2, the Design-Builder shall be compensated for the amount incurred pursuant to Section 3.1.E. above, as supported by Design-Builder's Payment Applications and subject to the Phase 1 Not to Exceed Amount. The compensation set forth herein shall be the Design-Builder's sole compensation for the Project if the Owner elects not to exercise its option to enter into Phase 2, and the Design Builder hereby agrees that it will not seek any other compensation, remedy or damages of any kind whatsoever if the Owner/DES elects not to exercise its option to enter into Phase 2.
3. The Design Builder shall not perform any Work after the submission of the GMP Proposal unless the Owner/DES exercises its option to enter into Phase 2 and has approved and signed the GMP Proposal unless the Design Builder obtains the Owner's/DES' prior, written consent to perform such Work and only to the extent that

such Work is expressly described in writing in such written consent.

4. If the Design Builder performs Work after the submission of the GMP Proposal but before the Parties enter into the GMP Amendment, Design Builder shall be compensated pursuant to Section 3.1.E. of the Contract; however, in no case shall the Design Builder be entitled to be paid in excess of the Phase 1 NTE, as amended by the Parties.

3.2 Phase 2, Post GMP Period.

- A. **Commencement and Scope of Work.** Phase 2 shall commence when the Owner/DES exercises its option to enter into Phase 2 and both Parties sign the GMP Amendment. Phase 2 is the final phase of the Contract. The scope of Work for Phase 2 will be developed during Phase 2 and set forth in the GMP Amendment, but it will, at a minimum, include the services set forth in Attachment B, including but not limited to the following:
 1. Completion of the design services and the development of Construction Documents for the Project,
 2. Performance and completion of construction work, start-up, testing and commissioning and closeout of the Project in accordance with the requirements of the Contract Documents; and
 3. Any ongoing contractual obligations after Final Completion, such as guarantees, warranty services, and/or obligations to provide insurance and indemnity to the Owner/DES.
- B. **Guaranteed Maximum Price.** The GMP Amendment shall establish a binding GMP between the Parties. Design Builder agrees that it will be responsible for paying all costs of completing the Phase 2 Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Execution of the GMP Amendment constitutes Design Builder's representation and agreement to the following:
 1. The Project is adequately defined in the Basis of Design Documents to provide an accurate Guaranteed Maximum Price;
 2. The Project is sufficiently clear and understandable for the Design Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP and within the Project Schedule; and
 3. If the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design Builder, and Design Builder hereby assumes liability for such costs without reimbursement by the Owner/DES.
- C. **Project Schedule.** The Substantial and Final Completion Dates will be set forth in the GMP Amendment. By entering into the GMP Amendment, the Design-Builder makes the following representations:
 1. The Project Schedule is sufficient time to complete the Project in accordance with the GMP Amendment and the Contract Documents.
 2. If the Design-Builder fails to achieve Substantial Completion by the date set forth in the GMP Amendment, the Design-Builder will pay liquidated damages in the amount set forth in Section 7.1 of the Contract as agreed compensation to Owner/DES for the cost of delay and not as a penalty.
- D. **Design Builder's Compensation.** Design Builder shall be compensated for Phase 2 for the following costs up to the established GMP.

1. The Cost of the Work as set forth in Section 6.5 of the General Conditions for Phase 2 Work.
 2. The Design-Builder's Fee allocated to Phase 2 Work, calculated pursuant to Section 6.4.A. of the General Conditions;
- E. Any costs incurred in excess of the GMP shall be the responsibility of the Design Builder.

3.3 Inability to Execute Phase 2 Between Owner/DES and Design-Builder – GMP. Phase 1 of the Contract is solely for Preliminary Services and Design Services as defined in Sections 2.1 and 2.2. Owner/DES and Design-Builder recognize that they may not be able to negotiate a GMP for this project. In that event, this Contract will be terminated, and Design-Builder will be paid the reasonable value of its documented services to the date of termination and will not be entitled to any other compensation, damages, loss of profits or payment of any other kind.

3.4 Prevailing Wages. The location of the Project is Pierce County. See General Conditions for requirements.

ARTICLE 4 – OWNER'S/DES' SERVICES AND RESPONSIBILITIES

4.1 Performance. Owner/DES shall throughout the performance of this Contract cooperate with Design-Builder. Owner/DES shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, so as not to delay or interfere with Design-Builder's performance of its obligations under this Contract.

4.2 Owner's/DES' Project Criteria. Owner/DES shall provide Design-Builder with relevant information regarding the Project for developing the BOD.

4.3 Owner/DES Provided Information. To the extent deemed necessary by the Parties, Owner/DES shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

- A. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- B. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- C. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project;
- D. To the extent available, as-built and record drawings of any existing structures at the Site; and
- E. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

4.4 Reliance on Owner/DES Provided Information. The Owner/DES Provided Information contains design or prescriptive specifications, and the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Owner/DES Provided Information, including any performance specifications, but only for the purposes of developing the Phase 1 Level of Effort, the Phase 1 Not to Exceed Amount.

Notwithstanding the above, Design-Builder is required to perform an independent evaluation of the Owner/DES Provided Information during Phase 1 as set forth in Attachment B to the Contract and may not rely on the Owner/DES Provided Information for the purposes of performing the Work. Provided Design-Builder complies with other requirements set forth in the Contract Documents regarding entitlement to adjustment of Commercial Terms, such as but not limited to those regarding notice of claims to the Owner/DES and identification of differing site conditions, Design-Builder may be entitled to an adjustment in the Phase 1 Not to Exceed Amount, but only to the extent Design-Builder's cost and/or time of performance have been adversely impacted by materially inaccurate design or prescriptive specifications in the Owner/DES Provided Information that is discovered in Phase 1.

- 4.5** Owner/DES is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner/DES is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.
- 4.6** **Basis of Design Documents.** Owner/DES shall collaborate with the Design-Builder in development of Basis of Design Documents.

ARTICLE 5 – CONTRACT TIME – PHASE 1

- 5.1** **Notice to Proceed.** Design-Builder shall commence performance of the services set forth in this Contract upon receipt of Notice to Proceed. Design-Builder shall complete such services no later than (TBD date to finish Phase 1/GMP).
- 5.2** **Interim Dates.** Interim milestone dates, if any, of identified portions of the services set forth in this Contract shall be achieved as described in a separate attachment to this Contract.

ARTICLE 6 – FEE PERCENTAGE

- 6.1** **Fee Percentage.** Design Builder's Fee Percentage shall be:
_____ percent (_____) of the Cost of the Work set forth in Section 6.5 of the General Conditions.

ARTICLE 7 – LIQUIDATED DAMAGES AMOUNT

- 7.1** **Liquidated Damages for Delay.**
[alternate provision] Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date")
Design-Builder shall pay Owner _____ Dollars (\$_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

ARTICLE 8 - REPRESENTATIVES OF THE PARTIES

- 8.1** **Owner's/DES' Representatives.**
- A. Owner/DES designates the individual listed below as its Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.B of the General Conditions:

Nancy K. Deakins, P.E.

Department of Enterprise Services
1500 Jefferson St.
P.O. Box 41476
Olympia, WA 98504
360-407-9333
Nancy.deakins@des.wa.gov

- B. Owner/DES designates the individual listed below as its Owner's/DES' Representative, which individual has the authority and responsibility set forth in Section 3.2 of the General Conditions:

Department of Enterprise Services
1500 Jefferson St.
P.O. Box 41476
Olympia, WA 98504

8.2 Design-Builder's Representatives.

- A. Design-Builder designates the individual listed below as its Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.B. of the General Conditions:

TBD

- B. Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Article 2 of the General Conditions:

TBD

ARTICLE 9 – DISPUTE RESOLUTION

Dispute Resolution. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner/DES each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. Dispute resolution processes shall be in accordance with Article 10 of the General Conditions of the Contract Between Owner/DES and Design Builder.

ATTACHMENTS:

The following documents, whether attached or not, are incorporated by reference and made a part of this Contract:

- A. General Conditions of the Contract Between Owner/DES and Design-Builder.
- B. Phase 1 and Phase 2 Scope of Design Build Services
- C. Owner's/DES's Project Criteria

- D. Hourly Rates
- E. Design-Builder's Proposal
- F. Owner/DES-specified CAD Standards

G. Other attachments cited

In executing this Contract, Owner/DES and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

DEPARTMENT OF ENTERPRISE SERVICES:

(Signature)

(Printed Name)

(Title)

Date: _____