Supreme Court of Kentucky

2012-4

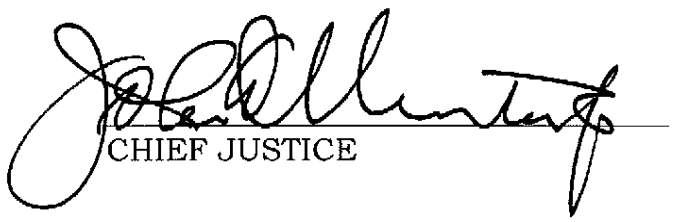
ORDER

IN RE: ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE, PART X. CAPITAL CONSTRUCTION PROGRAM

Pursuant to Sections 110(5)(b) and 116 of the Constitution of Kentucky, Part X of the Administrative Procedures of the Court of Justice is hereby renamed as "Capital Construction Program," and Section I, Construction Program Development, is amended in its entirety. All Kentucky Court of Justice Capital Construction Projects authorized after June 1, 2012, shall be governed by AP Part X, Section I, Construction Program Development. Sections II and III of AP Part X, which were authorized by Supreme Court Order 2007-03, remain in effect until further order of this Court.

This order shall be effective June 1, 2012.

Entered this 15th day of May, 2012.



CHIEF JUSTICE

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CHAPTER 1 - GENERAL

1-1 PURPOSE

KRS § 26A.160 requires the Chief Justice to establish rules of procedure on matters relating to the design, financing, and construction of court facilities. In furtherance of KRS § 26A.160, the Kentucky Court of Justice Administrative Procedures of the Court of Justice (AP) Part X, Section I sets forth rules of procedure for the Kentucky Court of Justice Capital Construction Program; guidelines for construction program documents for judicial center projects authorized by the Kentucky General Assembly; and guidelines for uniform contracts required to be used by local units of government.

1-2 CHIEF JUSTICE

The Chief Justice retains complete authority for approval or disapproval of Projects, project designs, project components, and/or procedures. This includes the authority to terminate, assign, appoint or reassign Project Development Board Members; to reject or amend any decision made by a Project Development Board and direct that the matter be disposed of in the best interest of the Kentucky Court of Justice; or, to terminate a Project Development Board and direct and complete projects in the best interest of the Kentucky Court of Justice.

The Chief Justice may implement changes and amendments to AP Part X to ensure that the best interests of the Kentucky Court of Justice are served. Such changes may affect statewide, regional, or individual Projects and may be either temporary or permanent. The Chief Justice may make temporary changes through a written document signed by the Chief Justice. The Chief Justice will make permanent amendments to AP Part X by Court Order.

1-3 APPLICABILITY

AP Part X, Capital Construction Program has the force and effect of law in the Commonwealth of Kentucky and applies to the development of all projects within the Kentucky Court of Justice Capital Construction Program. All judicial center projects authorized by the Kentucky General Assembly in furtherance of KRS § 26A.160 are projects within the Kentucky Court of Justice Capital Construction Program.

1-4 PROJECTS

All Projects within the Kentucky Court of Justice Capital Construction Program are intended to be 100% occupied by the Kentucky Court of Justice unless otherwise approved by the AOC Director, and evidenced by the execution of a Memorandum of Understanding with the co-occupant(s) detailing the rights, responsibilities, and obligations of the parties.

1-5 EXPLANATION OF ABBREVIATIONS AND TERMS

Abbreviations and special terms used in AP Part X are identified and defined below:

A-E means the Architect-Engineer, who may also be identified as the "Design Professional".

AOC means the Administrative Office of the Courts.

AOC Project Coordinator means the AOC Division of Capital Construction employee assigned to provide guidance and oversight to a Project.

AP Part X, Section I means the Rules of Administrative Procedure of the Court of Justice, Part X, Section I, Capital Construction Program.

AP Part X, Section II means the Rules of Administrative Procedure of the Court of Justice, Part X, Section II, Court Facilities Criteria.

AP Part X, Section III means the Rules of Administrative Procedure of the Court of Justice, Part X, Section III, Court Facilities Design and Construction.

Best Value means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Project. These decisions are based on objective and quantifiable criteria that include price and the reciprocal preference for a resident bidder as described in KRS § 45A.494 that have been communicated to the offerors as set forth in the invitation for bids.

CFSC means the Court Facilities Standards Committee.

CM means Construction Manager at-Risk.

Consultant means an individual or firm retained by the Owner or the A-E having specialized training or knowledge relating to an aspect of the Project.

Construction Management at-Risk means a project delivery method in which the Project Development Board awards a single contract to an offeror that assumes the risk for construction at a contracted guaranteed maximum price as a constructor and that provides consultation and collaboration regarding the construction during and after the design of a Project.

Construction Services Provider means the General Contractor that contracts with the Owner to construct the Project.

Constructor means the General Contractor or Construction Manager that contracts with the Owner to construct the Project.

CPTS means the Capital Projects Tracking System.

DCC means the AOC Division of Capital Construction.

Design-Bid-Build means a project delivery method in which the Project Development Board sequentially awards separate contracts, the first for A-E services to design the project and the second to a General Contractor for construction of the Project according to the design.

Ex Parte Contact means any communication concerning a matter related to a KCOJ Capital Construction Project that occurs between a general contractor or a professional services provider or their agent and any member of the Project Development Board outside of a public meeting of the Project Development Board before the selection of a general contractor or such a professional services provider. Project delivery methodologies are matters related to a KCOJ Capital Construction Project and communications concerning project delivery methodologies must be reported pursuant to Section 5-1(H) and (I), below.

GC means the General Contractor.

GMP means the Guaranteed Maximum Price as set forth in the contract between the Owner and the Construction Manager.

KCOJ means the Kentucky Court of Justice.

MOU means Memorandum of Understanding.

Owner means the Local Unit of Government that has entered into an MOU with the AOC pursuant to KRS § 26A.160(3) (e.g., County Fiscal Court, City, etc.) and also refers to the Public Properties Corporation in which title to the Project vests from the time that bonds or bond anticipation notes are issued until such debt is discharged.

PDB means Project Development Board.

PPC means a Public Properties Corporation established pursuant to KRS Chapter 58.

Professional Services Provider means an architectural/engineering firm, a construction management firm, a financial advisory firm, or other entity that contracts with the Owner to provide a professional service to the Project.

Program Document means a document prepared by the DCC containing itemized space requirements, space relationships, design goals, scope limits, site considerations, cost estimates, and a proposed budget as required by KRS § 26A.160(2)(b).

Project Account means an account held by a trustee containing Project Funds.

Project Funds means the amounts generated by the local unit of government's sale of bond anticipation notes or bonds to fund the construction of a Project within the KCOJ Capital Construction Program.

CHAPTER 2 – ADMINISTRATIVE OFFICE OF THE COURTS

Projects within the KCOJ Capital Construction Program are considered projects of the Judicial Branch. The AOC oversees the design, financing, and construction of KCOJ facilities in accordance with KRS Chapter 26A and AP Part X.

2-1 GENERAL

A. **The AOC Director** is the executive head of the AOC and retains complete authority over the AOC Manager of Capital Construction, the AOC Budget Director, the AOC Office of Legal Services, and all employees and departments of the AOC.

B. **The AOC Manager of Capital Construction** acts as a liaison between the AOC and the PDB, advises the PDB of the policies, procedures, and requirements contained in AP Part X, and supervises the AOC Project Coordinators. The AOC Manager of Capital Construction or designee has the authority to take any steps necessary to hold the professional service providers and general contractors accountable for compliance with AP Part X and the contract documents.

C. **The AOC Budget Director** oversees all financial matters pertaining to projects within the KCOJ Capital Construction Program and supervises the AOC Manager of Capital Construction.

D. **The AOC Office of Legal Services** may provide legal advice to the PDB concerning the policies, procedures, and requirements of AP Part X and the PDB's duties and responsibilities to the KCOJ. However, the AOC Office of Legal Services may not otherwise provide legal advice to the PDB or represent the PDB in any court of law. The AOC Office of Legal Services provides general legal advice to the AOC and acts on behalf of the AOC in disputes concerning the KCOJ Capital Construction Program. The AOC Office of Legal Services may attend legal proceedings on behalf of the AOC including, but not limited to, mediations, hearings, or settlement conferences, but must not practice law in any court of the Commonwealth of Kentucky. The AOC must approve any settlements signed by the Owner which involve any Project within the KCOJ Capital Construction Program.

E. **The AOC Project Coordinator** advises the PDB of the policies, procedures, and requirements contained in AP Part X. The AOC Project Coordinator may serve as the designee of the AOC Manager of Capital Construction during PDB meetings.

2-2 CAPITAL PLANNING PROCESS

KRS § 26A.160(2)(d) and KRS § 7A.120 require the Judicial Branch to submit to the Kentucky General Assembly a six-year capital plan every odd-numbered year.

A. **Capital Plan:** The AOC Budget Director, under the guidance and direction of the AOC Director and the Chief Justice, will prepare a six-year capital plan for submission to the Kentucky General Assembly. This plan may include a list of proposed projects, in priority, by biennium. The Chief Justice will make the final determination concerning the priority of the projects submitted in the capital plan.

1. **Analysis of Existing Facilities:** Prior to the development of the capital plan, AOC staff will assess, grade, and prioritize existing judicial facilities pursuant to KRS § 26A.160(2)(a) and (d) to assist the AOC Budget Director, the AOC Director, and the Chief Justice in determining which projects should be included in the capital plan.

2. **Preliminary Project Program Documents:** Prior to executing an MOU pursuant to KRS § 26A.160(3), the DCC will prepare Preliminary Project Program Documents which will include itemized space requirements, space relationships, design goals, scope limits, site considerations, cost estimates, and a proposed budget as required by KRS § 26A.160(2)(b).

    a. **Facility Size:** The space requirements will be based on county demographics, caseload, and staffing needs.

    b. **Construction Cost Estimates**: AOC will use recent historical cost factors to estimate the design and construction budgets. The estimates will include inflation factors to reflect program year.

3. **Memorandum of Understandings (MOU):** Before the KCOJ includes a proposed project in a budget request submitted pursuant to KRS § 48.050, the AOC and proposed Owner must enter into an MOU as provided in KRS § 26A.160(3). This MOU will be developed by the Manager of Capital Construction and the AOC Office of Legal Services. The MOU will specify the rights, duties, and obligations of the AOC and the proposed Owner and will incorporate the estimated facility size and construction cost estimates set forth in the Preliminary Project Program Documents. The terms of the MOU will include the proposed Owner's agreement to comply with AP Part X in the development and construction of the proposed project. The MOU will be contingent upon the General Assembly's authorization of the Project. No Project will be submitted for authorization without an executed MOU.

B. Legislative Approval: Until the Kentucky General Assembly authorizes a project and the Chief Justice issues a notice to proceed, Judicial Branch projects do not exist and are considered proposals.

C. Project Development Board (PDB): Upon legislative authorization establishing a Project, the Chief Justice will authorize the establishment of a PDB for each Project, through the issuance of a Notice to Proceed. The PDB must comply with the MOU and AP Part X in all actions taken in furtherance of the Project.

D. Final Project Program Documents Preparation: After the execution of an MOU, authorization by the General Assembly, and a mutual determination by the AOC and the Owner that the scope and cost of the building is supportable, the DCC will prepare Final Project Program Documents as required by KRS § 26A.160(2)(b).

1. The Final Project Program Documents will detail the estimated costs associated with the Project and all of the space requirements in the Project and will list required facility components and existing facility components.

2. **Project Scope:** The Final Project Program documents will identify any and all anticipated functional and non-functional areas within the proposed Project. This document must be used by the PDB and the A-E to develop the Project.

3. **Cost Estimate:** The cost estimate included in the Final Project Program Documents is the final approved budget and must not be exceeded unless so authorized in writing by the AOC Budget Director. The PDB must direct the A-E to design a facility that does not exceed the amount stated in the cost estimate. The cost estimate must include, as one of its components, an estimated cost of construction.

4. **Project Contingency:** The Final Project Program Documents will identify a project contingency amount, which may be modified in the discretion of the AOC Budget Director. This project contingency is intended to be used to resolve unforeseen or unknown issues

or conditions; to make necessary modifications to increase efficiency or durability of primary and supporting facility components; and to support necessary miscellaneous expenses associated with the Project in the discretion of the AOC Manager of Capital Construction and the AOC Budget Director. The AOC has the sole discretion to determine what items are paid from project contingency funds.

2-3 DUTIES AND RESPONSIBILITIES

A. **The AOC Division of Capital Construction:** All KCOJ facilities within the Commonwealth of Kentucky are subject to the direction and control of the Chief Justice. The AOC Division of Capital Construction is a division of the Office of Budget and Policy. It reports to the Budget Director and the AOC Director on all matters concerning the construction of KCOJ capital projects. The AOC Division of Capital Construction is responsible for the development of KCOJ construction projects in accordance with AP Part X and KRS § 26A.160.

B. **The AOC Manager of Capital Construction or AOC Project Coordinator** ensures the KCOJ's interests and expectations relating to facility development are met. The AOC Manager of Capital Construction or Project Coordinator will:

1. Act as a liaison between the PDB and the AOC.
2. Provide guidance to the PDB on the requirements of AP Part X and on all matters relating to court facilities criteria, design guidance, policies and procedures.
3. Review contracts and contract documents for substance and accuracy prior to submitting them to the Office of Legal Services for review.
4. Monitor the progress of A-E services for design through construction (Phase A through Phase D) to ensure compliance with program documents and AP Part X.
5. Review payment applications from all GCs, A-Es, CMs, and other consultants or construction service providers, as applicable, to ensure accuracy prior to consideration by the AOC Budget Director.
6. Review and make recommendations to the Budget Director concerning the approval, or disapproval of any and all Change Order Requests and Change Orders.
7. Ensure that all financial matters pertaining to the Project are submitted to the AOC Budget Director for consideration.
8. Make recommendations to the AOC Director and the Chief Justice on matters relating to the Project.
9. Assist the PDB during presentations to the Capital Projects and Bond Oversight Committee.
10. Execute other duties as prescribed by AP Part X.

C. **The AOC Budget Director** oversees all financial matters pertaining to the Project. The duties of the AOC Budget Director with respect to the KCOJ Capital Construction Program include but are not limited to:

1. Establishment of the financial condition of a proposed Owner as required by KRS § 26A.160(2)(c).

2. Preparation of the KCOJ's six-year capital plan.
3. Oversight of interim financing.
4. Oversight of bond sales.
5. Authorization, authorization with adjustments, or disallowance of payment applications.
6. Review and approval or disapproval of all Change Orders.
7. Review and approval or disapproval of final Project and Project closeout payments.

CHAPTER 3 – OWNER AND PROJECT DEVELOPMENT BOARD

3-1 GENERAL

A. **The Owner** must comply with all the requirements of AP Part X.

B. **The Project Development Board (PDB)** is a KCOJ body created pursuant to AP Part X. The PDB acts as the agent of both the Owner and the KCOJ during the development of the Project. The requirements concerning the composition, authority, responsibilities, and actions of the PDB are detailed in this Chapter. The PDB must not act as the PPC.

3-2 PDB FORMATION

A. **Notice to Proceed:** After a Project has been authorized by the General Assembly, the Chief Justice will notify the AOC Director and the Owner that the Project may proceed through the issuance of a written Notice to Proceed.

1. No steps may be taken in furtherance of the development of the Project until the Chief Justice has issued a Notice to Proceed.

2. Upon receipt of the Notice to Proceed, the Owner and the AOC must establish the PDB.

B. **PDB composition:** The PDB is comprised of six voting members and four advisory non-voting members:

1. Voting Members:
   a. The Owner's highest elected official (i.e. County Judge-Executive, Mayor, etc);
   b. The county's most senior (by local term) Circuit Judge;
   c. The county's most senior (by local term) District Judge;
   d. The county's Circuit Court Clerk;
   e. A citizen-at-large who resides in the county where the Project is to be located, to be appointed by the AOC Director; and
   f. A designee of the Executive Director of the Kentucky Bar Association.

2. Advisory Members:
   a. AOC Manager of Capital Construction or AOC Project Coordinator;
   b. AOC Budget Director;
   c. AOC General Counsel or designee; and
   d. The Owner's legal counsel (e.g. the County Attorney).

3. The AOC Manager of Capital Construction or the AOC Project Coordinator will attend PDB meetings regularly. The AOC Budget Director and/or the AOC General Counsel or designee is available to attend PDB meetings by phone or in person upon request.

4. The AOC Manager of Capital Construction or designee will be considered a voting member of the PDB only for the purpose of achieving a quorum or to break a tie vote.

C. **Failure to Appoint:** Any appointing authority who does not appoint a member to the PDB within thirty (30) days of the issuance of the Notice to Proceed forfeits the appointment authority to the AOC Director.

D. **PDB Chair:** The Owner's highest elected official is the Chair of the PDB. In the event that the Owner's highest elected official resigns, refuses to serve, or is removed from the PDB, the PDB Vice-Chair assumes the duties of PDB Chair.

E. **PDB Vice-Chair:** The PDB must elect one of the judicial officials on the PDB (the Circuit Judge, the District Judge, or the Circuit Court Clerk) to serve as Vice-Chair.

F. **Executive Committee:** The Executive Committee is comprised of the PDB Chair, the PDB Vice-Chair, and the AOC Manager of Capital Construction or designee.

G. **PDB Orientation and Training:** Before the first meeting of the PDB, members of the PDB and the Owner's legal counsel must attend an orientation scheduled and conducted by the AOC Project Coordinator and the AOC General Counsel or designee. This Orientation will inform PDB members of the requirements of AP Part X, the budget and scope of the authorized Project, and other matters relating to duties and responsibilities of the PDB. A PDB member may be excused from attending the Orientation if he or she has attended an Orientation for another Project governed by the current version of AP Part X.

H. **PDB Term:** The PDB will continue to meet as required by Section 3-4(D)(2) until final payment has been made to the A-E and the construction service provider. After Project completion, the Owner must manage the Project in accordance with KRS § 26A.110, KCOJ policy, and the Court Facilities Local Government Reimbursement Form (Blue Form) developed by the AOC.

3-3 PDB MEMBERS

A. Resignation, Removal, or Nonparticipation of PDB Members: When a PDB member chooses not to serve on the PDB, resigns from the PDB, or is removed from the PDB, the AOC Director will determine whether a replacement will be appointed or whether the position will remain vacant. When the AOC Director determines that a replacement will be appointed:

1. The AOC Director may appoint the replacement of the citizen-at-large; and
2. The Executive Director of the KBA may appoint the replacement of its designee.

B. Absence: Absence of a PDB member from three (3) consecutive PDB meetings or more than six (6) PDB meetings in a twelve (12) month period may be considered as nonparticipation and the PDB may request the AOC Director to determine that a replacement be appointed for that member.

C. Absence Due to Prolonged Illness or Convalescence: When a prolonged illness or other specific hardship requires a PDB member to be absent for longer than three (3) consecutive monthly meetings, that PDB member's appointing authority may, with the approval of the AOC Director, appoint a designee to fulfill the absent member's obligation until that member is of sufficient health or otherwise able to attend PDB meetings.

D. Conflict of Interest:

1. A member of the PDB must recuse from the conversation and vote regarding project delivery methodologies if the member or his/her immediate family is employed by or has received a financial benefit from any CM or GC. The PDB member must disclose any such potential conflict to the PDB and the AOC Manager of Capital Construction.

2. If a PDB member or his/her immediate family is employed by or has received a financial benefit from a construction or professional services provider who has submitted a bid or

proposal to contract with the Owner in furtherance of the Project, the member must recuse from the conversation and vote regarding award of that contract. The member must disclose any such potential conflict to the PDB and the AOC Manager of Capital Construction.

3. No member of the PDB or his/her immediate family may be employed by or receive any financial benefit from an entity contracted by the Owner in furtherance of the development of the Project, including, but not limited to, the A-E, the CM, the GC, and the Financial Advisor.

    a. If a member or his/her immediate family becomes employed by or receives a benefit from such an entity, the member must immediately report the employment or the benefit to the AOC Director and the PDB.

    b. The AOC Director will determine whether the member may remain on the PDB in either a full or limited capacity or whether the member must be removed from the PDB.

4. "Immediate family" means the spouse, child, parent, or sibling of the member or of the member's spouse.

E. Unprofessional and/or Obstructionist Conduct: If the AOC Director or the PDB by majority vote, determines that the conduct of a sitting PDB member is unprofessional or obstructionist, the AOC Director may remove the member from the PDB. Unprofessional or obstructionist conduct includes, but is not limited to, seeking to exceed the Project's authorized scope or budget; seeking to defy the requirements of AP Part X; violating the Conflict of Interest provision set forth in Section 3-3(D), above; or violating the ex parte contact provisions of Section 5-1(G) and (H), below.

F. Failure of PDB to Perform Required Duties and Responsibilities: The Chief Justice may terminate a PDB if the PDB fails to comply with AP Part X in a timely, diligent, and effective manner. In that event, the Chief Justice may authorize the AOC Division of Capital Construction to direct and complete the Project.

G. Expiration of term: Any elected official whose term ends during service on the PDB will be replaced by the next elected holder of that office.

3-4 MEETINGS

All regular, special, and emergency meetings of the PDB at which any public business is discussed or at which any action is taken by the PDB, are public meetings and must be open to the public at all times except for those instances listed in Section 3-4(G), below, which shall be strictly construed.

A. Quorum: A PDB may take final action on a matter only when a quorum is present. When more than half of the current voting PDB members are attending either in person, by phone, by video-teleconference, or by proxy, a quorum is present.

B. Proxy: From time to time, a PDB member who is unable to attend a PDB meeting may assign his or her vote to another PDB member by proxy. No person other than a current PDB member may be the proxy designee. The assignment must be made by a notarized writing that sets forth the name of the PDB member assigning his or her vote, the name of the proxy designee, the scope of the proxy (generally for all matters or, alternatively, to cast a specific vote on a specific agenda item), and the date of the meeting for which the proxy is valid. While a PDB member may assign his or her vote to another PDB member by proxy and that proxy will count toward making

a quorum, the PBD member who has assigned his or her vote by proxy is considered absent for the purposes of Section 3-3(B), above.

C. **Initial Meeting:** The Owner must document the establishment of the PDB in the Owner's record and must publicly advertise an initial public meeting notice on behalf of the PDB. The PDB must hold its first formal meeting at the existing courthouse in a room suitable for accommodating the PDB and the general public. The meeting should have the minimum agenda of:

1. Elect the PDB Vice-Chairperson who will act as Chair in the absence of the PDB Chairperson;

2. Establish subsequent regular meeting schedules that will be held at a suitable time, date, and location as may be determined by the PDB, with adequate accommodations to serve the public and to conduct the business of the Project; and

3. Identify PDB tasks, duties and responsibilities with the guidance of the AOC Project Coordinator.

D. **Regular Meetings**

1. **Public Notice:** The PDB must provide public notice of the approved regular meeting schedule. This notice is required to be published once, provided the regular schedule is maintained. Any special meetings require a minimum public notice of twenty-four (24) hours by either courthouse posting or local public broadcast.

2. **Schedule:** The PDB must conduct business monthly, typically in a regularly scheduled meeting (e.g. 1st Tuesday each month), at the same location, unless the PDB is awaiting services (e.g. appraisals, plans, etc.) and/or there is no critical business to be addressed.

3. **Attendance**: Individual members may telephonically attend meetings if personal attendance is not possible. The PDB is permitted to conduct meetings via video or teleconferencing at such locations where the general public may also attend.

4. **Agenda:** All meetings must include an agenda established by the Chairperson. The agenda must include: date and time, location, purpose of meeting, issues to be addressed, list of persons scheduled to speak, and contact information.

5. **Minutes:** All meetings must be recorded or transcribed. The meeting minutes must include the following:

    a. Name of the Project;
    b. Title: "Project Development Board Meeting Minutes";
    c. Date/Time;
    d. Meeting place;
    e. Attending PDB Members by roll call;
    f. Absent PDB Members;
    g. Attending persons related to the Project, including but not limited to the A-E, Financial Advisor, CM, Judicial Officials, and State and Local Officials, but excluding members of the general public; and
    h. Record of discussion topics, events, and actions, including but not limited to motions, seconds, votes, and discussions.

The Owner must provide all PDB Members and the AOC Division of Capital Construction with written minutes of each meeting within 5 business days after the meeting. Once the minutes have been approved by a majority vote of the PDB at the next meeting, they

must be maintained in the Owner's Project file and made available to the public upon request.

6. **Voting:** The PDB must vote on all matters pertaining to the Project. Votes must be recorded and reflected in the minutes.

E. Special Meetings:

1. **Authority to call a special meeting:** The Chair, Vice-Chair, or AOC Manager of Capital Construction may call a special meeting.

2. **Notice:** The Chair or Vice Chair must provide notice of a special meeting at least 24 hours prior to meeting. The notice shall consist of the date, time, place and agenda of the special meeting.

   a. PDB Members – written notice must be given to PDB members and may be delivered in person, by email, or by fax.

   b. Public - notice to the Public must be posted in the courthouse or the building where regular PDB meetings are held, and may be given by local public broadcast.

3. **Agenda:** No discussions or final actions may be undertaken at the meeting unless they concern items listed on the agenda in the notice.

F. Emergency Meetings:

1. In the case of an emergency which prevents compliance with the notice requirements in Section 3-4(E)(2), above, the PDB must make a reasonable effort to notify members of the PDB and the public of the emergency meeting.

2. At the beginning of the emergency meeting, the Chair or Vice-Chair must briefly describe for the record the emergency circumstances preventing compliance with the notice requirements. The description of the emergency circumstances must be recorded in the meeting minutes.

3. Discussions and actions taken at the emergency meeting are limited to the emergency for which the meeting is called.

G. Exceptions to Open Meetings: Exceptions to the open meetings requirements may be made when the following subjects are under discussion:

1. Initial consideration of submittals by professional or construction service providers where disclosures of proposals or bids submitted may jeopardize the Project;

2. Preliminary deliberations for decisions relating to the selection of professional service providers;

3. Deliberations by the PDB on the future acquisition of property if publicity would likely affect the value of the property;

4. Discussions of proposed or pending litigation against, or on behalf of, the PDB;

5. Discussions or hearings which might lead to the appointment, discipline, or dismissal of a PDB member, or a professional or construction service provider;

6. That portion of a meeting devoted to a discussion of a specific public record exempted from disclosure; and

7. Initial discussion on design issues that occur prior to selection of an A-E.

H. Requirements for Conducting Closed Meetings: The following requirements must be met before conducting closed sessions:

1. **Public Notice:** In a regular open meeting, a member of the PDB who moves to convene the PDB in closed session must state the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of Section 3-4(G), above, which authorizes the closed session.

2. **Vote:** Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session. The motion must be in the following format:

   "I hereby move to convene the PDB in a closed session for the purpose of _____ as authorized pursuant to AP Part X, Chapter 3, Section 3-4(G)(___).

3. **Agenda:** The discussions in closed session may only concern those matters which are publicly announced prior to convening the closed session.

4. **Final Action:** No final action may be taken at a closed session.

5. **Confidentiality:** Conversations and comments which occur in a closed session must remain confidential except as otherwise determined by the PDB to be made public. Violations of this provision may result in removal from the PDB pursuant to Section 3-3(E), above.

6. **Advisory Members:** Advisory members of the PDB cannot be prohibited from attending any meeting of the PDB, whether it is open or closed.

I. Executive Committee Meetings:

1. The Executive Committee is authorized to direct, monitor, and act on behalf of the PDB on all matters of Project administration, finance, design, and construction between regular PDB meetings if delay in a decision would impact the Project's progress or contractual obligations.

2. Actions taken by the Executive Committee carry the same weight and authority as actions taken by the PDB and must be presented in writing to the PDB at the next regularly scheduled meeting for inclusion into the minutes.

3. The Executive Committee may act upon a majority vote of its members.

4. Executive Committee business may be conducted telephonically or electronically and does not require public notice.

3-5 ENFORCEMENT OF SECTION 3-4 BY ADMINISTRATIVE PROCEDURE

A. **Complaints**: To enforce the provisions of Section 3-4, a person must submit a written complaint to the Chair or Vice-Chair of a PDB suspected of violating that Section. The complaint must detail the alleged violation and propose a remedy for the alleged violation. Within three (3) days after receipt of the complaint, excepting Saturdays, Sundays, and legal holidays, the PDB must determine whether to remedy the alleged violation and must issue a written response to the complaining party notifying him or her of its decision.

   1. If the PDB makes efforts to remedy the alleged violation, such efforts are not admissible as evidence of wrongdoing in an administrative or judicial proceeding.

   2. Any response of the PDB denying, in whole or in part, the complaint's requirements for remedying the alleged violation must include a statement of the specific rule or rules supporting its denial and a brief explanation of how the rule or rules apply.

   3. The PDB's response must be issued by the PDB Chair or the PDB Vice-Chair and constitutes final action.

B. **Review:** If a complaining party wishes the AOC to review a PDB's denial or the PDB's efforts to remedy the alleged violation, the complaining party must forward a copy of the written complaint, a copy of the PDB's written response, and a statement concerning the insufficiency of the PDB's efforts to remedy the alleged violation (if applicable) to the AOC General Counsel no more than sixty (60) days after receiving the PDB's written response. If the PDB refuses to provide a written denial, a complaining party must provide a copy of the written complaint within sixty (60) days from the date the written complaint was submitted to the PDB Chair or the PDB Vice-Chair. The AOC General Counsel will review the complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays, and legal holidays, a written decision stating whether the PDB violated the provisions of Section 3-4 and/or addressing the sufficiency of the PDB's efforts to remedy the alleged violation. In arriving at the decision, the AOC General Counsel may request additional documentation from the PDB. A copy of the decision will be mailed to the PDB and the complaining party.

C. **Appeal:** The complaining party shall have thirty (30) days from the day that the AOC General Counsel renders a decision to appeal that decision to the Circuit Court of the County where the PDB is located.

   1. When an appeal is properly filed, it shall be treated as if it was an action brought under Section 3-6 and the court shall determine the matter de novo.

   2. If an appeal is not filed within the thirty (30) day time limit, the decision of the AOC General Counsel shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the PDB is located.

D. **Notice:** The PDB must notify the AOC General Counsel of any actions filed against the PDB pursuant to Section 3-5 or Section 3-6.

3-6 ENFORCEMENT OF SECTION 3-4 BY JUDICIAL ACTION

A. The Circuit Court of the county where the PDB is located shall have jurisdiction to enforce the provisions of Sections 3-4, 3-5, and 3-6 as they pertain to that PDB, by injunction or other appropriate order upon a petition filed by any person.

B. A person alleging a violation of Section 3-4 shall not have to exhaust his or her remedies under Section 3-5(B) before filing suit in a circuit court. However, he or she shall file suit within sixty (60) days from receipt of the written denial referred to in Section 3-5(A) or, if the PDB refuses to

provide a written denial, within sixty (60) days from the date the written complaint was submitted to the PDB Chair or PDB Vice-Chair.

C. Except as otherwise provided by law or rule, proceedings arising under this Section shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

D. Any decision, resolution or other formal action of a PDB without substantial compliance with the requirements of Section 3-4 shall be voidable by a court of competent jurisdiction.

E. Any person who prevails against any PDB in any action in the courts regarding a willful violation of these rules may be awarded costs, including reasonable attorneys' fees, incurred in connection with the legal action. In addition, it shall be within the discretion of the court to award the person an amount not to exceed one hundred dollars ($100) for each instance in which the court finds a violation. Attorneys' fees, costs, and awards under this subsection shall be paid by the PDB responsible for the violation.

3-7 LEGAL SERVICES REQUIRED BY PDB

A. The Owner must provide basic legal representation to the PDB through its legal counsel at no cost to the PDB. Such representation includes, but is not limited to, representing the PDB / Owner in property transfers, basic condemnation proceedings, and basic construction disputes; reviewing contracts on behalf of the PDB; and providing general legal advice to the PDB, including legal advice about the procurement of professional and construction services and the validity of liens filed against Project funds.

B. If the Owner, its legal counsel, or the PDB determines that specialized or outside representation is required, the Owner may retain such outside counsel to represent the PDB in the matter and pay the costs associated with such representation. Any expenses associated with retaining outside counsel may be reimbursed from Project funds only if:

1. Prior to retaining outside counsel, the PDB has provided evidence to the AOC General Counsel that such legal services are required;

2. The retention of specialized or outside counsel has been approved by the AOC Manager of Capital Construction, the AOC Budget Director, and the AOC General Counsel;

3. Funds are available in the Project account; and

4. The hourly reimbursement rate does not exceed the Commonwealth's standard reimbursement rates for legal services as published by the Kentucky Legislature's Government Contract Review Committee unless otherwise approved by the AOC General Counsel.

C. Legal Actions: The Owner must provide written notice to the AOC General Counsel and the AOC Manager of Capital Construction of every legal action taken on behalf of the Owner or against the Owner in relation to the Project. Legal action includes, but is not limited to: filing of liens, filing of complaints, scheduling of mediations or settlement conferences, and initiation of arbitration proceedings. Neither the Owner nor the PDB may enter into a settlement agreement involving the Project until the AOC has had the opportunity to participate in settlement discussions, evaluate the claim and approve the settlement agreement.

3-8 ADMINISTRATIVE SUPPORT

A. The Owner is the custodian of all records relating to the Project and must provide primary administrative support for the PDB. Administrative support includes but is not limited to taking minutes of the PDB meetings and maintaining the Owner's files relating to the Project.

B. The PDB may procure administrative services to be paid from Project funds as deemed necessary and reasonable by a vote of the PDB and as approved by the AOC Budget Director. Statements for administrative support services must be submitted to the AOC Budget Director no less than once every three (3) months and must detail the services provided for the PDB and the time spent performing the services.

3-9 OTHER EXPENSES OF THE PDB

A. Expenses that are not specifically provided for herein will not be paid or reimbursed with Project funds unless the expense has been pre-approved by the AOC Budget Director.

B. An invoice for pre-approved expenses must be submitted to the AOC Budget Director for review and approval within forty-five (45) days of the date the expense is incurred.

C. Failure to comply with these requirements may result in a denial of reimbursement.

3-10 PROJECT EVALUATION

A. After construction has been completed and the KCOJ occupies the facility, and at the final meeting of the PDB, the PDB must meet in closed session, pursuant to Section 3-4 (G)(5), above, to complete a Project Evaluation Sheet on a form prescribed by the AOC. The PDB Chair must return the completed Project Evaluation Sheet to the AOC Manager of Capital Construction. The Project Evaluation Sheet will be made available to future PDBs as part of the professional service provider and construction service provider selection processes and must contain, at a minimum, the following:

- Evaluation of the A-E;
- Evaluation of the CM or GC;
- Evaluation of the Subcontractors;
- Evaluation of Project Change Orders;
- Suggestions that would have improved the Project; and
- Recommendations to improve the KCOJ Capital Construction Program.

B. Upon receipt of the Project Evaluation Sheet, the AOC Manager of Capital Construction must send each construction and professional service provider a copy of the portion of the Project Evaluation Sheet evaluating that construction or professional service provider's performance. Copies of the Project Evaluation Sheet must be maintained in the AOC's project files and in each construction or professional service provider's experience record file.

C. A construction or professional service provider may appeal in writing a below average evaluation to the PDB Chair within thirty (30) days of receipt of the PDB's evaluation of its performance on the Project. The PDB Chair must notify the construction or professional service provider within thirty (30) days from its appeal of his or her decision regarding whether to revise the evaluation.

D. The construction or professional service provider may appeal in writing the decision of the PDB Chair to the AOC Director within thirty (30) days. The AOC Director will review all

documentation relating to the construction or professional service provider's performance on the project. The AOC Director may discuss the evaluation with the PDB Chair or the construction or professional services provider. The AOC Director shall notify the construction or professional service provider and the PDB Chair of his or her decision within ninety (90) days from the date of appeal.

3-11 MAINTENANCE OF FACILITY AFTER COMPLETION

After construction has been completed and the KCOJ occupies the facility, the Owner must operate and maintain it in accordance with KRS Chapter 26A and policies and procedures developed by the AOC as set forth in the Court Facilities Local Government Reimbursement Form (Blue Form).

CHAPTER 4 – COURT FACILITIES STANDARDS COMMITTEE (CFSC)

4-1 GENERAL

The Court Facilities Standards Committee (CFSC) provides oversight for KCOJ Capital Projects. The CFSC members are appointed pursuant to KRS § 26A.090(7) and represent all three branches of government. The CFSC directs and approves program, design, construction, and budgetary aspects of Projects authorized by the Kentucky General Assembly.

4-2 COMPOSITION

A. **Voting Members:** Pursuant to KRS § 26A.090(7) the CFSC voting members are:

1. The Chief Justice of the Supreme Court of Kentucky or designee;
2. The AOC Director or designee;
3. The President of the Circuit Clerks' Association;
4. The Chairperson of the Senate Judiciary Committee of the General Assembly;
5. The Chairperson of the House Judiciary Committee of the General Assembly;
6. The Secretary of the Finance and Administration Cabinet or designee;
7. One (1) judge of the Court of Appeals appointed by the Supreme Court;
8. One (1) judge of the Circuit Court appointed by the Supreme Court;
9. One (1) judge of the District Court appointed by the Supreme Court; and
10. One (1) County Judge/Executive appointed by the Governor.

B. **Advisory Committee Members:**

1. AOC Budget Director;
2. AOC Manager of Capital Construction; and
3. AOC General Counsel or designee.

C. **Term:** Each appointed member will serve a term of four years from the date of appointment. When a member vacates the qualifying office on which his or her appointment was based, his or her term ends and a new member will be appointed

D. **Committee Chairperson:** The Chief Justice or designee is the CFSC chairperson for a term designated by the Chief Justice.

E. **Administrative Support:** The DCC will provide administrative support for the CFSC.

F. **Chief Justice:** The Chief Justice has final authority for the approval or disapproval of any Project, Project components, or procedures.

4-3 DUTIES AND RESPONSIBILITIES

A. **CFSC**: The duties and responsibilities of the CFSC are set forth in KRS Chapter 26A and include the following:

1. The CFSC must provide for periodic review of each court facility and may make recommendations for improvements. Such periodic review includes:

   a. Review of progress and financial status of Projects under construction; and

   b. Review of presentations or information concerning current or proposed court facility projects in the discretion of the Chief Justice or the CFSC Chair.

2. The CFSC must approve the Phase A (schematic) design cost estimate and financing prior to authorization for a Project to proceed to design development, construction documents, and construction phases.

3. The CFSC must ensure that construction Projects are in compliance with AP Part X and the authorized scope and use allowance.

4. The CFSC considers and makes determinations concerning requests for changes in scope or cost.

    a. If a change in cost results in an increase in the authorized use allowance, the CFSC must approve the increase before the KCOJ may agree to utilize the use allowance contingency fund as established by KRS § 26A.164(1) to cover the increase.

    b. The CFSC cannot approve an increase in the authorized use allowance of more than 15% of the original authorized use allowance. Any request to do so must be submitted by the AOC to the Capital Projects and Bond Oversight Committee for final approval.

B. AOC:

1. The DCC and the AOC Budget Director must review Phase A presentation documents for compliance with AP Part X.

2. The DCC must report to the CFSC the progress of Projects under construction.

3. The Office of Legal Services advises the CFSC as to the legality of its proposals and actions.

4. The DCC provides administrative support for the CFSC.

C. OWNER: The Owner must attend all CFSC meetings that pertain directly to the Owner's Project to verify community support, issues, or concerns.

4-4 MEETINGS

A. Public Notice: CFSC meetings are open to the public. Notice of a meeting must be published on the KCOJ web site.

B. Schedule: The Chief Justice has the discretion to schedule meetings or cancel or postpone a CFSC meeting.

C. Procedures:

1. Rules:

    a. The CFSC meetings must be conducted in accordance with Roberts Rules of Parliamentary Procedure.

    b. Feasibility Study presentations will be included on the agenda upon written request of the PDB and approval of the DCC.

    c. Phase A design presentations will be included on the agenda upon written request of the PDB and approval of the DCC. The PDB's written request must

be submitted to the DCC for consideration forty-five (45) calendar days prior to a scheduled meeting date.

2. Topics: Feasibility Study presentations, Phase A presentations, and project status reports for existing and proposed Projects may be presented to the CFSC. Any other topics may be submitted to the CFSC or discussed at the meeting only if approved in advance by the Chief Justice or the CFSC Chair.

3. The A-E must compile the results of a Feasibility Study, if applicable; and present them to the CFSC, if so directed by the PDB and the DCC.

4. The A-E must prepare Phase A presentation materials and present them to the CFSC.

   a. Four (4) copies of the Phase A presentation materials must be submitted to the DCC for review no less than twenty-one (21) days prior to the scheduled CFSC meeting.

   b. The DCC must advise the A-E of any deficiencies in the material no less than five (5) calendar days following the submittal.

   c. No less than ten (10) days prior to the scheduled meeting, the A-E must provide the DCC with thirty (30) copies of Phase A materials as approved by the DCC.

5. **Minutes:** CFSC meetings must be recorded electronically or by court reporter. Minutes of each meeting must be reviewed and approved by the CFSC at the beginning of the next scheduled meeting and retained in the DCC's files.

6. **Quorum:** Six (6) members must be present to achieve a quorum.

CHAPTER 5 – PROCUREMENT OF AND PAYMENT FOR CONSTRUCTION AND PROFESSIONAL SERVICE PROVIDERS

5-1 GENERAL

A. Professional service providers for projects within the KCOJ Capital Construction Program include the A-E, the CM, the Financial Adviser, and any other consultants retained by the PDB and approved by the AOC pursuant to AP Part X.

B. The PDB must execute and oversee the selection of all construction and professional service providers in accordance with AP Part X.

C. All professional services for KCOJ Projects must be procured through a competitive process in which service providers for each Project are selected on the basis of an evaluation of qualifications, capabilities, and experience. Price must be included as a criterion for selection of a professional services provider when a fee schedule has not otherwise been set by AP Part X.

D. The PDB must determine the project delivery method it will use to construct the Project before issuing Requests for Proposals for Construction Managers or Architects. Acceptable project delivery methods include:

1. Design-bid-build with construction services provided by a General Contractor; or
2. Construction Management at-risk.

No other project delivery methods may be considered. If a PDB who has initially chosen to construct the Project using a Design-bid-build project delivery method subsequently decides to use a CM-at risk project delivery methodology, the PDB must select the CM as early in the design phase for the Project as possible, and in no event after the conclusion of Phase B.

E. If the PDB elects to use Construction Management at-risk, the selection of a CM will proceed in accordance with this Chapter. If the PDB elects to use the Design-bid-build project delivery method, the procurement of a GC will proceed in accordance with Chapter 11.

F. A PDB must not select the same entity to provide both architectural services and construction management services on the same Project.

G. Discussions with general contractors and professional service providers or any paid consultant, contract employee, or representative of the general contractor or professional service provider by any member of the PDB relative to the procurement must be discouraged, except during an interview in accordance with this Chapter. Members of the PDB must not discuss matters relating to a KCOJ Capital Construction Project with a representative of any general contractor or professional service provider until such a general contractor or professional service provider has been selected by the PDB and the selection has been announced in open session.

H. Any contact described in Section 5-1(G), above, is ex parte contact. A PDB member must report any ex parte contact to the AOC Manager of Capital Construction and the PDB. A PDB member who does not comply with this section or Section 5-1(G), above, may be removed from the PDB in the discretion of the AOC Director pursuant to Section 3-3(E), above. In the discretion of the AOC Director or by majority vote of the PDB, a professional service provider's response to an advertisement for services may be rejected if that professional service provider has made ex parte contact with any PDB member.

I. Each offeror who responds to a Request for Proposals (RFP) for professional services on a Project within the KCOJ Capital Construction Program must accurately complete and include with

its response to the RFP a Disclosure of Conflicts Statement (Disclosure) on a form prescribed by the AOC. The Disclosure will contain a verification that the offeror, including any paid consultant, contract employee, or representative of the offeror, has not had any ex parte contact with any member of the PDB and must include the disclosure of any conflicts that may exist pursuant to Section 3-3(D). Failure to accurately complete the Disclosure and return it prior to the date in the RFP will result in a finding that the offer was nonresponsive.

J. The Owner must keep all documents relating to the evaluation of professional service providers in its Project file.

K. Protests: The AOC Director has authority to determine protests and other controversies of actual or prospective bidders or offerors in connection with the solicitation or selection for award of any contract by the Owner or subcontract by the CM within the KCOJ Capital Construction Program.

1. Only an actual or prospective bidder, offeror, or contractor who is allegedly aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the Director of the Administrative Office of the Courts. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such allegedly aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.

2. The AOC Director will promptly issue a decision in writing. A copy of that decision will be mailed or otherwise furnished to the aggrieved party and will state the reasons for the action taken.

3. The decision by the AOC Director is final and conclusive.

4. The policies and procedures used by the AOC Director to make determinations on bid protests will mirror those policies and procedures outlined in KRS § 45A.285, KRS § 45A.290, 200 KAR 5:380, and the Summary of Finance and Administration Cabinet's Protest Procedure located at http://www.finance.ky.gov/ourcabinet/caboff/OGC/ .

5. Any provision in the above-referenced procedures notwithstanding:

   a. For protests based upon alleged improprieties in a solicitation for bids which relate to the solicitation documents themselves, the facts giving rise to the protest shall be presumed to have been known to the protester on the date the solicitation, or a modification to it, was published;

   b. For protests based upon alleged improprieties in the award of a contract, the facts giving rise to the protest shall be presumed to have been known to the protester on the date of the PDB meeting at which a vote was taken to award the contract or to approve the award of the subcontract.

5-2 PROCURING A-E SERVICES

A. SOLICITATION: The PDB must issue an RFP for architectural / engineering services.

1. The RFP must conform to the standard template in Figure 5-1, below.

2. The A-E must complete and submit in response to the advertisement an Architect-Engineer and Related Services Questionnaire, on a form prescribed by the AOC . The Questionnaire will require the A-E to verify that it understands the Project budget and

scope limits and will require the A-E to list all proposed design team members, including consulting engineers and all other consultants. It will include a Disclosure of Conflicts Statement in furtherance of Section 5-1(I). The A-E may also present any printed data, materials, or displays the A-E deems suitable for the PDB to consider.

3. The PDB must provide a copy of the program document and any special instructions to all interested parties who respond.

4. The PDB must advertise the RFP for A-E services in the county's legal newspaper and in the one of the following with the largest circulation in the County where the Project is located: Kentucky Enquirer, the Louisville Courier-Journal or the Lexington Herald Leader. *See figure 5-1 for sample advertisement.*

5. Direct Solicitations: Concurrent with or following the publication of the RFP, the PDB may also solicit any qualified and competent design service provider, based on past service on a KCOJ Project, to submit a Questionnaire and letter of interest.

6. Immediate Services required: Should immediate A-E services be required for a Project for reasons including, but not limited to, the termination of an existing A-E, or abandonment of a Project by an A-E, the PDB may, with approval from the AOC Manager of Capital Construction, procure services of an A-E who is currently providing services or has in the past provided services for another KCOJ Project to the satisfaction of the AOC, without having to execute the selection process herein described.

7. Architectural / Engineering Services sample notice:

REQUEST FOR PROPOSALS FOR ARCHITECTURAL SERVICES

The *(Name)* County Project Development Board (PDB) proposes to construct a new judicial center (or renovate existing courthouse) to be located in *(City Name)*, KY. The PDB invites interested architectural firms to submit a Court of Justice Architect-Engineer and Related Services Questionnaire along with a letter of interest to the *(Local Unit of Government)*, *(Mailing Address)*, KY *(Zip Code)*. Proposals shall be returned to the address above no later than *(Month/Day/Year), (Time)*. Proposals received after this date and time shall not be considered.

The Questionnaire and project program documents may be obtained from the office above, either personally or by mail, or may be requested from the AOC Division of Capital Construction at CapitalConstruction@kycourts.net.

The PDB will select at least 3 firms to be interviewed by the PDB. The selection of these firms will be based on the criteria listed in the Kentucky Court of Justice Administrative Procedures for the Court of Justice Part X, Section 5-2, which can be accessed at http://courts.ky.gov/aoc/facilities/facilitiesprojectdevelopment.htm.

Figure 5-1. Sample Advertisement for Architectural Services

B. INTERVIEWS: Subject to Section (B)(2), below, the PDB must interview at least three (3) A-E firms who have timely responded to the RFP.

1. The PDB must select the interviewees based on the following criteria:

   a. Experience and ability, taking into consideration the number of professionals in the firm; the number of technical, administrative and other personnel in the firm; the number of years the firm has been in the business; the types of projects on which the firm has provided professional design services; qualifications and

experience of the proposed project team; availability of technical equipment; and volume of design work in the last three years;

b. Past performance, taking into consideration the firm's ability within the past three (3) years to design projects within specific project budgets and schedules; the average percentage by which construction bids deviated from the estimated construction cost; Change Orders as a percentage of the bid construction amount (including whether the Change Orders were requested by the Owner, caused by errors and omissions of the architect, or caused by found conditions or regulatory decisions); design performance and experience with prior projects of similar type and scope; construction supervision services and post construction services; and record of compliance with regulatory agencies, environmental regulations, equal employment opportunity regulations, and building codes;

c. Existing workload relative to the size of the firm and capacity to perform the project;

d. Payment of sub-consultants;

e. A proposed lump sum fee for completing a feasibility study for a renovation of or constructing an addition to the existing facility, if the RFP contemplates such a study; and

f. Any Project Evaluation Sheets completed by another PDB in furtherance of Section 3-10, above or by a CM or GC in furtherance of Sections 8-3(F) or 11-4(D), below.

g. The selected firm must be owned by a licensed A-E.

2. If fewer than three (3) A-E firms respond to the RFP, all of the responsive A-E firms must be granted an interview and the PDB is not required to evaluate the proposals prior to the interview.

3. Members of the PDB must each use a Proposal Evaluation Sheet, a form prescribed by the AOC, to evaluate the proposals.

4. A designee of the PDB will record the composite score from each individual Proposal Evaluation Sheet on the Evaluation Summary Sheet, a form prescribed by the AOC.

5. The highest evaluated finalists according to the Evaluation Summary Sheet will be invited to participate in the interview process.

6. The PDB must notify each finalist of the time and place of the interview, the names of the other finalists, and the selection criteria for the interview. The PDB must notify the finalists of the interview date at least two (2) weeks in advance thereof.

7. The PDB must notify each firm that responded to the RFP of the finalists and the rest of the procedure that will be followed in the awarding of the contract.

8. The AOC will provide a standard Evaluation Score Sheet to be filled out by the PDB members evaluating the interviews. The Evaluation Score Sheet will contain weighted criteria upon which the PDB will score the interviewees. A PDB must obtain prior approval from the AOC Manager of Capital Construction before deviating from the weighted criteria in the Evaluation Score Sheet. Each Evaluation Score Sheet will require

the PDB member to sign a statement that he or she has complied with Section 3-3(D) and 5-1(H), above, or otherwise to list any ex parte communication that has occurred.

9. The PDB will interview the finalists, preferably on the same day. The finalists will be interviewed one at a time, and each interview will be attended only by representatives of the finalist and members of the PDB. The PDB members must keep confidential the substance of the interviews until a contract is awarded.

10. A typical A-E presentation is limited to thirty (30) minutes followed by a fifteen (15) minute question and answer session. The PDB may alter the format as it deems appropriate.

C. **SELECTION:** Each PDB member present at the interviews must fill out an Evaluation Score Sheet either during the interviews or in closed session afterward.

1. A designee of the PDB will record the composite score from each individual Evaluation Score Sheet on an Evaluation Summary Sheet, a form prescribed by the AOC.

2. The firm with the highest rating on the Evaluation Summary Sheet is the selected offeror.

3. The PDB must attempt to negotiate an hourly fee for additional services with the selected offeror in accordance with Section 7-4(D)(1); the base rate for the A-E fee will be in accordance with Table 7-1.

4. If the PDB is unable to reach an agreement with the selected offeror, the PDB may terminate negotiations and negotiate an agreement with the next highest-rated offeror.

D. **PROCUREMENT OF A-E SERVICES:** The Owner must enter into a contract with the A-E selected by the PDB upon receipt of written authorization from the AOC Manager of Capital Construction. The Owner must use a standard form contract as developed and maintained by the AOC.

5-3 PROCURING CONSTRUCTION MANAGEMENT SERVICES

A. **SOLICITATION:** If the PDB has voted to use a CM at-risk project delivery method, the PDB must issue a Request for Proposals (RFP) for construction management at-risk services simultaneously with its issuance of an RFP for A-E services.

1. The RFP must conform to the standard template in Figure 5-2, below.

2. The CM selection process will be undertaken simultaneously with the A-E selection process, set forth in Section 5-2, above.

3. The PDB must provide a copy of the program documents and any special instruction to all interested parties who respond.

4. The CM must complete and submit in response to the RFP a Construction Services Provider Questionnaire, on a form prescribed by the AOC.

5. The Questionnaire will require that the CM provide the following information:

a. An assumed Project schedule ("Proposed Project Schedule") through all Phases, outlined in Chapter 6. The Proposed Project Schedule will outline:

i. The basis and assumptions made for the durations of each pre-construction phase; and

ii. The basis for durations and assumptions made for the duration of Phase D.

b. The CM Project team and detailed information on the team including the following:

i. Each individual that will be involved in the Project;

ii. Resumes for each individual listed; and

iii. A description of each individual's role during pre-construction phases including a description addressing the following topics:

- Pre-construction estimating;
- Pre-construction project scheduling and design document progress assessment;
- Pre-construction constructability analysis relating to site scope, architectural systems, structural systems, mechanical systems and electrical systems; and
- Pre-construction project progress reporting.

iv. A description of each individual's role during Phase D including a description addressing the following topics:

- Construction scheduling;
- Daily subcontractor communications and coordination;
- Change Order management;
- Quality control management;
- Construction Document clarification process;
- Weekly meeting management;
- Mechanical/electrical/plumbing/fire protection coordination drawing process;
- Submittal process;
- Punch list management;
- Interface with inspection agencies;
- Pay Application process; and
- Dispute resolution process.

v. The minimum amount of time that each person will be dedicated in each phase of the pre-construction for each month of the Proposed Project Schedule.

vi. The minimum projected amount of time (to be re-assessed during the GMP Phase D Amendment) that each person will be working during each month of Phase D of the Project, both on site and off site.

vii. The projects on which each individual has worked and their roles relating to those listed projects.

viii. The projects on which the proposed members have worked with each other.

c. Sample documentation from other projects including:

i. Pre-construction estimating.

ii. Pre-construction Project schedules.

iii. Construction Project schedules.

iv. Monthly progress reporting for pre-construction activities.

v. Monthly progress reporting for construction activities.

vi. Pre-construction phase meeting minutes.

vii. Construction phase meeting minutes.

viii. Quality Control Program and documentation demonstrating implementation of the Quality Control Program.

ix. Safety Program and documentation demonstrating implementation of the Safety Program.

d. History and Background information on the company, including the following information:

i. Number of construction professionals in the company;
ii. Number of administrative and other personnel in the company;
iii. Number of years the company has been in the business;
iv. Types of projects on which the company has provided construction management services;
v. Volume of construction management work in the last three years;
vi. Company's ability within the past three (3) years to construct projects within specific project budgets and schedules;
vii. Average percentage by which construction bids deviated from the estimated construction cost on projects completed within the past three (3) years;
viii. Change Orders as a percentage of the bid construction amount (including the nature of the Change Orders) on projects completed in the past three (3) years;
ix. Any final determinations of violations of KRS Chapters 136, 139, 141, 337, 348, 341, 342 and any other final determinations of violations from any regulatory agency in the past five (5) years; and
x. Existing workload of the company.

e. Proposed subcontract form which includes a flow down clause binding the subcontractor to all provisions of the contract between the Owner and the CM and the other contract documents as they apply to the subcontractor's portion of the work. No terms of the proposed subcontract form can conflict with or revise the contract forms developed and maintained by the AOC. No scope of work documents or narratives can include items which are designated as CM responsibilities and are included in its fee.

f. Proposed criteria for the requirement that subcontractors provide Payment and Performance bonds.

g. Statement of interest in self performance in all scopes of work that the CM may elect to competitively bid. Such statement shall include the CM's plan for managing and supervising such potential self performance of work, including, but not limited to, a description of how CM personnel that have management and supervision responsibilities of subcontractors will be utilized, if at all, in similar or related roles in the CM's possible self-performance.

h. A Disclosure of Conflicts Statement as set forth in 5-1(l), above.

i. Any other information which the CM wishes to submit to the PDB for its consideration.

5. The PDB must advertise the RFP for CM services in the county's legal newspaper and in the one of the following with the largest circulation in the County where the Project is located: Kentucky Enquirer, the Louisville Courier-Journal or the Lexington Herald Leader. *See Figure 5-2. For sample advertisement.*

6. Direct Solicitations: The PDB may also solicit any qualified and competent construction management service provider, based on past service on a KCOJ Project, to submit a Questionnaire and letter of interest.

7. Immediate Services required: Should immediate CM services be required for a Project for reasons including, but not limited to, the termination of an existing CM, or abandonment of a Project by a CM, the PDB may, with approval from the AOC Manager of Capital Construction, procure services of a CM who is currently providing services or who has in the past provided services for another KCOJ Project to the satisfaction of the AOC, without having to execute the selection process herein described.

8. Sample Advertisement for CM at-risk services:

ADVERTISEMENT
FOR
AT RISK CONSTRUCTION MANAGEMENT SERVICES

The *(Name)* County Project Development Board (PDB) proposes to construct a new Judicial Center (or renovate existing courthouse) to be located in *(City Name)*, KY through a construction manager-at-risk. The PDB invites interested construction management firms to submit a Kentucky Court of Justice Construction Service Provider Questionnaire along with a letter of interest to the *(Local Unit of Government)*, *(Mailing Address)* , KY *(Zip Code)*. Proposals shall be returned to the address above no later than *(Month/Day/Year)*, *(Time)*. Proposals received after this date and time will not be considered.

The Questionnaire and project program documents may be obtained from the office above, either personally or by mail, or may be requested from the AOC Division of Capital Construction, CapitalConstruction@kycourts.net .

The PDB will select at least 3 firms to be interviewed by the PDB. The selection of these firms will be based on the criteria listed in the Kentucky Court of Justice Administrative Procedures for the Court of Justice Part X, Section 5-3, which can be accessed at http://courts.ky.gov/aoc/facilities/facilitiesprojectdevelopment.htm.

Figure 5-2. Sample Advertisement for CM Services

B. INTERVIEWS: Subject to Section B(3), below, the PDB must interview at least three (3) CM firms which have timely responded to the RFP.

1. An offeror must possess:

   a. A minimum of five (5) years experience as a CM or GC;

   b. Current membership in the national association or state chapter of the Associated General Contractors of America, the Associated Builders and

Contractors, Inc., or the Construction Management Association of America ; and

c. The ability to obtain and maintain professional liability insurance and bonding in accordance with The Rules of Administrative Procedure of the Court of Justice, Part X, Capital Construction Program .

2. If fewer than three (3) CM firms respond to the RFP, all of the responsive CM firms must be granted an interview and the PDB is not required to evaluate the proposals prior to the interview.

3. Members of the PDB must each use a Proposal Evaluation Sheet, a form prescribed by the AOC, to evaluate the proposals. The Proposal Evaluation Sheet will include the following selection criteria:

   a. Reasonableness, clarity, basis and presentation of the assumed Project Schedule;

   b. Reasonableness, clarity, basis and presentation of the assumed Construction Schedule;

   c. Qualification of proposed pre-construction personnel, including:

      i. Experience on similar projects; and
      ii. Experience in proposed role.

   d. Qualification of proposed construction personnel, including:

      i. Experience on similar projects; and
      ii. Experience in the proposed role.

   e. Level of pre-construction Phase services represented by the minimum amount of hours committed.

   f. Level of Phase D services represented by the minimum projected amount of hours committed.

   g. Proposed criteria for the requirement that subcontractors provide Payment and Performance Bonds.

   h. Experience and ability, including:

      i. Number of construction professionals in the company;
      ii. Number of administrative and other personnel in the company;
      iii. Number of years the company has been in the business;
      iv. Construction management performance and experience with prior projects of similar type and scope;
      v. Volume of construction management experience in the last three (3) years;
      vi. The company's ability within the past three (3) years to construct projects within specific project budgets and schedules;
      vii. The average percentage by which construction bids deviated from the estimated construction cost on projects completed in the last three (3) years;

viii. Change orders as a percentage of the bid construction amount (including the nature of the Change Orders) on projects completed in the last three (3) years;
ix. Compliance with applicable federal, state, and local regulations; and
x. Existing workload relative to the size of the company and capacity to perform the project.

i. Any Project Evaluation Sheets completed by another PDB in furtherance of Section 3-10, above or by an A-E in furtherance of Section 7-3(A)(4)(p), below.

4. A designee of the PDB will record the composite score from each individual Proposal Evaluation Sheet on the Evaluation Summary Sheet, a form prescribed by the AOC.

5. The highest evaluated finalists according to the Evaluation Summary Sheet will be invited to participate in the interview process.

6. The PDB must notify each finalist of the time and place of the interview, the names of the other finalists, and the selection criteria for the interview. The PDB must notify the finalists of the interview date at least two (2) weeks in advance thereof.

7. The PDB must notify each firm that responded to the RFP of the finalists and the rest of the procedure that will be followed in the awarding of the contract.

8. The AOC will provide a standard Evaluation Score Sheet to be filled out by the PDB members evaluating the interviews. The Evaluation Score Sheet will contain criteria upon which the PDB will score the interviewees; and those criteria will be similar to the criteria set forth in the Proposal Evaluation Sheet, set forth above. A PDB must obtain prior approval from the AOC Manager of Capital Construction before deviating from the weighted criteria in the Evaluation Score Sheet. Each Evaluation Score Sheet will require the PDB member to sign a statement that he or she has complied with Section 3-3(D) and 5-1(H), above, or otherwise to list any ex parte communication that has occurred.

9. Each finalist must bring to the interview a letter from its bonding company confirming its ability to furnish a Performance and Payment Bond equivalent to 100% of the projected construction budget as set forth in the Project Program Documents.

10. The PDB will interview the finalists, preferably on the same day. The finalists will be interviewed one at a time, and each interview will be attended only by representatives of the finalist and members of the PDB. The PDB members must keep confidential the substance of the interviews until a contract is awarded.

11. A typical CM presentation is limited to thirty (30) minutes followed by a fifteen (15) minute question and answer session. The PDB may alter the format as it deems appropriate.

E. **SELECTION:** Each PDB member present at the interviews must fill out an Evaluation Score Sheet either during the interviews or in closed session afterward.

1. A designee of the PDB will record the composite score from each individual Evaluation Score Sheet on the Evaluation Summary Sheet, a form prescribed by the AOC.

2. The CM firm with the highest rating on the Evaluation Summary Sheet must be selected as the CM for the Project.

F. **PROCUREMENT OF CM SERVICES:** The Owner must enter into a contract with the CM selected by the PDB upon receipt of written authorization from the AOC Manager of Capital Construction. The Owner must use a standard form contract as developed and maintained by the AOC. At the end of Phase C-CM, when the GMP has been established by public bid, the Owner must enter into an Amendment to the contract with the CM to establish the Guaranteed Maximum Price and the construction critical path schedule. The Amendment must be on a standard form developed and maintained by the AOC.

5-4 PROCURING FINANCIAL SERVICES

A. **SOLICITATION:** The PDB must issue an RFP for the services of a financial advisor.

1. The RFP must conform to the standard template in Figure 5-3, below.

2. The Financial Advisor must complete and submit in response to the advertisement a Financial Advisory Services Questionnaire on a form prescribed by the AOC. The Questionnaire will include a Disclosure of Conflicts Statement in furtherance of Section 5-1(I). The offeror may also present any printed data, materials, or displays the offeror deems suitable for the PDB to consider.

3. The PDB must provide a copy of the program document and any special instructions to all interested parties who respond.

4. The PDB must advertise the RFP for Financial Advisor services in the county's legal newspaper and in the one of the following with the largest circulation in the County where the Project is located: Kentucky Enquirer, the Louisville Courier-Journal or the Lexington Herald Leader. *See figure 5-3 for sample advertisement.*

5. **Direct Solicitations:** Concurrent with or following the publication of the RFP, the PDB may also solicit any qualified financial advisor, based on past service on a KCOJ Project, to submit a Questionnaire and letter of interest.

6. Financial Advisor Services sample notice:

Public Notice for Financial Advisory Services

The (Name) County Project Development Board (PDB) proposes to construct a new judicial center (or renovate the existing courthouse) located in (City Name), Kentucky. The PDB invites interested Financial Advisors to submit a Financial Advisor Questionnaire along with a letter of interest to the *(Local Unit of Government)*, *(Mailing Address)*, KY *(Zip Code)*. The Questionnaire must be returned to the address above no later than *(Month/Day/Year)*, *(Time)*. Responses received after this date and time will not be considered.

Responses must include qualifications and experience with issuances of local bonds, other information determined to be pertinent by the responder, and a fee quote not to exceed the maximum fee schedule in AP Part X, Table 9-1 for financial services. Offerors must submit ten (10) copies of their response.

The Questionnaire and project program documents may be obtained from the office above, either personally or by mail, or may be requested from the AOC Division of Capital Construction at CapitalConstruction@kycourts.net.

The selection of a Financial Advisor will be based on the criteria listed in the Kentucky Court of Justice Administrative Procedures for the Court of Justice Part X, Section 5-4, which can be accessed at http://courts.ky.gov/aoc/facilities/facilitiesprojectdevelopment.htm.

Figure 5-3. Sample Advertisement for Financial Advisory Services

B. RANKING: The PDB will meet in closed session to evaluate the responses.

1. The PDB will evaluate the proposals based on the following criteria:

   a. The relevant experience of the firm;

   b. Financial stability of the firm as evidenced by the audited financial statements of the firm for the previous three (3) fiscal years;

   c. The relevant experience of the individual firm members proposed to work on the bond issuance;

   d. The relevant experience of the lead banker or contact person at the firm; and

   e. The relevant experience of the person in the firm proposed to perform cash flow and debt structuring analyses.

2. Members of the PDB must each use a Proposal Evaluation Sheet, a form prescribed by the AOC, to evaluate the proposals. Each Proposal Evaluation Sheet will require the PDB member to sign a statement that he or she has complied with Section 3-3(D) and 5-1(H), above, or otherwise to list any ex parte communication that has occurred.

3. A designee of the PDB will record the composite score from each individual Proposal Evaluation Sheet on the Evaluation Summary Sheet for the Project.

4. At least two (2) most qualified firms, according to the Evaluation Summary Sheet, will be ranked.

C. INTERVIEWS: Once the most qualified firms have been ranked, the PDB will vote in open session whether to leave the rankings in place or whether to interview at least the two (2) highest ranked firms to arrive at new rankings.

1. If the PDB votes to leave the rankings in place, the highest-ranked firm will be the PDB-selected firm.

2. If the PDB votes to proceed with interviews, the process is as follows:

   a. The PDB must notify each finalist of the time and place of the interview, the names of the other finalist(s), and the selection criteria for the interview. The PDB must notify the finalists of the interview date at least two (2) weeks in advance thereof.

   b. The PDB must notify each firm that responded to the RFP of the finalists and the rest of the procedure that will be followed in the awarding of the contract.

   c. The AOC will provide a standard Evaluation Score Sheet to be filled out by the PDB members evaluating the interviews. The Evaluation Score Sheet will contain criteria upon which the PDB will score the interviewees. The PDB must obtain prior approval from the AOC Manager of Capital Construction before deviating from the weighted criteria in the Evaluation Score Sheet.

   d. The PDB will interview the finalists, preferably on the same day. The finalists will be interviewed one at a time, and each interview will be attended only by representatives of the finalist and members of the PDB. The PDB members

must keep confidential the substance of the interviews until a contract is awarded.

e. A typical financial advisor presentation is limited to thirty (30) minutes followed by a fifteen (15) minute question and answer session. The PDB may alter the format as it deems appropriate.

f. Each PDB member present at the interviews must fill out an Evaluation Score Sheet either during the interviews or in closed session afterward.

g. A designee of the PDB will record the composite score from each individual Evaluation Score Sheet on the Evaluation Summary Sheet, a form prescribed by the AOC.

h. The firm with the highest rating on the Evaluation Summary Sheet is the selected offeror.

D. PROCUREMENT OF FINANCIAL ADVISOR SERVICES: The Owner must enter into a contract with the financial advisor selected by the PDB upon receipt of written authorization from the AOC Manager of Capital Construction. The Owner must use a standard form contract as developed and maintained by the AOC. Fees paid to the financial advisor must not exceed the fee schedule limits set forth in Section 9-2, below. Any fee which exceeds this schedule must be paid by the Owner and may not be reimbursed from project funds.

5-5 OTHER PROFESSIONAL SERVICES

The PDB may contract with a civil engineer, geotechnical engineer, a commissioning agent or other Consultant as the PDB deems necessary to address a specific purpose, condition or need relating to the Project. Fees associated with that contract will be paid from the Project funds only if:

A. The procurement of a special consultant or commissioning agent has been approved in advance by the AOC Manager of Capital Construction and the AOC Budget Director;

B. The procurement process is competitive, mirroring that described in this Chapter, although interviews are not required;

C. The cost of such professional services is a selection criterion in the competitive procurement process; and

D. The contract is approved by the AOC.

5-6 OTHER CONSTRUCTION SERVICES

The PDB may contract with a construction service provider as the PDB deems necessary to address a specific purpose, condition or need relating to the Project (e.g. contractor for demolition during a pre-construction phase when the PDB has selected a design-bid-build project delivery method with construction services provided by a GC). Fees associated with that contract will be paid from the Project funds only if:

A. The procurement of the construction service provider has been approved in advance by the AOC Manager of Capital Construction and the AOC Budget Director;

B. The procurement process is competitive, mirroring that described in this Chapter, although interviews are not required;

C. The cost of such construction services is a selection criterion in the competitive procurement process;

D. The contract is approved by the AOC; and

E. The construction service provider furnishes a Performance and Payment Bond as described in Section 11-6, herein.

CHAPTER 6 – PHASES OF CONSTRUCTION

6-1 GENERAL

The KCOJ Capital Construction Program will be divided into various Phases. Those Phases are:

A. Phase A, which includes:

1. Phase A-1: Program Confirmation and Conceptual Design; and
2. Phase A-2: Schematic Design;

B. Phase B: Design Development;

C. Phase C: Construction Document Production followed by either:

1. Phase C-CM: Subcontract Bidding, GMP Development and Negotiation and GMP Amendment Execution; ***or***
2. Phase C-GC: General Contractor Bidding and Contractor Award; and

D. Phase D: Construction.

6-2 PHASE A

A. Phase A-1: Program Confirmation and Conceptual Design

1. During this phase of the project, the Project Program Documents will be reviewed; and the conceptual design will be developed.

2. If applicable, during this phase, the A-E will conduct a feasibility study on the potential renovation of the existing courthouse. The results must be presented to the CSFC in accordance with Section 4-4 for approval to proceed with the renovation prior to entering Phase A-2.

3. During this phase, the A-E will work with the PDB and the AOC Project Coordinator to review and evaluate the Project Program Documents. Additionally, the A-E will prepare a preliminary Project Schedule and, unless a CM-at risk has been selected to provide cost estimates in preconstruction phases, a preliminary estimate of the cost of construction for the Owner's review. The A-E's specific duties during this phase will be outlined in the Contract between the Owner and A-E, on a form developed and maintained by the AOC.

4. If the PDB has chosen to construct the Project using a CM-at risk, the CM during this phase will consult with the A-E, the PDB and the AOC Project Coordinator to review and evaluate the Project Program Documents and will also assist those parties in development of the conceptual design and the preliminary Project Schedule. The CM will also prepare a preliminary estimate of the cost of construction. The CM's specific duties during this phase will be outlined in the Contract between the Owner and the CM, on a form developed and maintained by the AOC.

B. Phase A-2: Schematic Design

1. During this phase, the Schematic Design Documents will be developed, and the estimate for the costs to construction and the Project Schedule will be refined.

2. During this phase, the A-E will prepare Schematic Drawings and outline specifications to define the style and type of the structure, the type of mechanical systems, controls, lighting, electrical systems, structural systems and supporting facilities for the Project which can be completed within the allowable construction costs and allowable Project Schedule. The A-E's specific duties during this phase will be outlined in the Contract between the Owner and the A-E, on a form developed and maintained by the AOC and will include making a presentation to the CFSC as set forth in Chapter 4 herein.

3. If the PDB has chosen to construct the Project using a CM-at risk, the CM during this phase will work with the A-E, the PDB and the AOC Project Coordinator to develop the Schematic Drawings and will provide significant input on the estimate for the cost of construction and the Project Schedule. The CM's specific duties during this phase will be outlined in the Contract between the Owner and the CM, on a form developed and maintained by the AOC.

4. The AOC Manager of Capital Construction will execute a Phase Review of the Schematic Design Documents and the estimate for the cost of construction with the A-E to ensure that the Project will meet the needs of the KCOJ. The AOC Manager of Capital Construction will prepare a statement of the results of the review and comments to the PDB. Upon approval of the review by PDB, the PDB must sign and return to the A-E one (1) copy of these documents. Any comments must be addressed and/or incorporated into the Phase A design prior to the CFSC presentation as described below.

5. As part of Phase A, the A-E must present a proposed Phase A plan and Program Cost Estimate to the CFSC. The A-E's presentation to the CSFC must include at least the following items, which must be furnished to the DCC for presentation to the CFSC in accordance with Section 4-4(C)(4):

    a. Anticipated Construction Start and Finish Dates;
    b. Drawings of a vicinity map depicting the location of the proposed Project; Site and Master Plans; and Floor Plans of Proposed Project with areas identified with nomenclature described in the Program Document and room numbers;
    c. Functional Areas Listing showing relationships between authorized square footage and proposed square footage;
    d. Project Construction Cost Estimate including site costs, design costs, construction costs, and
    e. Financing data, including estimated 20-year debt service schedule, as provided by the financial advisor.

6. When the CFSC approves the plan, the A-E must incorporate any and all CFSC recommendations into the design. The PDB and the AOC Manager of Capital Construction will issue a written directive to proceed to Phase B Design when the program is in compliance with CFSC and AOC directives.

6-3 PHASE B: DESIGN DEVELOPMENT

A. During this phase, the Design Development Documents will be prepared and the estimate of the cost of construction and the Project Schedule will be further updated.

B. During this phase, the A-E will prepare the Design Development Documents for review and approval of the PDB and the AOC and will further refine the Project Schedule. Unless a CM-at

risk has been selected to provide cost estimates in preconstruction phases, the A-E will also further refine the estimate for the cost of the construction. The A-E's specific duties during this phase will be outlined in the Contract between the Owner and the A-E, on a form developed and maintained by the AOC.

C. If the PDB has chosen to construct the Project using a CM-at risk, the CM during this phase will work with the A-E, the PDB and the AOC Project Coordinator in their review and evaluation of the Design Development Documents and will spend significant time in updating the estimate for the cost of construction and the project schedule. The CM's specific duties during this phase will be outlined in the contract between the Owner and the CM, on a form developed and maintained by the AOC.

D. The AOC Manager of Capital Construction will execute a Phase Review of the Design Development Drawings and the estimate for the cost of construction with the A-E to ensure that the Project will meet the needs of the KCOJ. The AOC Manager of Capital Construction will prepare a statement of the results of the review and comments to the PDB. Upon approval of the review by PDB, the PDB must sign and return to the A-E one (1) copy of these documents with written approval to proceed to Phase C.

6-4 PHASE C

A. Construction Document Production

1. During this phase, the Construction Documents will be prepared, reviewed, revised and finalized.

2. During this phase, the A-E will prepare and finalize the Construction Documents and will further refine the Project Schedule. Unless a CM-at risk has been selected to provide cost estimates in preconstruction phases, the A-E will also further refine the estimate for the cost of the construction. The A-E's specific duties during this phase will be outlined in the contract between the Owner and the A-E, on a form developed and maintained by the AOC.

3. If the PDB has chosen to construct the Project using a CM-at risk, the CM during this phase will review and evaluate the Construction Documents and will refine the estimate of the cost of construction and assist in refining the Project Schedule. The CM's specific duties during this phase will be outlined in the contract between the Owner and the CM, on a form developed and maintained by the AOC.

4. The AOC Manager of Capital Construction will execute a Phase Review of the Construction Documents and the estimate for the cost of construction with the A-E to ensure that the Project will meet the needs of the KCOJ. The AOC Manager of Capital Construction will prepare a statement of the results of the review and comments to the PDB. Upon approval of the review by PDB, the PDB must sign and return to the A-E one (1) copy of these documents with written approval to proceed to Phase C-CM or C-CG. No Invitation to Bid may be published until the design has been approved in writing by the Kentucky Office of Housing, Buildings and Construction.

B. Phase C-CM: Subcontract Bidding GMP Development and Negotiation and GMP Amendment Execution

1. If the PDB has chosen to construct the Project using a CM-at risk, the CM will solicit competitive bids from subcontractors and develop and finalize the GMP during this phase.

2. Upon approval of the AOC Director, the CM may commence demolition and/or site work during Phase C of the Project on the condition that the Owner and the CM execute an amendment to the contract to authorize such work and that the CM furnish a Performance and Payment bond as required by Section 8-7, herein.

3. The CM's specific duties during this phase will be outlined in the contract between the Owner and the CM, on a form developed and maintained by the AOC.

C. Phase C-CG: General Contractor Bidding and Contractor Award

1. If the PDB has chosen to construct the Project using a GC, the PDB, with the assistance of the A-E, will solicit and receive competitive lump sum bids from GCs and award the contract to the lowest responsive, responsible bidder or to the bidder who provides the best value, depending upon the basis for award selected by the Owner.

2. Upon approval of the AOC Director, the Owner or the PDB may commence demolition and/or site work during Phase C of the Project. In such instance, the PDB, with the assistance of the A-E, will solicit and receive competitive lump sum bids for such work in accordance with Section 11-1, herein. No contractor may proceed with such demolition or site work until it has furnished a Performance and Payment bond as required by Section 11-6, herein.

6-5 PHASE D: CONSTRUCTION

A. During this phase, the Project will be constructed in accordance with the Contract Documents developed during the earlier phases of the Project and in accordance with the Project Schedule.

B. The A-E's specific duties during this phase will be outlined in the Contract between the Owner and the A-E, on a form developed and maintained by the AOC.

C. If the PDB has chosen to construct the Project using a CM-at risk, the CM's specific duties during this phase will be outlined in the Contract between the Owner and CM, on a form developed and maintained by the AOC.

D. If the PDB has chosen to construct the Project using a GC, the GC's duties during this phase will be outlined in the Contract between the Owner and the General Contractor, on a form developed and maintained by the AOC.

6-6 AUTHORIZATIONS TO PROCEED

A. For each pre-construction phase of the Project, the Chair of the PDB, after receiving a written authorization from the PDB, the AOC Manager of Capital Construction and the AOC Budget Director, may authorize the A-E and the CM, if applicable, to proceed with the next phase of the Project.

B. Nothing in the contract between the Owner and the A-E or the Owner and the CM should be construed as placing any obligation on the Owner to authorize the A-E or CM to proceed with any phase of its services beyond the written authorization of the PDB; nor is the Owner obligated to pay any fees to the A-E or CM incurred beyond the fees which apply to the authorized phase of the services, without written authorization as prescribed by AP Part X.

C. Request for Authorization to Proceed with Phase D: Upon a recommendation of the PDB, the AOC Manager of Capital Construction and the AOC Budget Director, the PDB must submit a Request for Authorization to Proceed to the AOC Director.

D. Authorization to Proceed with Phase D: Upon authorization by the AOC Director to proceed with Phase D, the PDB must direct the Owner to execute an amendment to the contract between the Owner and the CM or a contract between the Owner and the GC. The contracts must be in a form developed and maintained by the AOC. The A-E must obtain documentation for required bonding of the CM/GC. The A-E must provide copies of all contracts and bonds to the AOC Project Coordinator.

CHAPTER 7 - A-E SERVICES AND PAYMENTS

7-1 GENERAL

A. The A-E will perform work on behalf of the PDB. The A-E will execute services, which are divided into phases as detailed in Chapter 6.

B. Contract Documents: Throughout the design and construction process, the A-E must use documents developed and maintained by the AOC.

1. If the AOC has not developed a standard form for a particular purpose relating to the Project, the A-E may propose a document for such purpose for approval by the AOC. Any such proposed document must be consistent with the standard forms developed for the AOC and must incorporate AP Part X.

2. The A-E must ensure that AP Part X is incorporated in the contract documents.

3. The A-E must ensure that all contract documents contain a provision requiring all disputes relating to a contract between the Owner and a professional or construction service provider to be brought in Franklin Circuit Court, Franklin County, Kentucky.

C. Types of Design Services:

1. New Construction: Design services for a new construction produces an original and unique design of a facility or an addition to an existing courthouse for the specific needs identified in the Program Document. Table 7-1 applies.

2. Renovations: Design services for a renovation produces a design constituting:

   a. a major renovation of an existing courthouse; or
   b. a major renovation of the existing courthouse combined with an addition to the existing courthouse.

   Table 7-1 applies to all new construction and the construction of all additions. If the PDB elects to renovate part of the existing courthouse, the AE fee will be increased by 1.25% for only the pro rata portion of the Project that constitutes a major renovation of the existing facility, to be calculated by square footage.

D. Legal Actions:

1. The A-E must provide written notice to the Owner, the AOC General Counsel and the AOC Manager of Capital Construction of every legal action involving the Project. Legal action includes, but is not limited to: filing of liens, filing of complaints, scheduling of mediations or settlement conferences, and initiation of arbitration proceedings.

2. The A-E must serve as a witness in connection with any legal proceeding regarding the Project upon request of the PDB or the AOC.

E. An A-E firm which has contracted with the Owner to provide design services for a Project may not also serve as a commissioning agent on the same Project.

F. Personnel: The A-E must not make any changes to the A-E design team members following the submission of is Architect-Engineer and Related Services Questionnaire in accordance with Section

5-2 unless it has provided the credentials of the replacement team member to the PDB and the PDB has approved the replacement.

7-2 REPRESENTATION AND WARRANTIES

A. **A-E/Design Team Qualifications:** The lead architect(s) and engineer(s) assigned to work on the Project must be licensed to practice architecture or engineering or both within the Commonwealth of Kentucky.

B. **Licenses and Authorizations:** The A-E must maintain all necessary licenses, permits and other authorizations necessary to act as A-E for the Project until the A-E duties have been fully satisfied. The PDB may only contract with licensed A-Es or architectural firms owned by licensed A-Es to provide A-E services.

C. **Insurance:** Insurance requirements for the A-E will be set out in the Contract between the Owner and the A-E, as developed and maintained by the AOC. At a minimum, these requirements must include:

1. Professional Liability Insurance in the amount of $1 million per occurrence, $2 million aggregate;
2. General Liability Insurance in the amount of $1 million per occurrence, $2 million aggregate;
3. Worker's Compensation insurance as required by statute; and
4. Employer's Liability Insurance in the amount of $1 million.

7-3 A-E SERVICES

A. BASIC SERVICES

1. Basic Services include all traditional architectural and engineering services related to a construction project, including civil, structural, mechanical, and electrical services. While coordination of items listed in Section 7-5 is included in basic services, payment for those items will be made by the Owner.

2. Basic Services of the A-E are divided into Phases, as described in Chapter 6, above. They are further set forth in the Contract between the Owner and the A-E, which is developed and maintained by the AOC.

3. Basic Services for the pre-construction phases must include, at a minimum, the following:

   a. Meeting with the PDB and the DCC within fifteen (15) days of the award of the A-E contract to confirm the Project's budget, purposes, concepts, and requirements and to determine any specific preferences with respect to the systems and other elements of the Project;

   b. Preparation of Project Schedules and, unless the PDB has contracted with a CM to prepare Cost Estimates during pre-construction phases, Cost Estimates during each of the pre-construction phases;

   c. Preparation of Schematic Design Documents;

   d. Making a presentation to the CFSC in accordance with Chapter 4, above and appearing before any other governmental agency as required by the PDB or the AOC in furtherance of the Project;

e. Preparation and interpretation of Design Development Documents;

f. Preparation and interpretation of Construction Documents;

g. Meeting with the PDB and the DCC for review of and comment on the design at the end of each Phase of design (Phases A, B and C);

h. Coordinating and submitting all necessary documentation for all required code compliance reviews, including but not limited to Housing, Building and Construction (HBC);

i. Ensuring that the PDB submits required documents to obtain the established prevailing wage grades for the Project and publishing the established prevailing wage with the bidding documents;

j. Preparation of Bidding Documents in accordance with AP Part X Chapter 11;

k. Assistance with the bidding process and in evaluating bids;

l. Filing of all required documents with governmental authorities having jurisdiction over the Project, including obtaining necessary permits to allow the Project to proceed into construction;

m. Coordination of design consultant services; and

n. Obtaining copies of Performance and Payment bond documents required for the GC/CM and providing those copies to the PDB and the AOC.

4. Basic Services for the construction phase must include, at a minimum, the following:

a. Reviewing and advising the PDB and the AOC as to the accuracy and sufficiency of the Schedule of Values submitted by the GC/CM;

b. Reviewing and advising the PDB and the AOC as to the sufficiency of the Critical Path Schedule submitted by the GC/CM;

c. Preparing design documents in connection with Change Orders;

d. Evaluating Change Orders and making recommendations to the PDB and the AOC concerning those Change Orders;

e. Promptly responding to Requests for Information from the GC/CM;

f. Reviewing GC/CM submittals and making approvals of or recommendations about such submittals;

g. Making no fewer than two visits to the worksite each month and providing written reports to the PDB and the DCC concerning whether the work is proceeding in accordance with the Construction Documents;

h. Making recommendations to the PDB and the DCC as to whether any special testing or inspection of the work is needed and assisting the Owner in procuring the services of a Special Inspector;

i. Reviewing payment applications and making recommendations to the PDB and making certifications to the PDB and the AOC that the work has progressed to the point indicated in the payment applications based on the Schedule of Values;

j. Facilitating and documenting all design-related meetings including:

   i. Attending all PDB and construction progress meetings and recording minutes of progress meetings if there is no CM on the Project; and

   ii. Meeting with the representatives of the PDB and the AOC as required by the PDB or the AOC, or as necessary to expedite Project progress or to resolve A-E issues;

k. Conducting one inspection to determine the date of Substantial Completion;

l. Conducting up to two inspections to determine the date of Final Completion;

m. Visiting the worksite up to two times during the one-year warranty period to assist the Owner in evaluating the need for any corrective measures;

n. Assist the CM/GC as necessary in making final corrections to the drawings, incorporating all changes and revisions made during the progress of the work so as to provide record drawings fully depicting the as-built condition of the Project;

o. Providing to the PDB all manuals, operating instructions, record drawings, warranties, guarantees and other documents required by the construction contract and submitted by the CM/GC; and

p. Making a final written report to the AOC within thirty days of final payment to the GC/CM. Such written report must include, at a minimum, the following:

   i. Evaluation of Project Change Orders;
   ii. Evaluation of the Project schedule;
   iii. Evaluation of the performance of the Project CM or GC; and
   iv. Suggestions that would have improved the Project.

B. ADDITIONAL SERVICES

1. Additional Services are those services which are significant, unreasonable, and extraordinary work outside of the scope of the basic services listed above and as further identified in the Contract between the Owner and the A-E, which is developed and maintained by the AOC.

2. Additional services may include making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by the Owner <u>except for:</u>

   a. Those revisions requested by the CFSC;

   b. Those documents identified by the CM/GC as presenting constructability problems;

   c. Those documents needing revisions to reflect clarifications and assumptions and allowances on which a GMP is based;

d. Those documents which need revisions in order to comply with state or local building codes;

e. Those documents which require redesign because of an error or omission on the part of the A-E;

f. Those documents which require revisions in order to conform to the construction budget as identified in the Project Program Documents; and

g. Any other revisions which are due to causes within the control of the A-E.

3. Additional Services may include construction services required because of extended construction time as provided in this section. When the PDB requires the A-E to provide Phase D inspection and construction administration services for an extended period and there is no fault of the A-E for the extension, then the PDB and the AOC Manager of Capital Construction may authorize additional compensation for hourly additional services provided during extended period with the approval of the AOC Budget Director. This authorization is limited as follows:

   a. For Projects with construction costs less than $20 million, "extended construction time" means Phase D construction lasting more than 24-months.

   b. For Projects with construction costs greater than $20 million, "extended construction time" means Phase D construction lasting more than 28-months.

   c. Services which are basic services and are not recurring monthly services are not eligible to be considered as additional services, including but not limited to: shop drawing reviews, Change Order processing, record drawings, punch list, final inspections, and closeout documents.

   d. Services which may be eligible to be considered as additional construction services include only recurring monthly services such as: attendance at regular monthly meetings and monthly worksite inspections.

4. Time spent serving or preparing to serve as a witness in connection with a legal proceeding regarding the Project in which the A-E is not a party may be considered as an additional service.

7-4 A-E FEES

A. GENERAL: Contract fees and payments are determined by AP Part X. The fee provisions of AP Part X take precedence over any conflicting provisions in a contract with an A-E.

1. **Requests for Payments** must be submitted to the PDB monthly on an Invoice for Architectural Services as developed by the AOC. Payment requests must be entered into the CPTS simultaneously with submission of the Invoice. The Owner must not process or execute payment for any invoice of services that is not approved and authorized by the PDB and the AOC for payment.

2. **Retainer Fees:** Neither the Owner, the PDB nor the AOC, may pay retainer fees for A-E Services.

B. FEES FOR BASIC SERVICES

1. Fees for Basic Services during pre-construction phases are calculated by multiplying the applicable percentage found in Table 7.1 by the estimated cost of construction in the Project Program documents. Fees for Basic Services during Phase D are calculated by multiplying the fee percentage by the actual cost of construction.

    a. The percentage multiplier to be inserted in the A-E contract is determined by using estimated construction costs as stated on the Project Program Document. This percentage multiplier is used throughout the Project to determine the A-E fee and does not adjust when the actual cost of construction is determined.

    b. For Projects that are constructed using the CM at-Risk project delivery method, the actual cost of construction is the Guaranteed Maximum Price as modified by additive and deductive Change Orders.

    c. For Projects that are constructed using the Design-bid-build project delivery method with a General Contractor as a constructor, the actual cost of construction is the Contract Price as modified by additive and deductive Change Orders.

Estimated construction budget based on project program documents			**Total Percent**
Up	to	$20,000,000	7.75
$20,000,001	to	$25,000,000	7.3
$25,000,001	to	$50,000,000	6.9

Table 7-1 Uniform Standards for the Payment of Architect-Engineer Services

2. If the PDB has elected to renovate an existing facility, the A-E's fee percentage will increase by 1.25% in accordance with Section 7-1(C)(2), above.

3. If the PDB has elected to construct the Project using a design-bid-build project delivery method and the A-E performs services as described in Section 6-4(C)(1), then the A-E will receive an additional lump sum payment of $50,000 upon completion of Phase C-GC.

C. PAYMENT OF FEES FOR BASIC SERVICES

1. For the purposes of this subsection, phase completion occurs when the PDB has, upon authorization from the AOC, issued a written notice to proceed with the next Phase of the Project.

2. Basic Fees for the pre-construction phases are based on the estimated construction costs in the project program documents.

3. Payments for Basic Fees as set forth in Section 7-4(B)(1) for pre-construction phases must not exceed the following percentages of the total Fee for Basic Services, and are made only upon completion of each Phase, except as noted in Section 7-4(C)(4), below:

a. Upon completion of Phase A - 15%
b. Upon completion of Phase B - 20%
c. Upon completion of Phase C - 35%
d. Upon completion of Phase C-CM or C-GC – 5%

4. During Phase C, the PDB may allow a maximum of two (2) partial payments if:

   a. The first payment is not more than 50% of the allocated Phase C A-E fee;
   b. The A-E requests such a payment;
   c. Phase C services are at least 50% complete; and
   d. Partial payment has been approved by the AOC Manager of Capital Construction and the AOC Budget Director.

F. **Adjustment for Phases A-C Fees After Bids Received:** No adjustments will be made to fees earned and paid in Phases A-C after bids are received and the GMP or Contract Price is established.

G. Payments for Phase D services are based on the Contract Price or the GMP, including approved, written additive and deductive Change Orders.

   a. Throughout Phase D, the PDB will authorize the Owner to pay the A-E the remaining twenty-five percent (25%) of its total fee through monthly payments made according to the percentage of completed construction as identified by the constructor's pay applications.

   b. Final payment to the A-E will not be made until the Owner has received a Certificate of Substantial Completion, the record drawings, including one (1) set of drawings and specifications submitted in United States National CAD Standard format on one (1) compact diskette (CD), and the written report described in Section 7-3(A)(4)(p).

   c. Within 90 calendar days after KCOJ acceptance and occupation of the facility, the A-E must submit to the PDB, the AOC Manager of Capital Construction, and the AOC Budget Director, a memorandum of record stating that either all of its charges for work have been submitted and paid with regard to the Project or detailing any and all invoices or statements of charges which are outstanding or have not been paid.

H. As a prerequisite for payment, the A-E must provide partial lien and claim waivers from any of its consultants, verifying payment for all work included in prior payment applications and verifying payment for the completed work included in the tendered payment application. Such waivers will be conditional upon payment.

I. No payments may be made without the written authorization of the AOC Manager of Capital Construction or designee and the AOC Budget Director.

D. FEES FOR ADDITIONAL SERVICES

1. **Hourly Rates:** The PDB must negotiate hourly rates for any authorized additional services of the A-E prior to entering into a contract with the A-E.

   a. The agreed-upon hourly rate must be approved by the AOC Manager of Capital Construction or designee and included in the Contract between the Owner and the A-E.

b. These hourly rates establish the basis of payment for all other design services as described herein.

c. Hourly rates negotiated and written into any executed contract must not be contrary to reasonable and accepted standards of the profession or duties associated with that hourly rate.

E. REIMBURSABLE EXPENSES:

1. The PDB and the AOC may authorize reimbursement for only the actual cost of the following expenses:

   a. Fees paid for securing approval of authorities having jurisdiction over the Project;

   b. Reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;

   c. Models and mock-ups requested by the Owner; and

   d. The expense of additional insurance coverage or limits requested by the Owner in excess of the minimum limits required by AP Part X.

F. PAYMENT FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

1. Requests for consideration of additional services must be made prior to any such work being performed and require written authorization and approval of the request by the PDB, the AOC Manager of Capital Construction, and the AOC Budget Director.

2. Additional services rendered prior to such approval will not be given consideration for payment.

3. All invoices or payment requests for additional services and reimbursable expenses must be presented contemporaneously with the event and approved or denied by the PDB. All such requests must be presented within 30 days of the event or they must be void and rejected with prejudice by the PDB, the AOC Manager of Capital Construction and the AOC Budget Director.

   a. Payment requests made on a timely basis and properly submitted in writing to the PDB may be rejected with or without prejudice.

   b. Those claims rejected without prejudice may be resubmitted at a future date.

4. All invoices or payment requests for additional services or reimbursable expenses must provide itemized details of additional claims, payments, services, or expenses. The itemized, breakdown, breakouts, or delineation of services or claims of service must be provided to the PDB, the DCC and the AOC Budget Director who may, in their discretion authorize full or partial payment thereof.

5. Authorization for payments for additional services and reimbursable expenses must be in accordance with AP Part X. No payments may be authorized by the PDB unless the A-E has strictly complied with this Section.

7-5 PAYMENT FOR OTHER ITEMS COORDINATED BY A-E

The following items will be coordinated by the A-E in accordance with the Contract between the Owner and the A-E as developed and maintained by the AOC, but will be paid by the Owner:

- The site survey, if not already executed;
- Geotechnical surveys and analysis;
- Environmental surveys, if needed (including but not limited to hazardous materials abatement);
- Required permits and code compliance reviews to proceed into construction, including HBC;
- Special inspections and testing; and
- Commissioning.

None of these items are included in the Contract Price or GMP for the purposes of calculation of fees for the A-E or the CM.

7-6 CONSULTANTS

A. The A-E must employ a structural engineer for the design and direct supervision of the professional services associated with that portion of the work.

B. The A-E may employ any other necessary engineers as it deems appropriate. The Owner and the AOC reserve the right to reject any consultant proposed by the A-E and to require the A-E to select another consultant.

C. All such consultants must maintain the required licenses required for their work on the Project, and maintain insurance in accordance with Section 7-2(C).

D. The A-E is solely responsible for payment of its consultants or sub-consultants.

E. The A-E assumes responsibility to the Owner for negligent acts, errors, and omissions of its consultants or sub-consultants for professional services within its scope of work and must promptly and without additional compensation correct any errors, omissions, deficiencies, or conflicts in the work product caused by the negligent acts, errors or omissions of the A-E or its consultants or both.

7-7 CHANGE ORDERS

A. The processes and procedures for change orders, including duties of the A-E, are set forth in Sections 8-9 and 11-7, below.

B. In addition to the Phase D fee for change orders described in 7-4(C)(7)(a), the A-E will receive a Phase A-C fee for additive change orders to be calculated by multiplying 75% of the contractual fee percentage by the increase in the GMP or contract sum represented by the change order.

C. Design services relating to deductive change orders are considered part of basic services.

CHAPTER 8 – CONSTRUCTION MANAGEMENT SERVICES AND PAYMENTS

8-1 GENERAL

A. The CM will perform work on behalf of the PDB. The CM will execute services, which are divided into phases as detailed in Chapter 6.

B. **Contract Documents:** Throughout the design and construction process, the CM must use documents developed and maintained by the AOC.

1. If the AOC has not developed a standard form for a particular purpose relating to the Project, the CM may propose a document for such purpose for approval by the AOC. Any such proposed document must be consistent with the standard forms developed for the AOC and must incorporate AP Part X.

2. The CM must ensure that AP Part X is incorporated in the subcontract documents.

C. **Legal Actions**:

1. The CM must provide written notice to the Owner, the AOC General Counsel and the AOC Manager of Capital Construction of every legal action involving the Project. Legal action includes, but is not limited to: filing of liens, filing of complaints, scheduling of mediations or settlement conferences, and initiation of arbitration proceedings.

2. The CM must serve as a witness in connection with any legal proceeding regarding the Project upon request of the PDB or the AOC.

3. The CM must ensure that all contract documents contain a provision requiring all disputes relating to a contract between the Owner and a professional or construction service provider to be brought in Franklin Circuit Court, Franklin County, Kentucky.

D. **Personnel:** The CM must not make any changes to the CM Project team members following the submission of is Construction Services Provider Questionnaire in accordance with Section 5-3 unless it has provided the credentials of the replacement team member to the PDB and the PDB has approved the replacement.

8-2 INSURANCE

A. Insurance requirements for the CM will be set out in the Contract between the Owner and the CM as developed and maintained by the AOC. At a minimum, these requirements must include:

1. Payment and Performance Bonds in accordance with Section 8-7;
2. General Liability Insurance in the amount of $2 million per occurrence, $5 million aggregate;
3. Worker's Compensation insurance as required by statute; and
4. Employer's Liability Insurance in the amount of $1 million.

B. The CM must purchase Builder's Risk on behalf of the Owner. Builder's Risk insurance premiums are reimbursable costs.

8-3 RIGHTS AND RESPONSIBILITIES

A. The CM will provide its construction management and construction services for the Project with the understanding that it is at risk to deliver the completed project within the time parameters and financial constraints set forth within the GMP.

B. Meetings:

1. The CM must attend all PDB and construction progress meetings and record minutes of progress meetings;

2. The CM must attend all meetings with the representatives of the PDB and the AOC as required by the PDB or the AOC, or as necessary to expedite Project progress or to resolve CM issues; and

3. The CM must appear before any governmental agency as required by the PDB or the AOC in furtherance of the Project.

C. Critical Path Schedule: The CM must prepare and establish a Critical Path Schedule to establish a timeline for all construction events. The CM must document any and all circumstances and events that adversely affect the Critical Path Schedule.

D. Liquidated Damages:

1. For projects with a GMP less than $15,000,000, liquidated damages will be assessed against the CM in the amount of $1,500 per day for each day that substantial completion is delayed beyond the substantial completion date in the contract, as amended by Change Order.

2. For projects with a GMP more than or equal to $15,000,000, liquidated damages will be assessed against the CM in the amount of $1,750 per day for each day that substantial completion is delayed beyond the substantial completion date in the contract, as amended by Change Order.

E. Tap on fees: The CM is responsible for coordinating payment of tap-on fees.

F. Record Drawings: The CM must create and submit to the PDB and the AOC detailed and comprehensive record drawings, in accordance with the United States CAD Standard, depicting all as-built construction. The record drawings must be submitted to the A-E, the Owner and to the AOC, as follows: one (1) printed set each of the working drawings and specifications each.

G. The CM must make a final written report to the AOC within thirty days of final completion. Such written report must include, at a minimum, the following:

1. Evaluation of Project Change Orders;
2. Evaluation of the Project schedule;
3. Evaluation of the performance of the Project A-E; and
4. Suggestions that would have improved the Project.

H. The CM's specific rights and responsibilities during each Phase of the Project will be outlined in the contract between the Owner and the CM, on a form developed and maintained by the AOC.

8-4 SELECTION OF SUBCONTRACTORS

A. The CM must advertise for bids or proposals from subcontractors and suppliers on a competitive basis and administer the selection process for subcontractors and suppliers.

B. Prior to soliciting bids or proposals, the CM must determine whether it will select the subcontract awardees / suppliers on the basis of lowest responsive, responsible bid, or select the subcontract awardees / suppliers on the basis of best value.

C. The criteria that form the basis of the award must be communicated in the bidding documents.

D. The CM may elect to self-perform portions of the Work only if the CM has competitively bid that portion of the work and presented its bid or proposal in the same manner as any subcontractor and the PDB approves such self-performance.

E. The bidding documents must instruct the bidder or offeror to submit its bid to the Owner. The Owner will then tender the bids to the CM for selection of the subcontractors and suppliers.

F. The bidding documents must be consistent with the terms and conditions of the Owner / CM contract and with AP Part X and be approved by the AOC Manager of Capital Construction and the AOC Office of Legal Services before publication. In the event of an inconsistency between the bidding documents and the terms and conditions of the Owner / CM contract and AP Part X, the terms and conditions of the Owner / CM contract and AP Part X control.

G. The CM must receive and review at least two bids for each bidding package. In the event that the CM does not receive two bids for a bidding package, it must re-bid that package.

H. Based upon its review of the bids, the CM must select the subcontractors and suppliers it intends to use as a part of the GMP; and the CM will present a list of the selected subcontractors and suppliers to the PDB for approval, which approval must not be unreasonably withheld.

I. The CM must contract directly with its selected subcontractors, as approved by the PDB, and is at risk for their performance.

J. The bidding documents must contain provisions allowing the Owner to purchase certain materials directly to enable the Owner to save Kentucky sales tax in accordance with KRS § 139.470(7).

K. The protest procedures set forth in Chapter 5-1(K) apply to solicitations and awards of subcontract under this Section.

8-5 DEVELOPMENT OF THE GMP

A. Unless a bid protest concerning the award of a subcontract or selection of a supplier has been filed, the CM must propose a GMP Phase D Amendment in accordance with the requirements and restrictions set forth in the contract between the Owner and CM, within three (3) weeks after PDB approval of the CM's subcontractor and supplier list. The GMP Phase D Amendment must be on a form developed and maintained by the AOC.

B. In the event that the proposed GMP Phase D Amendment amount is within the Construction Cost Estimate in the Project Program Documents, and the Owner finds that the proposed GMP Phase D Amendment meets all requirements and restrictions, then the Owner and CM will execute Amendment No. 1 to the Owner-CM contract after the AOC Director has given written authorization to the Owner and CM to do so.

C. In the event that the proposed GMP Phase D Amendment amount exceeds the Construction Cost Estimate in the Project Program Documents, the Owner, with the assistance of the A-E, can either work with the CM to make adjustments to the GMP Phase D Amendment amount or bid the project to General Contractors.

D. The CM's specific rights and responsibilities during the GMP Phase D Amendment preparation, proposal and agreement process will be outlined in the contract between the Owner and the CM, on a form developed and maintained by the AOC.

E. The proposed GMP Phase D Amendment must include, but not be limited to: specific schedule requirements, specific CM staffing requirements, a specific project logistical plan, and a description of any work to be self-performed by the CM. The specifics of the requirements and restrictions of the GMP Phase D Amendment will be outlined in the contract between the Owner and the CM, on a form developed and maintained by the AOC.

F. The CM's proposed Phase D GMP Amendment amount must include, in general, amounts for proposed subcontractors and suppliers, the premium for the CM's provision of the required Performance and Payment Bond(s) and the CM's fee for its Phase D services. The CM's proposed Phase D GMP Amendment amount shall not include any of the CM's costs associated with its personnel not stationed at the site, any of the CM's costs incurred in any pre-construction phase or in the preparation of the proposed GMP Phase D Amendment, including any revisions to any proposed GMP Phase D Amendment, or any contingencies. The specifics of what costs can and cannot be included within the CM's proposed Phase D GMP Amendment amount will be outlined in the contract between the Owner and the CM, on a form developed and maintained by the AOC

8-6 CM FEES

A. The Owner must authorize payment to the CM once such payment has been approved by the PDB, the AOC Manager of Capital Construction, and the AOC Budget Director.

B. Funding for CM services must be obtained from the estimated construction cost in the Project's budget as described in the Project Program Documents.

C. The CM will receive a fee of one percent (1%) of the Construction Cost Estimate in the Project Program Documents for pre-construction services, to be administered as follows:

1. Upon completion of Phase A of the Project, the CM will receive a total fee of 0.22% of the Construction Cost Estimate in the Project Program Documents. This fee is inclusive of all CM costs during Phase A-1 and A-2.

2. Upon completion of Phase B of the Project, the CM will receive a total fee of 0.25% of the Construction Cost Estimate in the Project Program Documents. This fee is inclusive of all CM costs during Phase B.

3. Upon completion of Phase C of the Project, the CM will receive a total fee of 0.1% of the Construction Cost Estimate in the Project Program Documents. This fee is inclusive of all CM costs during Phase C.

4. Upon completion of Phase C-CM of the Project, the CM will receive a total fee of 0.43% of the Construction Cost Estimate in the Project Program Documents. This fee is inclusive of all CM costs during Phase C-CM.

5. If a PDB selects a CM after the commencement of Phase A, the CM will receive a fee for only those Phases in which it has fully participated and for which it fulfills its contractual obligations according to the contract between the CM and the Owner.

D. For its services during Phase D of the Project, the CM will receive a fee totaling seven percent (7%) of the Phase D Construction Costs as defined in the contract between the Owner and the CM. This fee is inclusive of all of the CM's on-site General Conditions and all of its other costs during Phase D, with the exception of the CM's premium for providing the Performance and Payment Bond(s), with a penal sum equivalent to one hundred percent (100%) of the GMP, which premium shall be separately reimbursed by the Owner as part of the CM's first Phase D pay application.

1. Each payment in Phase D will be paid according to the percent of completed construction as determined by the A-E.

2. Payments under Phase D will be made less a ten percent (10%) retainage until the Project is 50% complete. When the A-E has certified that the Project is 50% complete, subsequent payments to the CM will be made less a five percent (5%) retainage.

3. Final payment to the CM will not be made until the CM has completed the Project punch list and the PDB and the AOC Manager of Capital Construction have received the following:

   a. Record drawings which are complete and fully depict the as-built condition of the Project.
   b. Operations and Maintenance Manuals.
   c. A Certificate of Substantial Completion.
   d. A Release of Liens and Consent of Surety to Release Final Payment.
   e. Any other close-out documents required.

4. The CM must submit Applications for Payment of its fees for the various Phases of the Project, on a form prescribed by the AOC, in accordance with the terms of the contract between the Owner and the CM, which will be on a form developed and maintained by the AOC. In addition to submitting its Application for Payment to the Owner and the Architect/Engineer, the CM must simultaneously submit Payment request information in the CPTS, as directed by the AOC.

5. As a prerequisite for payment, the CM must provide partial lien and claim waivers from any of its subcontractors and suppliers, verifying payment for all work included in prior payment applications and verifying payment for the completed work included in the tendered payment application. Such waivers will be conditional upon payment.

6. Within 90 calendar days after KCOJ acceptance and occupation of the facility, the CM must submit to the PDB, the AOC Manager of Capital Construction, and the AOC Budget Director, a memorandum of record stating that either all charges for work have been submitted and paid with regard to the Project or detailing any and all invoices or statements of charges which are outstanding or have not been paid.

8-7 PERFORMANCE AND PAYMENT BOND(S)

A. The CM will not be required to furnish Performance or Payment Bond(s) during Phases A-1, A-2, B, C or C-CM of the Project, unless subcontracts for demolition and/or site work are awarded in Phase C, in which case the CM must furnish a Performance and Payment bond as required by Section 8-7(E), below.

B. Within three (3) days of execution of the Phase D GMP Amendment to the Owner-CM Contract, the CM must furnish Performance and Payment Bond(s), with a penal sum equivalent to one hundred percent (100%) of the GMP, to the Owner in accordance with the requirements set forth below. The CM must not enter into any subcontracts to perform work on the Project until it furnishes its Performance and Payment Bond(s), with a penal sum equivalent to one hundred percent (100%) of the GMP, as set forth below.

C. As set forth herein, the CM must, within three (3) days of execution of the Phase D GMP Amendment to the Owner-CM Contract and prior to entering into any subcontracts to perform work on the Project, furnish Performance and Payment Bond(s) to the Owner as obligee, on a form satisfactory to the AOC, issued by a surety company authorized to do business in the Commonwealth of Kentucky and with a penal sum equivalent to one hundred percent (100%) of the GMP, as it may be increased, the conditions of which must bind the CM, as principal, and the surety, to the performance of the contract according to the terms, conditions and specifications of the contract, and any changes or modifications thereto and to the payment of all costs for labor, materials, equipment, supplies, taxes and any other proper charges and expenses incurred or to be incurred in the performance of the contract.

D. The Owner will reimburse the CM for the premium paid by the CM for furnishing the required Performance and Payment Bond(s).

E. The CM cannot proceed to award demolition or site work contracts during Phase C of the Project until it furnishes Performance and Payment bonds with a penal sum equivalent to one hundred percent (100%) of the value of such work as required by this section.

F. The CM cannot proceed with any portion of the Phase D work on the Project until it furnishes the Performance and Payment Bond(s), with a penal sum equivalent to one hundred percent (100%) of the GMP, as set forth herein.

G. In the event that the CM defaults under the terms of its contract with the Owner, and the surety is required to supplement or replace the CM, the surety must comply with all requirements of the original contract between the Owner and the CM, included, but not limited to, compliance with AP Part X.

8-8 CONTINGENCIES

A. As stated in Section 8-5(F), above, the GMP may not include any contingencies.

B. The contract between the Owner and the CM will contain a provision which provides that in the event that the proposed GMP is less than the estimated construction costs in the Project Program Documents, then the difference between the proposed GMP and the estimated construction costs as set forth in the Project Program Documents will be considered as a "GMP Contingency."

1. This GMP Contingency will not be included in the GMP.

2. The CM may request that the Owner issue a Change Order from the GMP Contingency for any allowable construction costs as set forth in the contract between the Owner and the CM, except for the following:

   a. Additional CM personnel or personnel related costs, not including trade labor;
   b. Any additional fee; or
   c. Any additional bond or insurance costs.

C. If the GMP contingency is not expended, then the CM will receive neither an additive nor deductive Change Order for the remainder of that GMP contingency. The remaining GMP contingency will be processed in accordance with Section 14-5, below.

8-9 CHANGE ORDERS

A. General: Project Change Orders may increase, decrease, or cause no change in the cost of the Project.

B. The CM or the A-E may propose Change Orders only to the extent that the condition requiring such proposed changes is beyond the control of the CM or the A-E, and only for one of the following purposes:

   1. To correct unforeseen or unknown issues or conditions; or

   2. To make necessary modifications to increase efficiency or durability of primary and supporting facility components.

C. The PDB or the AOC may propose a Change Order only if sufficient Project funds remain unobligated in the Project account.

D. No document, including a Change Order, is a recognized encumbrance to the Project until it is fully executed and signed by all required parties.

E. All Change Orders require the approval of the PDB, the AOC Manager of Capital Construction, the AOC General Counsel or designee, and the AOC Budget Director.

F. The AOC will only approve time extensions by Change Order when the extension is due to no fault of the CM or its subcontractors

G. Change Order Process:

   1. A proponent of a proposed Change Order must submit such proposed Change Order to the A-E.

   2. The A-E must receive and promptly examine change requests from the proponent, request additional information from the proponent, if necessary, and advise the AOC Project Coordinator and the PDB of the request. The A-E must:

      a. Evaluate proposed Change Order impacts and costs, determine whether the proposed change(s) are acceptable for presentation to the PDB and ensure proposed costs are fair and reasonable, or reject the proposed change(s) based on documentation.

      b. Enter Change Order request data into the AOC Project Tracking System as directed by the AOC.

      c. Provide all supporting and backup for all requests for material, labor, equipment, etc., included in the Project Change Order request.

      d. Issue and collect required signatures for all authorized and approved changes.

   3. The AOC Manager of Capital Construction or designee must approve, disapprove or request modification to the requestor, of a submitted Change Order Request in the CPTS. Upon approval by the AOC Manager of Capital Construction, the submitted Change Order request must be considered for approval by the AOC Budget Director and the AOC General Counsel.

4. The AOC General Counsel or designee must determine whether the Change Order is in accordance with AP Part X.

5. The AOC Budget Director must determine whether authorized funding is available for the submitted Change Order request.

6. The CM must advise the AOC and the PDB of any Change Order requests and assist the A-E in promptly examining Change Order requests from the requestor, requesting additional information from the Change Order requestor, if necessary.

H. CM Fees on Change Orders:

1. A Change Order which results in an increase or decrease in the GMP will be calculated by the Cost of the Work, as defined in the Owner / CM contract, plus an amount not to exceed seven percent (7%).

I. The PDB and the AOC must authorize additional compensation for Change Orders resulting in a compensable time extension, as determined by the PDB and the AOC with the assistance of the A-E, as follows:

1. In consideration for the payment of $15,000, the CM will not seek additional costs or damages for any time extension for the first ninety (90) days following the original date of Substantial Completion as set forth in Amendment 1 to the CM contract.

2. If the CM were to seek additional costs or damages for any time extension beyond that ninety (90) day time frame, the compensation for such time extension will be calculated by multiplying the number of days associated with the time extension by the per diem amount of the CM's General Conditions, established at the time of contract.

CHAPTER 9 – FINANCIAL AND BOND COUNSEL SERVICES AND PAYMENTS

9-1 Financial Advisor Duties

A. The duties of the Financial Advisor will be set forth in the Contract between the Owner and the Financial Advisor as developed and maintained by the AOC. At a minimum, those duties will include:

1. Developing a plan of financing;
2. Consulting with and advising the Owner and AOC as to the current market conditions; and
3. Coordinating the sale and delivery of the bonds.

B. The Financial Advisor must ensure that the financing for the Project complies with AP Part X.

C. Prior to the issuance of the bonds, the Financial Advisor must attend all meetings and presentations and provide required materials to governmental bodies including the PDB, the CFSC, the Capital Projects and Bond Oversight Committee, the Department of Local Government, and the Interim Joint Committee on Appropriations and Revenue. After the issuance of the bonds, the Financial Advisor must attend any such meetings or presentations upon request of the Owner or the AOC.

9-2 Financial Advisor Fees

A. Financial Advisor fees will be $2.00 per $1,000 bond basis, inclusive of all expenses including but not limited to copying, faxing, mailing, telephone, travel and other expenses.

B. The fee for each bond or note issue will not be less than $5,000 or more than $75,000 for permanent financing of the Project.

9-3 Bond Counsel Duties

A. The AOC must retain a bond counsel firm to provide all necessary bond counsel services for interim and permanent financing for KCOJ Capital Construction Projects.

1. Bond counsel must be licensed to practice law in the Commonwealth of Kentucky.

2. Bond counsel must be listed as a "municipal bond attorney" in the most recently published edition of "The Bond Buyer's Municipal Marketplace".

3. Bond counsel must be qualified by the Office of Financial Management to serve as bond counsel to the State Properties and Buildings Commission.

B. Bond counsel's duties include but are not limited to the following:

1. Provide opinions and advice related to the debt structure;
2. Draft and produce the preliminary and final Official Statements;
3. The sale and closing of the securities;
4. Provide advice about tax issues including arbitrage regulation compliance;
5. Consult with the issuer, the trustee, and the AOC;
6. Provide information as requested to the rating agencies and insurers;

7. Oversee the printing of bond certificates;
8. Draft and circulate the required issuance documents for approval;
9. Prepare the lease documents in a form approved by the AOC;
10. Coordinate the closing of all issues;
11. Review any investment agreements related to the debt service reserve fund deposits; and
12. Provide all other legal services related to the bond issue as may be necessary, required, requested, or set forth in the Contract between the AOC and bond counsel.

C. All items prepared by bond counsel which require the signature of an AOC representative, including but not limited to Continuing Disclosure Agreements and Lease Agreements, must be transmitted to the AOC Budget Director and the AOC Office of Legal Services no later than fourteen (14) days prior to the date that signature is required.

9-4 Bond Counsel Fees

A. Bond counsel fees will be paid out of proceeds of each bond or note issue only upon completion and closing of a bond / note issue.

B. Bond counsel fees will be $2.00 per $1,000 bond basis, inclusive of all expenses including but not limited to copying, faxing, mailing, telephone, travel and other expenses.

C. The fee for each bond or note issue will not be less than $5,000 or more than $75,000 for permanent financing of each Project.

D. Upon extraordinary circumstances, bond counsel fees may be reviewed and adjusted, if approved by the AOC Director and the AOC Budget Director.

CHAPTER 10 – SITE SELECTION AND PROCUREMENT

10-1 SITE REQUIREMENTS

A. The Project site must support a building of the size required by the project program documents. Projects within the KCOJ Capital Construction Program are freestanding buildings newly constructed in accordance with AP Part X, unless otherwise approved by the AOC Manager of Capital Construction and the AOC Budget Director.

1. The PDB may require its A-E to conduct a feasibility study to determine whether the interests of the Owner, the KCOJ, and the community would be better served by renovating and/or constructing an addition to the existing KCOJ facility.

2. The costs associated with such a feasibility study must be paid by the Owner, and will be reimbursed by Project funds if approved in advance by the AOC Budget Director.

3. If the PDB determines, with the approval of the AOC Manager of Capital Construction and the AOC Budget Director, that it is in the best interest of the Owner, the KCOJ, and the community to renovate and/or construct an addition to the existing KCOJ facility:

   a. The Project is defined as the existing facility and any renovations or additions thereto;

   b. The Project, including the existing facility, must be 100% KCOJ occupied in accordance with Section 1-4, above;

   c. The Project, inclusive of the existing facility, must conform to the space requirements set forth in the project program documents; and

   d. The Project, including all renovations or additions, must not exceed the cost estimate set forth in the project program documents unless otherwise authorized by the AOC Budget Director in writing.

B. The location of the site should maximize the Project's visual presence in the community and facilitate accessibility from a main public thoroughfare.

1. First consideration must be given to sites near the existing courthouse in the general downtown fabric of the community so as to benefit the local economy and not disrupt established land use. The effort to maintain judicial presence in the downtown or center of the community must be pursued and supported by the PDB.

2. If the AOC Manager of Capital Construction determines that there is no site near the existing courthouse that meets the needs of the KCOJ, the AOC Manager of Capital Construction will advise the PDB to pursue a suitable site at an alternate location.

10-2 SITE SELECTION

A. **General:** The PDB must select a suitable site that adequately supports the Project. Except for design activities related to site analysis and evaluation, no design services may proceed until a site has been selected and the transfer of title is imminent

B. **Property of the Owner:** If the Owner has a site to offer for consideration it must be discussed during a PDB meeting to determine whether it will be necessary to accept additional proposals for property.

1. Any costs associated with real estate procurement for Judicial Center development before the General Assembly authorizes a Project and the Chief Justice issues a Notice to Proceed is at the risk and full expense of the Owner.

    a. Any property purchased by the Owner before the General Assembly authorizes a Project and the Chief Justice issues a Notice to Proceed is subject to the procedures stated in this Chapter.

    b. Procurement of a site by the Owner does not guarantee that the site will be selected by the PDB or that the Owner will be reimbursed.

2. If the PDB deems a site or sites owned by the Owner to be the best and most appropriate site for the development of a KCOJ Project, reimbursements may only be made for costs authorized by AP Part X, Section I. Reimbursement to the Owner must comply with the provisions in this Chapter.

3. If the PDB determines that it is necessary to solicit proposals for property, the PDB must issue a public and open call for private or public property owners to offer property for consideration. All offers must contain a plat or deed description, the address of the property, and a written statement of the asking price. The PDB must establish a date/time deadline and location for all offered properties to be submitted to the PDB for consideration.

C. **Public Hearing:** The PDB must discuss issues relating to site procurement at a public hearing. At the discretion of the PDB, the public hearing for site selection may be held in conjunction with the regularly scheduled PDB meeting. The public hearing for site issues must be conducted in accordance with this Section.

1. **Public Notice:** If it is determined that the PDB wishes to solicit proposals for potential sites, it shall issue a public notice of a public hearing utilizing the example below.

Sample Public Notice

The _____ County Project Development Board has scheduled a public hearing for a proposed Kentucky Court of Justice Facility for (Day); (Date); (Location) and (Time). Details of the proposed Project are available for examination at the (Owner's) office, (Address), between (AM) and (PM) through (Date). Interested property owners should submit plats of property to be considered, asking price, and statements of any known historical or environmental concerns. Individuals who wish to comment on the proposed facility may present oral or written statements at the public hearing.

Figure 10-1 Sample Public Notice

2. **Agenda:** Items to be discussed at the public hearing include, but are not limited to:

    a. Proposed scope of the Project (e.g., square footage, number of floors, etc.)

b. Receive site proposals and present them for open discussion.

c. Questions, concerns and comments.

3. **Minutes:** The Owner is responsible for taking minutes of the public hearings, placing those minutes in its Project file, and forwarding the minutes to the AOC DCC.

D. **Preliminary Site Assessments:** The PDB or the A-E will perform a preliminary assessment of any or all sites submitted at the public hearing. The assessment must include, but is not limited to, the following:

1. Identification of potential sites which may suit the needs of a proposed KCOJ facility.

2. Review of the asking price and of the PVA assessed value of potentially suitable sites.

3. Identification of any potential environmental or historical issues. The PDB may require the owner of the proposed site to address environmental issues related to offered properties, and any such issues may affect the PDB's evaluation of the proposed properties.

E. **Final Site Assessment:** Upon completion of the preliminary site assessments, the PDB must determine and prioritize the most suitable and appropriate site(s). Upon prioritization, the PDB must execute a final site assessment of up to three (3) of the most suitable and appropriate sites in accordance with the following:

1. Site location/description of site
2. Size of site (length, width, area)
3. Current uses of property
4. Owner(s)
5. Current uses/condition of adjacent properties
6. Identified and suspected environmental concerns
7. Historical concerns
8. Demolition requirements
9. Storm water issues
10. Flood plain issues
11. Existing utilities/services

F. **AOC Approval of Site:** Prior to PDB presentation and recommendation of a site(s) to the Owner for procurement, the PDB must submit the proposed site(s) to the AOC DCC. The AOC Manager of Capital Construction or designee will evaluate each proposed site to determine whether it meets the needs of the KCOJ. No site may be presented to the PDB for its consideration and recommendation to the Owner unless it has been approved by the AOC Manager of Capital Construction or designee.

G. **PDB Presentation:** After final assessment of the site(s), each site approved by the AOC will be presented to the PDB with the following information:

1. Scaled Drawing(s) (with files on AutoCAD) of site for graphic clarification.

2. Alternatives considered.

3. Appraisal of Site(s). The KCOJ recognizes only appraisal values determined by an appraiser with a principal place of business outside of the County in which the property is located. Only appraisals from such an appraiser are considered as a Project expense.

The PDB may expend Project funds to execute one appraisal for each property site. Under certain conditions (e.g., existing ownership by local unit of government) values may be determined as described in Section 10-5.

4. PVA values of site(s).

5. Asking price of site(s).

H. **No Suitable Site:** If the PDB determines that none of the proposals received prior to the public hearing(s) produced a suitable site, the PDB may elect to continue to seek the most appropriate site via public or private general solicitations.

10-3 PROCUREMENT OF PRIVATELY OWNED PROPERTY

A. **Negotiations for Properties**: The PDB may negotiate a property price as follows:

1. Property price must not exceed the appraised value.

2. Should the property owner(s) desire a price greater than the appraisal, the PDB may recommend condemnation of the property.

3. The PDB may not agree to include in the purchase price the amount of any unpaid property taxes.

4. The PDB may not agree to the reimbursement of relocation costs of any business or other dislocated party.

5. Exceptions to these provisions must be approved by the AOC Manager of Capital Construction and the AOC Budget Director.

B. **Proposal and Recommendation to Owner:** Once the PDB has selected an AOC-approved site and a price has been negotiated, the Owner must effectuate the purchase of the selected property.

C. **Condemnation of Property:** If the negotiations fail to procure a suitable site or a suitable site for a fair and reasonable price, or if the price exceeds appraised value, the PDB may recommend to the Owner that condemnation actions be initiated. The Owner must initiate and execute the condemnation process as recommended by the PDB. Costs associated with the condemnation, excluding fees for legal services provided by the county attorney, may be reimbursed to the Owner from Project funds if approved by the PDB, the AOC Manager of Capital Construction, and the AOC Budget Director. No agreements may be made as to the purchase price of the property during the condemnation proceedings unless the AOC approves the purchase amount in writing.

D. **Property Offered For No Compensation:** Private property owners may propose to donate or transfer ownership of their property to the Owner for development of a KCOJ facility. The PDB must consider those sites on an equal basis with other potential sites to ensure that the recommended site is the one which best meets the needs of the KCOJ and the community. Documentation of any donated site from private individuals may reflect the asking price so long as it does not exceed a fair market consideration for tax purposes.

10-4 PROCUREMENT OF PUBLICLY OWNED PROPERTY

A. **General:** Suitably sized and located publicly-owned property may be designated for the development of a KCOJ facility upon the recommendation of the PDB and with the approval of the AOC Manager of Capital Construction, in accordance with this Chapter. Titles and necessary legal documentation must be executed so the ownership of the property is transferred to the Project as identified in the MOU.

B. **Compensation for Property:** No compensation may be made to the Owner for any property unless bond counsel has issued a written determination that any reimbursed costs will not jeopardize the tax exempt status of any bonds or notes issued or to be issued for the Project. The PDB and the AOC Budget Director may approve total or partial reimbursement to the Owner for publicly owned property. Reimbursements must not:

   1. Affect the tax exempt status of any bonds or notes issued or to be issued for the Project;
   2. Exceed the appraised value of property; or
   3. Use any funds necessary to complete design and construction of the facility.

C. Recently Procured Property: Reimbursement for property procured by the Owner in the ten (10) years preceding the General Assembly's authorization of the Project is limited to:

   1. The Owner's actual site procurement/purchase costs; and
   2. Any actual interest costs and/or interest earnings, at a reasonable and legal rate as may be approved and established by the PDB and the AOC Budget Director.

   In no event may the reimbursement exceed the appraised value of the property.

Property Offered For No Compensation: Public property owners may propose to donate or transfer ownership of their property to the Owner for development of a KCOJ facility. The PDB must consider those sites on an equal basis with other potential sites to ensure that the recommended site is the one which best meets the needs of the KCOJ and the community.

10-5 SITE REMEDIATION

Any remediation required to render a site acceptable must be accomplished prior to the procurement unless approved or agreed otherwise by the PDB and AOC Manager of Capital Construction.

10-6 ENVIRONMENTAL ISSUES

A. It is the responsibility of the owner(s) of a proposed site to ensure the property is free and clear of any and all known or anticipated adverse environmental issues.

B. Expenses associated with Professional services for environmental analysis may be paid from Project funds if approved by the PDB and AOC Manager of Capital Construction.

CHAPTER 11 – GENERAL CONTRACTORS

11-1 PROCUREMENT OF GENERAL CONTRACTOR SERVICES

A. General:

1. Those PDBs who have chosen to construct their Project via the Design-bid-build project delivery method with construction services provided by a GC must execute and oversee the selection of a GC in accordance with this Chapter.

2. All General Contracting services for KCOJ Projects must be procured through a competitive process in which GCs are selected on the basis of an evaluation of either "low bid", or "best value".

3. "Low bid" means the responsive and responsible bidder with the lowest lump sum bid.

4. "Best value" means the selection is based on the meeting the specific requirements and best interests of the PDB and the KCOJ. Best value may be based on objective and quantifiable criteria that include price and a reciprocal preference for a resident bidder as described in KRS § 45A.494 that have been communicated to the bidders in the invitation for bids. The criteria may include qualifications, capabilities, and experience of each bidder.

5. Before advertising for General Contracting services, the PDB must determine whether it will select the contract awardee on the basis of low bid or best value. The selection criteria must be included in the invitation to bid.

6. The ex parte contact and conflict provisions set forth in Sections 5-1(G) – 5-1(I) apply to the process for selecting a General Contractor.

7. The Owner must keep all documents relating to the evaluation of General Contractors in its Project file.

B. Solicitation: The PDB must issue an RFP for General Contracting services.

1. The RFP must conform to the standard template in Figure 11-1, below.

2. As part of its bid, the bidder must complete and submit a Statement of Qualifications on a form prescribed by the AOC, and a Disclosure of Conflicts Statement in furtherance of Section 5-1(I).

3. The PDB must advertise the RFP for GC services in the county's legal newspaper and in the one of the following with the largest circulation in the County where the Project is located: the Kentucky Enquirer, the Louisville Courier-Journal, or the Lexington Herald Leader.

4. General Contractor sample notice:

ADVERTISEMENT
FOR
GENERAL CONTRACTOR SERVICES

The *(County Name)* County Project Development Board is in the process of designing and constructing a new Judicial Center (or renovating the existing courthouse) to be located in *(City Name)* , KY. Construction is slated to begin *(month/year)*. The Board invites interested General Contractors to submit a lump sum bid for the general construction of the project. Sealed bids shall be submitted to the *(County Name)* County Project Development Board Chairperson, *(office of County Judge Executive)* , *(Mailing Address)* , KY *(Zip Code)*.

Copies of the construction documents may be viewed in the office of *(Local Unit of Government Name)*, or may be obtained as directed by the construction documents invitation to bid from *(printer/ distributors name)*.

Figure 11-1. Sample Advertisement for GC Services

C. Qualifications of Bidders:

1. An offeror must possess:

   a. A minimum of five (5) years experience as a CM or GC;

   b. Current membership in the national association or state chapter of the Associated General Contractors of America, the Associated Builders and Contractors, Inc., or the Construction Management Association of America ; and

   c. The ability to obtain and maintain general liability insurance and bonding in accordance with The Rules of Administrative Procedure of the Court of Justice, Part X, Capital Construction Program .

D. Instructions to Bidders:

1. The A-E must include in the bidding documents instructions to bidders and must manage and oversee the printing and distribution of construction documents. The instructions to bidders must be a form as developed and maintained by the AOC and must incorporate AP Part X.

2. The instruction to bidders must contain the weighted best value criteria, if any, that will be used by the PDB to select a GC for the Project. The best value criteria used must be approved by the PDB and the AOC Manager of Capital Construction, and must include:

   a. Price;

   b. Qualifications of proposed construction personnel, including:

i. Experience on similar projects; and
ii. Experience in the proposed role.

c. Experience and ability of the company, including:

i. Number of construction professionals in the company;
ii. Number of administrative and other personnel in the company;
iii. Number of years the company has been in the business;
iv. General Contracting performance and experience with prior projects of similar type and scope;
v. Volume of General Contracting experience in the last three (3) years;
vi. The company's ability within the past three (3) years to construct projects within specific project budgets and schedules;
vii. The average percentage by which construction bids deviated from the estimated construction cost on projects completed in the last three (3) years;
viii. Change orders as a percentage of the bid construction amount (including the nature of the Change Orders) on projects completed in the last three (3) years;
ix. Compliance with applicable federal, state and local regulations; and
x. Existing workload relative to the size of the company and capacity to perform the project.

3. The bidding documents must contain provisions allowing the Owner to purchase certain materials directly to enable the Owner to save Kentucky sales tax in accordance with KRS § 139.470(7).

E. Addenda:

1. Distribution: The printer must mail or deliver addenda to all individuals who have requested and were furnished bidding documents.

2. Availability: Copies of addenda will be made available for inspection wherever the bidding documents are on file.

3. Cut-Off Date: No addenda of a material nature will be issued later than seven (7) calendar days prior to the date for receipt of bids, except for addenda postponing the date for receipt of bids or withdrawing the Invitation to Bid.

4. Bidder Confirmation: The bidder must ascertain, prior to submitting its bid, that all addenda issued by the PDB for the particular bid invitation have been received. The bidder must acknowledge receipt of all addenda in the Form of Proposal, or by a separate letter to the PDB, which is received at or prior to the hour and date specified for receipt of bids.

F. Bidding Procedure:

1. Bid Form:

a. Bids must be submitted on bid forms (Form of Proposal) as provided in the contract documents, and must meet requirements set forth in the invitation for bids.

b. The bid form must at least contain the following:

i. Identification, by name, the project title, the PDB and the entity soliciting the bid.
ii. Lump sum bid, written and enumerated.
iii. Alternate proposals identified as Additive or Deductive.
iv. Unit prices.
v. Any final determinations of violations of KRS Chapters 136, 139, 141, 337, 348, 341, 342 and any other final determinations of violations from any regulatory agency in the past five (5) years.
vi. List of subcontractors with greater than 1% of the bid amount.
vii. Name, address, phone number and email address (if applicable) of bidder.
viii. Acknowledgement of addenda by date and number, and space for enumeration of all issued addenda.
ix. A ten-percent (10%) bid bond for submitted proposals.
x. Any additional items required by the listed best value criteria, if applicable.

2. Bid Security

a. Bids must be accompanied by a bid guarantee of not less than ten percent (10%) of the amount of the base bid executed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky.

b. Bid security shall secure the bidder's promise to:

i. Enter into a contract with the Owner on the terms stated in the bid proposal; and,

ii. Furnish bonds covering the faithful performance of the contract and the payments of all obligations.

c. Should the bidder refuse to enter into a contract or fail to furnish the required performance and payment bonds, the amount of the bid surety shall be forfeited to the Owner as liquidated damages, not as a penalty.

d. The PDB must retain the bid security of the bidders until either:

i. The contract has been executed and the performance and payment bonds have been furnished; or,

ii. The specified time has elapsed so that bids may be withdrawn; or,

iii. All bids have been rejected.

3. Submission of Bids: Bids must be submitted in accordance with the requirements contained in the invitation to bid, a document which is developed and maintained by the AOC.

4. Modifications or Withdrawal of Bid:

a. Bids may be withdrawn or modified in accordance with the provisions contained in the invitation to bid, a document which is prescribed by the AOC.

b. No bidder may withdraw, modify or cancel its bid for a specified time of at least sixty (60) days, but extendable to ninety (90) days by written notice to the bidder. The parties may agree to extensions beyond ninety (90) days when required.

G. Bidders should submit with their Form of Proposal a Disclosure of Conflicts Statement in accordance with Chapter 5-1(I).

H. The Instructions to Bidders, prescribed by the AOC, must include:

1. A Notice that Foreign corporations doing business within the Commonwealth of Kentucky are required to be registered and in good standing with the Secretary of State.

2. A Notice that GC contracts in the Commonwealth of Kentucky are not exempt from the provisions of the Kentucky Sales and/or Use Tax; but that the Owner is entitled to exemption from Federal Excise Tax. All adjustments and allowances for the current sales or use tax must be provided for in the bid amount and no later adjustments to the contract sum will be permitted or made on this basis.

3. A Notice that all bidders must be in full compliance with the law concerning Unemployment Compensation, Workers' Compensation, and the Kentucky Equal Employment Opportunity Act of 1978, as found in KRS Chapters 341, 342, and 45.550, et seq.

I. Post-bid Review:

1. The preliminary apparent low bidder or bidders must submit the material and equipment listing within the timeframe set forth in the bidding documents. The materials and equipment listing must be that listing bound with the Form of Proposal.

2. Post-bid Preliminary Review will include representatives of the PDB, the A-E, and the AOC Project Coordinator.

3. Direction of Review: The post-bid preliminary review will be directed toward subcontractors, material listing, unit prices and qualifications of the bidder or bidders.

4. Apparent Low Bidder's or Bidders' representative(s) must have the authority and ability to respond to questions that arise during the post-bid preliminary review.

J. Consideration of Bids:

1. Unless the Advertisement for Bids or Invitation to Bid indicates otherwise, all properly identified, timely bids must be publicly opened and read aloud. All such bids must be listed on the official bid tabulations and will be made available to bidders upon request.

2. The right to cancel the Invitation to Bid, to reject any and all bids, and to waive technicalities and minor irregularities in bids shall be maintained and preserved by the AOC and the PDB when such action is determined to be in the best interest of the KCOJ and the Owner.

3. Grounds for the rejection of bids include but are not limited to:

a. Failure of a bid to conform to the essential requirements of the Advertisement of Bids or Invitation to Bid.

b. Failure of a bid to conform to the requirements of the contract documents.

c. Failure of a bid to conform to the time requirements established in the bidding documents.

d. Inclusion of a bid provision limiting the bidder's liability to the Owner in a manner inconsistent with the provisions of the bidding documents.

e. Unreasonableness of a bid price, as determined by the PDB and the AOC Manager of Capital Construction.

f. Non-responsibility of the bidder.

g. Failure of a bidder to furnish a bid security in accordance with the requirements of the Advertisement for Bids or Invitation to Bid.

O. Acceptance of Bids:

1. PDB Recommendations: The PDB shall recommend to the AOC Manager of Capital Construction a successful bidder for the proposed work for approval and permission to proceed with an award of contract. Each PDB member must sign a statement that he or she has complied with Section 3-3(D) and 5-1(H), above, or otherwise to list any ex parte communication that has occurred.

2. Alternates are considered in the award of contract. Alternate(s) may or may not be accepted by the PDB and the AOC Project Coordinator in the sequence in which they are listed on the bid proposal form; and, the lowest bid sum shall be computed on the basis of the sum of the base bid plus and/or minus any alternates accepted.

P. Protests: The protest procedures set forth in Chapter 5-1(K) apply to solicitations and awards of contracts to GCs under this Chapter.

Q. The Owner shall enter into a contract with the PDB-selected GC upon receipt of written authorization from the AOC Manager of Capital Construction.

1. The successful bidder shall provide to the PDB and the AOC Manager of Capital Construction a complete and thorough breakdown of their bid on a Schedule of Values on a form developed and maintained by the AOC.

2. This bid breakdown shall be organized by standard divisions of work, shall be used as the basis of administering partial payments throughout the project and shall include the identification of all cost items, inclusive of mobilization, Payment and Performance Bond costs, labor and materials costs, shop drawings, close out documents, overhead and profit line items.

11-2 GENERAL CONTRACTOR REQUIREMENTS

A. **Contract Documents:** Throughout the construction process, the GC must use documents developed and maintained by the AOC.

1. If the AOC has not developed a standard form for a particular purpose relating to the Project, the GC may propose a document for such purpose for approval by the AOC.

Any such proposed document must be consistent with the standard forms developed for the AOC and must incorporate AP Part X.

2. The A-E must ensure that AP Part X is incorporated in the contract documents.

B. Tap on fees: The GC is responsible for coordinating payment of tap-on fees

C. **Legal Actions**:

1. The GC must provide written notice to the Owner, the AOC General Counsel and the AOC Manager of Capital Construction of every legal action involving the Project. Legal action includes, but is not limited to: filing of liens, filing of complaints, scheduling of mediations or settlement conferences, and initiation of arbitration proceedings.

2. The GC must serve as a witness in connection with any legal proceeding regarding the Project upon request of the PDB or the AOC.

D. **Insurance:** Insurance requirements for the GC will be set out in the Contract between the Owner and the GC as developed and maintained by the AOC. At a minimum, these requirements must include:

1. Payment and Performance Bonds in accordance with Section 11-6;
2. General Liability Insurance in the amount of $2 million per occurrence, $5 million aggregate;
3. Worker's Compensation insurance as required by statute; and
4. Employer's Liability Insurance in the amount of $1 million.

11-3 MEETINGS

A. **Required Meetings:** The GC is responsible to facilitate all construction-related meetings.

1. Pre-Construction Meeting: The GC and its primary subcontractors must confer with the A-E, the PDB, and the AOC Project Coordinator to confirm their understanding of the Project's program, including budget, purposes, concepts, desires, requirements and time-table prior to initiating construction activities.

2. Monthly Progress Meetings: The GC must confer with the A-E, the PDB, and the AOC Project Coordinator to report the progress and status of the Project and to address any special conditions or issues that have occurred or are anticipated.

3. Other Meetings: The GC must confer with the PDB and the AOC Project Coordinator to address issues, special conditions, or anticipated issues or conditions upon request of the A-E, the PDB, or the AOC Project Coordinator.

B. **Execution of Meetings and Minutes:** Meetings are intended to update persons and agencies involved in the Project and to provide information and discussion to make informed decisions. Meetings are not to be used as a forum to discuss issues which can/could be resolved between two persons or agencies.

1. Meeting Agenda: An agenda for meetings is required, and must include the following information, at a minimum:

a. Date and time of meeting
b. Location

c. Purpose
d. Issues to be addressed
e. List of participants
f. Contact person

2. Meeting Facilitation: The A-E must facilitate all design-related meetings and provide meeting notes to the PDB and the AOC Project Coordinator. Construction progress meetings must be facilitated by the GC.

3. Meeting Minutes: The facilitator must record minutes of meetings and must provide copies of minutes to all concerned parties including but not limited to the PDB, the AOC Project Coordinator, the A-E, and all affected contractors, subcontractors, and vendors.

11-4 RIGHTS AND RESPONSIBILITIES

A. **Supervisory Personnel:** GCs must maintain an adequate number of supervisory personnel on the project work site during the hours that work is performed. Supervisory personnel, including but not limited to job superintendents, project managers, and general foremen, may not be reassigned from a Project without the written consent of the PDB and the AOC Manager of Capital Construction.

B. **GC Performance:** The GC must perform all of the work required, implied or reasonably inferable from the contract, including but not limited to the following:

1. Construction of the Project in a timely and efficient manner consistent with the authorized construction documents and the contract.

2. Critical Path Schedule: The GC must prepare and establish a Critical Path Schedule to establish a timeline for all construction events. The GC must document any and all circumstances and events that adversely affect the Critical Path Schedule.

3. The provision and prompt payment of labor, supervision, administrations, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project.

C. The creation and submission to the A-E, AOC, and PDB of detailed and comprehensive record drawings, in accordance with the United States CAD Standard, depicting all as-built construction. The record drawings must be submitted to the A-E, the Owner and to the AOC, as follows: one (1) printed set each of the working drawings and specifications each.

D. **Intent of the Contract Documents:** The intent of the contract documents is to include all items necessary for the proper completion of the work by the GC. Labor or materials, which are evidently necessary to produce the desired results, even though not specifically mentioned in the contract documents, is included in the work.

E. The GC must make a final written report to the AOC within thirty days of final completion. Such written report must include, at a minimum, the following:

1. Evaluation of Project Change Orders;
2. Evaluation of the Project schedule;
3. Evaluation of the performance of the Project A-E; and
4. Suggestions that would have improved the Project.

F. **Liquidated Damages:**

1. For projects with a Contract Price less than $15,000,000, liquidated damages will be assessed against the GC in the amount of $1,500 per day for each day that substantial completion is delayed beyond the substantial completion date in the contract, as amended by Change Order.

2. For projects with a Contract Price more than or equal to $15,000,000, liquidated damages will be assessed against the GC in the amount of $1,750 per day for each day that substantial completion is delayed beyond the substantial completion date in the contract, as amended by Change Order.

G. The GC specific rights and responsibilities during each Phase of the Project will be outlined in the contract between the Owner and the GC, on a form developed and maintained by the AOC.

11-5 PAYMENTS TO GCs

A. The Owner must authorize payment to the GC once such payment has been approved by the PDB, the AOC Manager of Capital Construction, and the AOC Budget Director.

1. Each payment will be paid according to the percent of completed construction as determined by the A-E.

2. Payments will be made less a ten percent (10%) retainage until the Project is 50% complete. When the A-E has certified that the Project is 50% complete, subsequent payments to the GC will be made less a five percent (5%) retainage.

3. Final payment to the GC will not be made until all punch list items are complete and the PDB and the AOC Manager of Capital Construction have received the following:

   a. Record drawings which are complete and fully depict the as-built condition of the Project.
   b. Operations and Maintenance Manuals.
   c. A Certificate of Substantial Completion.
   d. A Release of Liens and Consent of Surety to Release Final Payment.
   e. Any other close-out documents required.

4. The GC must submit Applications for Payment on a form prescribed by the AOC, in accordance with the terms of the contract between the Owner and the GC, which will also be on a form developed and maintained by the AOC. In addition to submitting its Application for Payment to the Owner and the A-E, the GC must simultaneously submit Payment request information in the CPTS, as directed by the AOC.

5. As a prerequisite for payment, the GC must provide partial lien and claim waivers from any of its subcontractors and suppliers, verifying payment for all work included in prior payment applications and verifying payment for the completed work included in the tendered payment application. Such waivers will be conditional upon payment.

6. Within 90 calendar days after KCOJ acceptance and occupation of the facility, the GC must submit to the PDB, the AOC Manager of Capital Construction, and the AOC Budget Director, a memorandum of record stating that either all charges for work have been submitted and paid with regard to the Project or detailing any and all invoices or statements of charges which are outstanding or have not been paid.

11-6 PERFORMANCE AND PAYMENT BOND(S)

A. Within three (3) days of execution of Owner-GC Contract, the GC must furnish Performance and Payment Bond(s), with a penal sum equivalent to one hundred percent (100%) of the Contract Price, to the Owner in accordance with the requirements set forth below. The GC must not enter into any subcontracts to perform work on the Project until it furnishes its Performance and Payment Bond(s), with a penal sum equivalent to one hundred percent (100%) of the Contract Price, as set forth below.

B. As set forth herein, the GC must, within three (3) days of execution of the Owner-GC Contract and prior to entering into any subcontracts to perform work on the Project, furnish Performance and Payment Bond(s) to the Owner as obligee, on a form satisfactory to the AOC, issued by a surety company authorized to do business in the Commonwealth of Kentucky and with a penal sum equivalent to one hundred percent (100%) of the Contract Price, as it may be increased, the conditions of which must bind the GC, as principal, and the surety, to the performance of the contract according to the terms, conditions and specifications of the contract, and any changes or modifications thereto and to the payment of all costs for labor, materials, equipment, supplies, taxes and any other proper charges and expenses incurred or to be incurred in the performance of the contract.

C. The Owner will reimburse the GC for the premium paid by the GC for furnishing the required Performance and Payment Bond(s).

D. The GC cannot proceed with any portion of the work on the Project until it furnishes the percent Performance and Payment Bond(s), with a penal sum equivalent to one hundred percent (100%) of the Contract Price, as set forth herein.

E. In the event that the GC defaults under the terms of its contract with the Owner, and the surety is required to supplement or replace the GC, the surety must comply with all requirements of the original contract between the Owner and the GC, included, but not limited to, compliance with AP Part X.

11-7 CHANGE ORDERS

A. General: Project Change Orders may increase, decrease, or cause no change in the cost of the Project.

B. The GC or the A-E may propose Change Orders <u>only</u> to the extent that the condition requiring such proposed changes is beyond the control of the GC or the A-E, and <u>only</u> for one of the following purposes:

   1. To correct unforeseen or unknown issues or conditions; or

   2. To make necessary modifications to increase efficiency or durability of primary and supporting facility components.

C. The PDB or the AOC may propose a Change Order only if sufficient Project funds remain unobligated in the Project account.

D. No document, including a Change Order, is a recognized encumbrance to the Project until it is fully executed and signed by all required parties.

E. All Change Orders require the approval of the PDB, the AOC Manager of Capital Construction, the AOC General Counsel or designee, and the AOC Budget Director.

F. The AOC will only approve time extensions by Change Order when the extension is due to no fault of the GC or its subcontractors.

G. Change Order Process:

1. A proponent of a proposed Change Order must submit such proposed Change Order to the A-E.

2. The A-E must receive and promptly examine change requests from the proponent, request additional information from the proponent, if necessary, and advise the AOC Project Coordinator and the PDB of the request. The A-E must:

   a. Evaluate proposed Change Order impacts and costs, determine whether the proposed change(s) are acceptable for presentation to the PDB and ensure proposed costs are fair and reasonable, or reject the proposed change(s) based on documentation.

   b. Enter Change Order request data into the AOC Project Tracking System as directed by the AOC.

   c. Issue and collect required signatures for all authorized and approved changes.

3. The GC must provide all supporting and backup and documentation for material, labor, equipment and any other items included in the Project Change Order request as required by the A-E, the PDB, and the AOC.

4. The AOC Manager of Capital Construction or designee must approve, disapprove or request modification to the requestor, of a submitted Change Order Request in the CPTS. Upon approval by the AOC Manager of Capital Construction, the submitted Change Order request must be considered for approval by the AOC Budget Director and the AOC General Counsel.

5. The AOC General Counsel or designee must determine whether the Change Order is in accordance with AP Part X.

6. The AOC Budget Director must determine whether authorized funding is available for the submitted Change Order request.

7. The GC must advise the AOC and the PDB of any Change Order requests and assist the A-E in promptly examining Change Order requests from the requestor, requesting additional information from the Change Order requestor, if necessary.

H. GC Fees for Change Orders: A Change Order which results in an increase or decrease in the Contract Price will be calculated by the Cost of the Work, as defined in the Owner / GC contract, plus an amount not to exceed fifteen percent (15%), which shall include any and all subcontractor markups.

I. The PDB and the AOC must authorize additional compensation for Change Orders resulting in a compensable time extension, as determined by the PDB and the AOC with the assistance of the A-E, as follows:

1. In consideration for the payment of $15,000, the GC will not seek additional costs or damages for any time extension for the first ninety (90) days following the date of Substantial Completion.

2. If the GC were to seek additional costs or damages for any time extension beyond that ninety (90) day time frame, the compensation for such time extension will be calculated by multiplying the number of days associated with the time extension by the per diem amount of the GC's General Conditions, established at the time of contract.

CHAPTER 12 – NAMING OF FACILITY / GROUNDBREAKING / DEDICATION

12-1 NAMING OF FACILITY

A. General: The Project will be named "the ____ County Judicial Center." No other names may be considered.

B. Names of Honoraria:

1. The PDB may not name a new KCOJ facility after an individual.

2. Names of Rooms within Facility: The PDB may name components within a facility in honor of local and statewide persons of prominence, with the approval of the AOC Director. Facility components that may be considered for such a name include, but are not limited to: courtrooms, conference areas, and hearing rooms.

C. The AOC, through the AOC Manager of Capital Construction, has the authority to approve, deny, modify, or assign KCOJ facility names.

12-2 PUBLIC EVENTS

A. Coordination and Approval of Project Public Events: The PDB is responsible for coordinating and scheduling all plans related to public events regarding the Project including, but not limited to: the ground breaking ceremony, public hearings, and the Grand Opening/Dedication. The PDB must obtain the AOC Manager of Capital Construction's approval for all such plans.

B. Cost:

1. Groundbreaking: The Owner may request reimbursement of up to $500 from project funds for expenses associated with the groundbreaking ceremony. Any expenses that exceed $500 will be the responsibility of the Owner.

2. Dedication: The Owner may request reimbursement of up to $1,000 from project funds for expenses associated with the dedication and grand opening ceremony. Any expenses that exceed $1,000 will be the responsibility of the Owner.

12-3 DEDICATION PLAQUES

The cost of one (1) Dedication Plaque for each Project will be paid from project funds. A Dedication Plaque may only contain the names of existing PDB members and current Justice(s), legislators, and AOC staff at the time of Project completion.

CHAPTER 13 – PROJECT PAYMENTS

13-1 DEFINITIONS

A. **Capital Projects Tracking System (CPTS)** is a web-based program designed, developed, and administered by the AOC. The CPTS provides a means to monitor, track and report financial and budgetary data related to the cost of construction of Projects

B. **Payment Requisitions** are payment requests, submitted on a form prescribed by the AOC, for the Trustee to initiate payments for all costs associated with the Project.

13-2 PAYMENT PROCEDURES

A. **Payment Requests:** All payment requests must be submitted on a form prescribed by the AOC, and must simultaneously be entered into the CPTS.

1. Payment requests must be submitted to the AOC no less than one week before the PDB meeting at which it will be considered.

2. All GC and CM payment requests must be approved by the A-E before submittal to the AOC.

3. No payment requisition may be authorized and forwarded to the Trustee by the PDB without prior authorization by the AOC Budget Director and the AOC Manager of Capital Construction.

B. **Change Orders** may not be included in any payment requisition unless they are first entered into the CPTS by the A-E, CM or GC and approved in writing by the PDB, the AOC Budget Director, the AOC General Counsel or designee, and the AOC Manager of Capital Construction.

C. **Requisition Submittal to Trustee:** The Chair of the PDB is responsible for forwarding approved payment requisitions to the trustee. This responsibility may not be delegated to a CM.

13-3 AUTHORIZED USE OF FUNDS

Project funds must be used in accordance with AP Part X. The PDB may only use KCOJ Project funds for the promotion and execution of the specifically described and authorized KCOJ Project. The Owner may not direct the expenditure of any Project funds to other local agency-owned or occupied projects or facilities. KCOJ Project funds are for the benefit of KCOJ-occupied facilities only.

CHAPTER 14 – FINANCING

14-1 DEFINITIONS

A. **Level Repayment Schedule** is a repayment schedule in which the combined amount of principal and interest payments, per fiscal year, for each bond issue remains relatively constant over the life of the bond issue.

B. **Lease/Sublease Agreement** is an agreement entered into between the Owner, the PPC, and the AOC that details the agreed-upon terms concerning the lease, operation, maintenance, financing, and use allowance payments for the Project. The Lease/Sublease Agreement must be prepared by bond counsel with the assistance of the financial adviser and approved by the AOC. Bond Counsel must submit the Lease/Sublease Agreement and any related documents to the AOC Office of Legal Services and the AOC Budget Director at least fourteen (14) days prior to any needed signature.

14-2 OUTSTANDING DEBT

The local unit of government becomes solely responsible for paying any outstanding debt or loan obligation it holds on an existing court facility when the KCOJ vacates that facility. Once the KCOJ vacates the existing court facility, no further use allowance payments, as described in KRS Chapter 26A, will be paid for that facility. No outstanding debt on any existing court facility may be rolled over or encumbered under the financing for any new Project.

14-3 INTERIM FINANCING

The Owner, with assistance from the Financial Advisor, must identify potential sources of interim financing and procure interim financing for front costs, such as land purchase costs, site and environmental surveys, demolition (if required), design-related costs, or other miscellaneous costs. The term of the interim financing must not exceed five (5) years. Interim financing must be retired and paid in full upon the issuance of long-term financing for the Project.

14-4 LONG-TERM FINANCING

A. **Financing Approval:** Owners can only obtain funding for KCOJ Projects from licensed financial firms.

B. **Rate of Participation:**

1. The AOC will determine the Owner's rate of participation, if any.

2. The AOC's level of participation is based on the AOC's pro rata occupancy of the facility and KRS Chapter 26A.

3. KCOJ Projects will be 100% occupied by the KCOJ unless the AOC Director approves a lesser rate of occupancy. In the event that the AOC Director has approved a mixed-occupancy facility, the AOC will only be financially responsible for its pro rata share of the Project based on occupancy. In that event, the Owner must assume the remainder of the debt service payments, which may be accomplished by sub-leasing its pro rata share of the Project from the AOC in the discretion of the AOC Budget Director.

C. **Financing Procedures:** In the event that the Owner cannot issue bonds to finance the Project, the Owner may seek to finance the Project through another local unit of government in accordance with KRS Chapter 26A.

D. Debt Service Schedules: The following procedures must be used by all participating Owners in the debt service schedules:

1. The AOC's use allowance applied to debt service must be limited to a twenty (20) year issue with a level repayment schedule. The maximum annual repayment amount (use allowance) must not exceed the amounts authorized by the General Assembly and as defined by KRS § 26A.090. In extenuating circumstances and upon written request, an extension of the bond term up to twenty-five (25) years, may be granted by the AOC Director as provided by KRS § 26A.162. The AOC Director must submit any proposal for an extension of the bond term greater than twenty-five (25) years to the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bond Oversight Committee as set forth in KRS § 26A.162(2).

   a. Annual payments must be based on a fiscal year. The fiscal year of the AOC begins on July 1 of one year, and ends the following year on June 30. Debt service schedules must not require payments in the month of July.

   b. Interest payments and all additional fees must be fixed for twenty (20) years or the life of the debt and not subject to change. The interest costs paid on the debt obligations issued to finance the AOC portion of the Project must be computed and paid at a fixed rate of interest and must not be subject to any change during the entire life of the debt obligations. Additionally, if the debt structure includes any credit enhancement fees, trustee and paying agent fees, or any administrative fee or add-on annualized costs of any kind, then these additional fees and costs must be fixed during the entire life of the debt obligations and must be disclosed prior to closing.

   c. Debt obligations must be redeemable within 10 years and six months of their date of issuance. Any debt obligations issued to finance the AOC portion of the Court facility must be redeemable within ten (10) years and six months of the dated date of the obligations, at a premium of no greater than two percent (2%).

2. The Owner's portion of the bond sale, if any, may be structured to meet the unique financial needs of the Owner's debt service on the bonds issued and must include the minimum amount required for eligibility to participate in the program as certified by the AOC and the Owner.

3. Interest collected and accrued on funds derived from the bond sale must be allocated to the debt service schedules of the Owner and the AOC in the same proportions as their respective participation in the bond issue.

4. The proceeds of the bond sale must be held by a trustee and continually invested in compliance with KRS § 66.480, until expended on the Project or until the Project is completed. Any remaining proceeds or investment income received after completion of the Project must be applied to debt service. Credit against the debt service schedule must be applied in the same percentage as the participation in the bond issue. Exceptions require approval by the AOC Budget Director.

14-5 PROJECT CLOSEOUT

Within eighteen (18) months of substantial completion, the PDB must provide to the AOC Budget Director all closeout documents, including a Certification that all expenses relating to a Project have been paid. Upon approval by the AOC Budget Director, construction funds will then be closed and any remaining money in the construction fund must be transferred to the debt service fund.

14-6 REFINANCING / REFUNDING BONDS

A. **Consent to Proceed:** Either the Owner or the AOC may propose to issue refunding bonds for the purpose of refinancing a debt obligation on a KCOJ-occupied facility where such refunding bonds result in a savings to the Owner or the AOC after all costs are taken into consideration. The Owner must request the written consent of the AOC Budget Director before proceeding with the issuance of any refunding obligations. If the AOC Budget Director determines a debt obligation of an Owner should be refinanced, then the Owner must not reasonably deny issuing the refunding obligations on AOC's behalf.

B. **Owner's Request for Refinance**: The Owner, through its financial advisor, must make a request in writing for AOC's approval to refinance a debt obligation for which a use allowance is being applied towards all or a portion of the bond payment. The Owner must include in its request supportive schedules showing the outstanding bonds to be called, the escrow (if any) to be purchased to decrease the outstanding bonds, the escrow cash flows (if any), the sources and uses of the refunding bonds, and the projected net interest costs savings, including an allocation of the savings between the AOC and the Owner. All savings must be shown as a gross number and a net present value number, present valued at the refunding bond yield, and as a percentage of the prior bonds to be discharged.

C. **Consideration for Refinancing and Refunding Policy**: The AOC Budget Director may grant approval to refinance the bonds if at least a five percent (5%) net present value savings will be achieved. The AOC Budget Director may approve the refinance if a five percent (5%) net present value savings is not expected to be achieved if such exception is warranted due to a nominal interest spread coupled with already low rates, the remaining tenure of the bonds to be refinanced, or other economic circumstances.

D. **Use Allowance:** AOC's obligation must not extend beyond the original maturity date of the Bonds being refunded. If the bond term on the refunding issue is less than the term of the original bond issue, then AOC use allowance payments must terminate at the end of the duration of the refunding issue. Refunding or refinancing of KCOJ Projects requires the consent and approval of the AOC Budget Director.

E. **Savings from Refundings:** The Owner and AOC will be entitled to benefit from any savings realized by the issuance of the refunding bonds on a pro-rata basis. When the KCOJ occupies 100% of the Project and is responsible for 100% of the debt, the AOC is entitled to 100% of any savings realized by the issuance of the refunding bonds.