
Rules and Regulations of the State of Georgia

Department 672 STATE DEPARTMENT OF TRANSPORTATION

Chapter 672-22. GOVERNING ALTERNATIVE CONTRACTING METHODS

Rule 672-22-.01 **Statement of Policy and Purpose of Rules & Regulations.**

Rule 672-22-.02 **Definitions.**

Rule 672-22-.03 **General Rules for ACM Agreements.**

Rule 672-22-.04 **CM/GC Procurement Process.**

Rule 672-22-.05 **Rules Governing Construction Management Agreements.**

Rule 672-22-.06 **Rules Governing Predevelopment Agreements.**

Rule 672-22-.07 **Rules Governing Comprehensive Development Agreements.**

Rule 672-22-.08 **Size and Frequency Limitations for ACMs.**

Rule 672-22-.09 **Reporting ACM Contracting Activity.**

Rule 672-22-.01 Statement of Policy and Purpose of Rules & Regulations.

(a) **Policy.** It is the policy of the Department to consider when the public interest is best served by using an Alternative Contracting Method (ACM) to deliver projects under consideration by the Department, pursuant to the ACM Statute.

(b) **Suitability of Projects.** In assessing the suitability and feasibility of using an ACM to deliver a project, the Department will consider at least the following factors:

- (1) Public interest.
- (2) Innovation.
- (3) Risk identification, risk allocation, and risk mitigation.
- (4) Design complexity.
- (5) Cost control.
- (6) Construction schedule optimization.
- (7) Expected benefits from phased project delivery or issuance of multiple work packages.
- (8) Projects that present unique needs that would benefit from Construction Manager or Developer involvement early in the design process.

(c) **Board Approval.** The Department shall submit to the State Transportation Board a written request to proceed with using an Alternative Contracting Method to procure a project when consideration of the factors in (b) indicate the public interest is best served by doing so, in accordance with the ACM Statute. Each request to use an Alternative Contracting Method will clearly identify the statutes and rules that will apply for the solicitation and any resultant ACM agreement. Alternative Contracting Methods that are included in a separate Public Private Initiative or a Public Private Partnership authorized by Section 32-2-80 of the Official Code of Georgia are subject to Board action provided for in Section 32-2-80(f), governed by separate rules and regulations, and are not subject to approval as provided for projects initiated under the ACM Statute.

Rule 672-22-.02 Definitions.

The following terms, as used in this chapter, shall have the following meanings unless the context thereof indicates to the contrary:

(a) “**Alternative Contracting Method**” or “**ACM**”: One of the three contracting methods authorized by the ACM Statute, specifically: (i) Construction Manager/General Contractor

(“CM/GC”) Agreement, (ii) Comprehensive Development Agreement, and (iii) Predevelopment Agreement.

(b) “**ACM Statute**”: Section 32-2-82 of the Official Code of Georgia Annotated.

(c) “**Board**” shall mean the State Transportation Board of the State of Georgia.

(d) “**Capital Budget**”: The current, projected, and final audited total amount of state, federal, and other funds received by the Department for the support of the capital program including the construction, operations, and maintenance of public roads.

(e) “**Comprehensive Development Agreement**” or “**CDA**”: An alternative contracting method consisting of a single, multi-phase contract that allows for expedited project delivery through the concurrent design and construction of a project pursuant to which the Developer shall (i) collaborate with the Department to advance development of the project concept, (ii) perform or provide for the design and construction services, and (iii) perform or provide any operations or maintenance services required for the project; provided, however, that the initial CDA agreement may provide for negotiating and entering into future phases or segments of the project at the times that the Department considers advantageous to the Department.

(f) “**Construction Manager/General Contractor**” or “**CM/GC**”: The counterparty to a Construction Management Agreement let by the Department in accordance with Rule 672-22-.04.

(g) “**CM/GC Agreement**” or “**Construction Management Agreement**”: An alternative contracting method consisting of a two-phase contract between the Department and a CM/GC, whereby: (i) in the first phase, the CM/GC performs specified Preconstruction Services for a project, in the capacity of a construction manager, in collaboration with the Designer of Record and the Department, and (ii) in the second phase—which is subject to the Department’s acceptance of the CM/GC’s proposed Negotiated Construction Price the Department may authorize CM/GC to proceed, in the capacity of a general contractor, to complete construction of the project.

(h) “**Department**”: The Department of Transportation of the State of Georgia.

(i) “**Designer of Record**” or “**DOR**”: The entity under a separate contract with the Department that is responsible for the design of a project delivered using the CM/GC method.

(j) “**Developer**”: shall mean the counterparty to a Comprehensive Development Agreement or a Predevelopment Agreement approved by the Board as an ACM in accordance with the ACM Statute.

(k) “**Encumbered Amount**” shall refer to the amount of the Department’s annual contractual commitments for the projected payments by the Department pursuant to an executed ACM agreement authorized under the ACM Statute.

(l) **“Negotiated Construction Price”** or **“NCP”**: The maximum price—that includes project direct costs, indirect costs, and profit—to which the CM/GC commits to deliver a construction project with a quantified and defined scope of work.

(m) **“Preconstruction Services”**: The scope of services that a CM/GC or Developer may be requested to perform during the design phase of a project, which will be identified on a project-by-project basis in the solicitation issued by the Department for an ACM agreement.

(n) **“Preconstruction Services Fee”**: The price component—expressed in a lump-sum amount or any other payment method permitted by law, covering the full scope of Preconstruction Services identified in a solicitation for a CM/GC procurement of a prospective CM/GC ’s proposal.

(o) **“Predevelopment Agreement”** or **“PDA”**: An alternative contracting method that provides the framework for one or more Developers to collaborate with the Department on one or more projects: (i) for the conceptual, preliminary, and final planning and project development work for such project(s), which may include, but is not limited to, predevelopment services, financial planning, environmental studies and mitigation, survey, conducting transportation and revenue studies, right of way acquisition, design and engineering, preliminary engineering, implementation planning, and assistance with public outreach; and (ii) to perform, at the Department’s election, any aspect of the development of the transportation facility including the construction work for the project or projects, that the parties may deem appropriate, subject to agreement between the Department and the Developer(s) as to the scope of such services, a reasonable price for that scope of services, and the basis of payment for those services.

Rule 672-22-.03 General Rules for ACM Agreements.

(a) **Applicability.** When the Board approves the use of an Alternative Contracting Method, the Department shall solicit participation through a procurement process in accordance with the authority of subsection 32-2-82(e) of the Official Code of Georgia Annotated, and as otherwise authorized by applicable law and regulation.

- 1) When procuring a contractor to enter an ACM agreement with the Department for a project that does not or is not anticipated to require private financing the Department shall utilize the procurement procedures set out in Section 32-2-81(d) of the Official Code of Georgia Annotated
 - a. When procuring a CM/GC to enter a Construction Management Agreement with the Department, the Department shall utilize the process in Rule 672-22-.04.
 - b. When procuring a Developer to enter a CDA or PDA utilize Chapter 672-18 of the Rules of the State of Georgia.
- 2) When procuring a contractor or developer to enter an ACM agreement with the Department that is associated with a project that is anticipated to require or requires private financing, the Department shall utilize the procurement procedures set out in Section 32-2-80 of the Official Code of Georgia Annotated.

(b) **Subsequent Phases of Work.** Each Alternative Contracting Method authorized by the ACM Statute and herein contemplates an initial phase of work followed by one or more subsequent

phases of work, subject to the Department's discretion; the initial and subsequent phases of work shall be considered one project. The terms of any subsequent phases of work under an ACM agreement are authorized to be negotiated and memorialized in an amendment, supplemental agreement, or separate agreement according to the terms of the ACM agreement and are not subject to Section 32-2-73 of the Official Code of Georgia.

(c) **Confidentiality and Open Records.** Except as specifically provided under these Rules, no proposal shall be made public, and no information about any proposer's approach or proposal will be shared with other proposers, until the Department has either publicly announced the successful proposer and executed the ACM agreement or terminated the project.

(d) **Terms of an ACM Agreement.** A contract to deliver a project using an ACM shall identify the rights and obligations of the Department, the contractor, and any other parties with respect to that project, consistent with these Rules. All design documents prepared in association with an ACM shall become the property of the Department upon preparation and all construction documents prepared in association with an ACM shall become the property of the Department upon delivery to the Department.

Rule 672-22-.04 CM/GC Procurement Process.

(a) **Notice of Request for Proposals.** The Department shall announce its intention to initiate a procurement of a CM/GC to perform the requirements of a Construction Management Agreement by posting a Public Notice Advertisement ("PNA") of an upcoming Request for Proposals ("RFP") on the Department of Administrative Services website or in substantially the same manner utilized by the Department to solicit requests for proposals. The PNA will provide information on the upcoming project, the tentative scope and description of services, and anticipated procurement schedule.

(b) **Prequalification Requirements.** The Department requires contractors and professional consultants to be prequalified for the work they are proposing to perform, by the date of submission of proposals in response to the RFP utilizing a one phase selection method, or by the date of submission of a statement of qualifications utilizing a two phase selection method. All contractors and consultants for CM/GC projects must be prequalified by the Department, pursuant to either Chapter 672-5 of the Rules of the State of Georgia or project specific qualifications set forth in the solicitation which at a minimum must comply with Chapter 672-5. The request for qualifications or the RFP will set forth the requirements for evidence of bonding capacity required of the CM/GC.

(c) **Procurement.** The Department may award a Construction Management Agreement following either a one-phase or two-phase selection process based on qualifications, best value, suitability, or any other combination of factors considered appropriate by the Department and which are clearly specified in the RFP. A best value-based selection is based on the proposer's submittals regarding among other things (i) qualifications, key personnel, and prior experience performing work under contracts for projects of a similar size, scope, complexity, and magnitude, (ii) its technical proposal, and (iii) the proposer's Preconstruction Services Fee.

(1) **Evaluation Criteria.** In the RFP for a Construction Management Agreement, the Department will specify the evaluation criteria as well as the basis for award, including the weight of each evaluation factor and subfactor in evaluating proposals.

(2) **Interviews.** The Department shall identify, in the RFP, whether it intends to conduct interviews with responsive proposers. These interviews may be a component of the score, or otherwise evaluated. If the interview will be scored the scoring will be clearly stated in the evaluation criteria and in accordance with 23 CFR § 635.504.

(3) **Evaluation of Proposals.** The Department shall evaluate proposals in accordance with the requirements in the RFP. A proposal will only be considered nonresponsive if it does not contain all the information and level of detail requested in the RFP; provided, that the Department has sole discretion to determine whether a proposal is nonresponsive. No proposal will be considered unless it is accompanied by a proposal guaranty in a form of security acceptable to the Department and specified in the RFP.

(4) **Selection Decision.** Based on the evaluation factors as set forth in the RFP, the Department shall rank all proposals that are complete, in conformance with, and responsive to the RFP, consistent with the specified basis for award. The Department shall announce the award of the Construction Management Agreement to the CM/GC in the same manner used to publish the initial notice of solicitation.

(d) **Reserved Rights.** The Department reserves all rights available by law in administering these rules, including without limitation, the right in its sole discretion to:

(1) Reject any and all responses to a solicitation for a Construction Management Agreement at any time.

(2) Suspend, discontinue or terminate evaluation of any and all responses to a solicitation for a Construction Management Agreement at any time.

(3) Suspend, discontinue or terminate discussions or negotiations with any proposer at any time prior to the actual authorized execution of such final agreement by all parties.

(4) Discuss and negotiate with a proposer without being bound by any provision in its proposal.

(5) Modify, issue addenda to, or cancel any CM/GC solicitation.

(6) Request or obtain additional information about any proposal, or request revisions thereto.

(7) Undertake such other action or exercise such other rights as may be provided for in an Construction Management Agreement solicitation.

Rule 672-22-.05 Rules Governing Construction Management Agreements.

(a) **Phase One - Preconstruction Services.** Upon award of the Construction Management Agreement, the CM/GC will be authorized to begin performing Preconstruction Services pursuant to the requirements of the Construction Management Agreement. During the initial phase of the Construction Management Agreement, the CM/GC will be required to perform phase-one services, which may include, but are not limited to, the following:

- (1) Collaborating with the DOR and the Department on the design and preparation of the construction documents, for improved overall constructability of the project.
- (2) Participating in design reviews and anticipating construction issues.
- (3) Engaging in risk assessment and mitigation workshops with the Department.
- (4) Identification of potential risks and assistance in identifying means and methods to mitigate such risks during design.
- (5) Assisting with material selection, scheduling, sequencing, and other related services.
- (6) Evaluating contemplated innovations and constructability recommendations for cost-effectiveness.
- (7) Assisting the Department with project-level budgeting for construction through progressive cost estimating for the project.
- (8) Active management and mitigation of project risks with the Department.

(b) **Construction Price Proposal.** The CM/GC will be responsible for progressing the estimates of probable construction costs and developing the price proposal for the construction of the project, to include the direct cost of construction, contingency, overhead, and profit (collectively, the “NCP Proposal”). The timing of the development of the NCP Proposal will be based on the percentage of design complete, as determined by GDOT on a project specific basis. The NCP Proposal shall be prepared on an open book basis using labor and equipment rates; and must include a construction schedule and the assumptions underlying the NCP amount. A price reconciliation meeting will be held to review and discuss any differences in the Department’s estimate and the CM/GC’s NCP Proposal.

(1) **Accepting the NCP Proposal.**

If a reasonable NCP is negotiated, the CM/GC and GDOT shall execute a supplemental agreement or amendment to the Construction Management Agreement, authorizing the CM/GC to complete the construction of the project. The CM/GC will be required to provide performance and payment bonds in the full amount of the NCP.

(2) **Rejecting the NCP Proposal.** If the Department and the CM/GC are unable to agree upon a reasonable NCP, the Department may initiate a new procurement to complete the construction-phase work for the project.

(c) **Phase Two – Construction.** Upon execution of a supplemental agreement or amendment to the Construction Management Agreement, its terms, including the NCP, become contractual. The Department may authorize the CM/GC to proceed in constructing the project through the release of distinct work packages based on the design documents.

(d) **Construction Works Packages.** The construction services may be authorized through various construction works packages, which are subject to negotiation and agreement on price between the Department and the CM/GC, and will be included in the NCP as part of the development of the construction price proposal under Rule 672-22-.05(b).

Rule 672-22-.06 Rules Governing Predevelopment Agreements.

(a) **Contracting for Project Planning and Development Services Using a PDA.**

Predevelopment agreements allow the Department to procure one or more Developers to assist in developing the framework for one or more projects' conceptual, preliminary, and final planning and project development work and may include preconstruction services on one or more projects that would benefit from early involvement by the Developer(s) in the project(s). The PDA (i) allows the commencement of activities including predevelopment services, financial planning, environmental studies and mitigation, survey, conducting transportation and revenue studies, right-of-way acquisition, design and engineering, and public outreach; and (ii) contains provisions related to any aspect of the development of a transportation facility, including construction work for the project or projects, that the parties may deem appropriate, subject to agreement as to the basis for payment for any construction services.

(b) **Implementation of Design and Construction After a PDA.** Upon the completion of the elements of the PDA, the Department will have rights to the work-product developed by the Developer and may use such work product in the further development of its projects, including in any procurements for financing, design, engineering, value engineering, or construction services.

(c) **Form of the Agreement.** The Department shall prescribe the general form of a predevelopment agreement and may include any matter the Department considers advantageous to the Department, including that each PDA shall:

- (1) set forth the scope of work to be performed by the Developer, its subconsultants, and subcontractors;
- (2) specify the level of design, alternatives to be reviewed, impacts and outcomes to consider, and other information to be provided by the Developer, its subconsultants, and subcontractors;
- (3) reserve to the Department the right to independently review any studies and conclusions reached by the Developer, its subconsultants, and subcontractors before their

inclusion in an environmental document, and reserve to the Department the responsibility for the environmental document.

Any changes to the Predevelopment Agreement shall be negotiated by the parties and memorialized in a supplemental agreement thereto or in a separate agreement pursuant to the PDA.

Rule 672-22-.07 Rules Governing Comprehensive Development Agreements.

(a) Using a CDA. A Comprehensive Development Agreement provides the Department with a single multi-phase contract to allow for the development of the project concept, the concurrent design and construction of the project, and the operations and maintenance of the project. The CDA (i) allows the commencement of activities including conceptual, preliminary and final project planning and development, right-of-way acquisition, design and engineering, environmental support and mitigation, survey, conducting transportation and revenue studies, ascertaining the availability of financing for the proposed facility or facilities and public outreach; and (ii) contains provisions related to any aspect of the development, construction, operations, and maintenance of a transportation facility that the parties may deem appropriate.

(b) Form of Agreement. The Department shall prescribe the general form of a comprehensive development agreement and may include any matter the Department considers advantageous to the Department, including that each CDA shall:

- (1) set forth the scope of work to be performed by the Developer, its subconsultants, and subcontractors;
- (2) specify the level of design, alternatives to be reviewed, impacts and outcomes to consider, and other information to be provided by the Developer, its subconsultants, and subcontractors;
- (3) reserve to the Department the right to review any studies and conclusions reached by the CDA contractor, its subconsultants, and subcontractors before their inclusion in an environmental document, and reserve to the Department the responsibility for the environmental document.

(c) Negotiations Authorized. The initial procurement of the Developer shall follow Rule 672-22-.03. GDOT and the contractor shall negotiate the specific terms of a CDA. Any changes to the initial Comprehensive Development Agreement, including those for subsequent project phases, shall be negotiated by the parties and memorialized in a supplemental agreement to the CDA or in a separate agreement pursuant to the CDA.

Rule 672-22-.08 Size and Frequency Limitations for ACMs.

Pursuant to subsection 32-2-82(f) of the Official Code of Georgia Annotated:

(a) Limitations. The Department is subject to the limitation on the number of projects delivered using one or more ACM agreements set forth in subsection 32-2-82(f) of the Official Code of Georgia Annotated.

(b) Cap on Annual Encumbered Amount for an ACM Agreement. Solely as it relates to a project authorized by the Board to be delivered using an ACM, the Department shall not encumber under any one ACM, in any one fiscal year, an amount greater than five percent of the Department's Capital Budget in the previous fiscal year.

Rule 672-22-.09 Reporting ACM Contracting Activity.

(a) Fiscal Year Reports. Pursuant to subsection 32-2-82(g) of the Official Code of Georgia Annotated, no later than 90 days after the end of a fiscal year in which the Department has executed a contract to deliver a project using an ACM as approved by the Board, the Department will provide the Governor, Lieutenant Governor, Speaker of the House of Representatives, and chairpersons of the House and Senate Transportation Committees a summary containing all contracts that utilize an ACM. The report may include, but is not limited to, the following: The project name, project number, county, project description, name of CM/GC or Developer, selection method, and date of contract award. ACM Agreements that are part of a separate Public Private Initiative or Public Private Partnerships are outside of this Rule and are not included in this summary. This Report will be made available for public information.

(b) Reports Required Every Five Years. Pursuant to subsection 32-2-82(i) of the Official Code of Georgia Annotated, no later than five years after the effective date of that Code section and then once every five years thereafter, the Department will submit a report to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and members of the House and Senate Transportation Committees detailing all contracts delivered using an ACM, along with the benefits of using an ACM compared with other contracting methods for purposes of the executive's and legislature's review and consideration of the effectiveness of that Code section and any necessary amendments.