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# Doing Business with CAP

Seminar for State Agencies  
Spring 2010



[www.ok.gov.dcs](http://www.ok.gov.dcs)

405/521-2112

John W. Morrison AIA  
State Construction Administrator  
Department of Central Services  
Construction and Properties Division

# Agenda

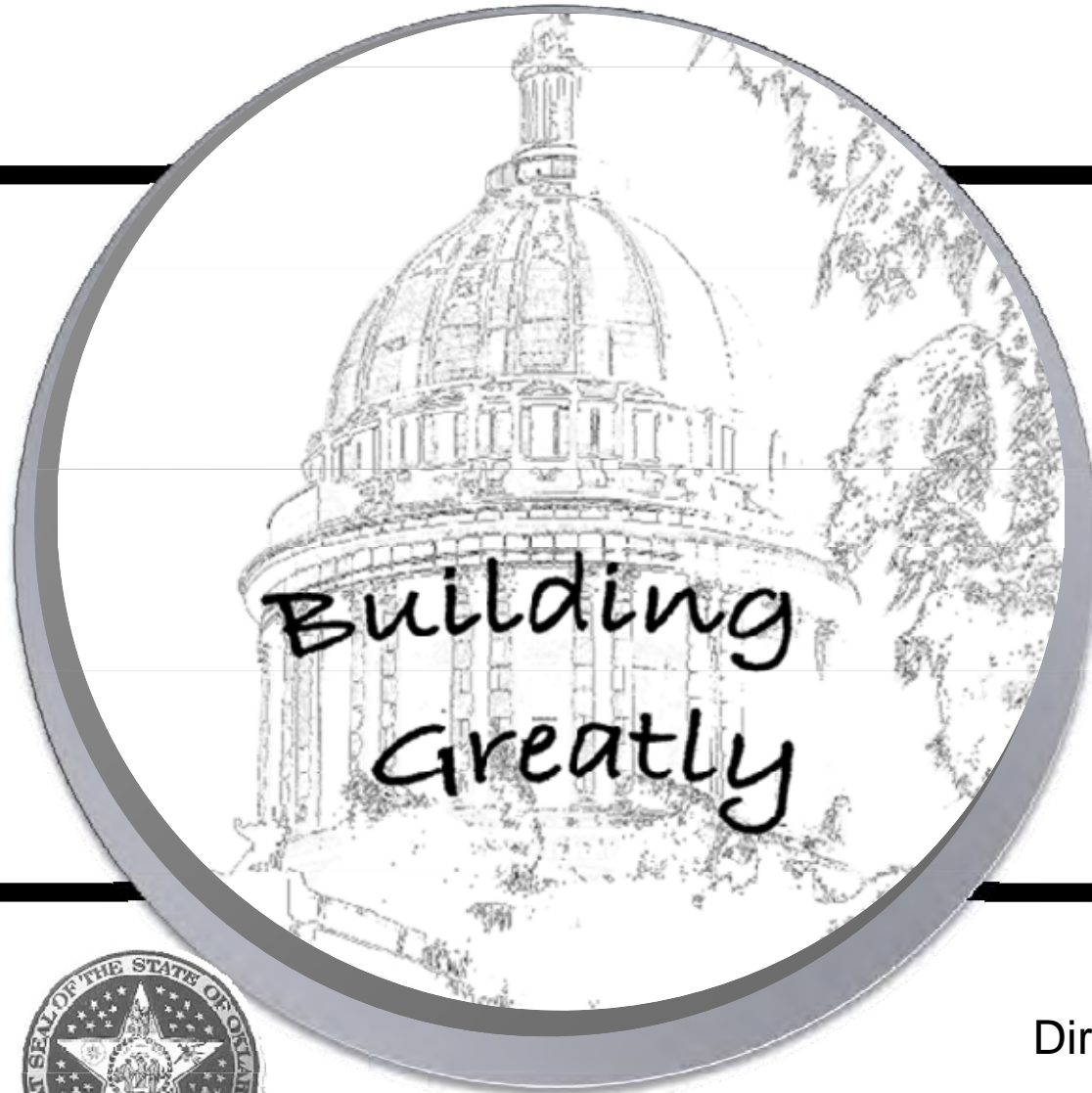
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- **Welcome and Update**
- **Art in Public Places**
- **Real Estate Services**
- **Contract Management**
- **Q&A**

# CAP Update

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- **Green = Free. No Charge for CAP CPO Credits**
  - Download presentation from CAP homepage
- **Best Value – PIPS Update**
- **Bid Document Management**
- **Statewide Advertising for Small Projects**



# Art in Public Places

## Requirements for State Construction Projects



405/522-8959  
[www.arts.ok.gov](http://www.arts.ok.gov)

Debby Williams  
Director, Art in Public Places Program  
[dwilliams@okhistory.org](mailto:dwilliams@okhistory.org)

# REAL ESTATE SERVICES

Construction and Properties Division  
Oklahoma Department of Central Services

Sharon Crawford  
Real Estate Manager

[www.ok.gov/DCS](http://www.ok.gov/DCS)



405/522-6277

DCS/Construction and Properties Division/RES



DCS/Construction and Properties Division/RES

# Real Estate Services

## Primary Interface for Real Estate Transactions

- Acquisition of Land and/or Buildings
- Disposal of Land and/or Buildings
- Surface Leases\*
- Easements/Rights of Way
- Land Database Management
- Research of all state owned land, buildings, leases, easements, mineral deeds
- Other Service Requests
- Q & A Wrap-Up



[www.ok.gov/DCS](http://www.ok.gov/DCS)

DCS/Construction and Properties Division/RES

# Before we start ...

## Abbreviations

- CAP: Construction and Properties Division
- DCS: Department of Central Services
- RES: Real Estate Services Section
- Agency: state agency that engages RES to carry out real estate transactions

## RES Forms and Procedures

- Referred to throughout
- Available on Request to RES Manager
- [www.ok.gov/dcs/](http://www.ok.gov/dcs/)
  - Go to Real Estate Services (Under construction)



# Acquisition of Land/Buildings

**RES assists agencies with real estate transactions subject to their jurisdiction in accordance with the following statute:**

- Procedures for state agency transactions to lease, acquire, dispose of, or transfer real property.
- **74 OS § 129.4A**
  - Authorizes DCS to acquire or dispose of real estate
  - Establishes DCS as “contracting agent” on behalf of state agencies
  - Procedures are established allowing agencies to fulfill real estate transactions
  - No Agency may acquire property without legislative authorization or statutory authority\*

# Acquisition of Land

- Procedures for state agency transactions to lease, acquire, dispose of, or transfer real property.
- 74 OS § 129.4
  - RES will assist Agency with procedures for the acquisition
  - RES begins process to acquire real property
  - After process is complete and purchase required, Agency submits to CAP/RES, CAP Form M701 Requisition Checklist, along with a Requisition to purchase real property and is processed through CAP
  - RES provides Agency with copy of Deed once filed in appropriate county courthouse
  - Call RES to initiate process

# Acquisition of Building

- Process is similar to acquisition of land
  - Inspections are recommended/required when purchasing a building
    - Phase I Assessment
    - Flood Plain Certificate
    - Condition Assessment (architectural, structural, etc.)
  - Director of DCS approves transactions prior to proceeding with acquisition

# Disposal of Real Property

- 74 OS § 129.4 (2C)
  - Statutory authority or legislative authorization to dispose land/building
  - Written notification to the Director of the DCS declaring property surplus and request for approval/disapproval with reference to statutory authority to dispose of state owned real property
  - Complete Real Estate Disposal form return to RES
  - Once approved by DCS, RES will notify Agency
  - RES will assist Agency with procedures for the disposal
  - A notice of sale for the property will be published in newspaper (s)

# Disposal of Real Property

- Procedures to Dispose Real Estate
  - Sale of the real property will be through public auction or sealed bids
  - Property sold to the highest bidder
  - Can not accept a bid of less than ninety percent (90%) of the appraised value of the real property, and improvements upon such property (by statute)

# Disposal of Real Property

- Procedures to Dispose Real Estate
  - RES coordinates with closing company to set closing date
  - Closing documents are signed by the Director
  - Possession of property will be delivered upon successful completion of all transactions
  - If bidder fails to pay balance of purchase price, bidder forfeits all monies to the State of Oklahoma as liquidated damages

# Disposal of Real Property

- Procedures to Dispose Real Estate
- PLEASE NOTE – The State of Oklahoma DOES NOT warrant title to real property transactions involving land and reserves and retains all mineral rights to such land. All land is sold “as is, where is” and is subject to all easements, rights of way and restrictions of record

# Surface Leases

## 74 OS § 126.2

- Authorizes the Director of the DCS to lease surface of any of the lands belonging to the state
- Procedures are in place through CAP/R\_\_\_\_\_ perform lease transactions
  - Surface lands are lands that are not needed or required for the proper maintenance of the institutions, departments or Agencies in possession of said lands
  - Surface Leases are arranged and maintained by and through RES
  - Leases are not to exceed three (3) years
  - Leases are not effective until they are submitted to and approved by the Governor



# Easements/Rights of Way

## 74 OS § 126.1

- Authorizes the Director of the DCS to grant easements or rights-of-way on any of the lands belonging to the state
- RES will assist agencies with procedures

# Land Database

## 74 OS § 129.4 (E)

- Requires DCS to maintain a comprehensive inventory of state-owned real property and its use excluding property of the public schools and property subject of the jurisdiction of the Commissioners of Land Office
- Current database records contain approximately 370,000 acres
- RES maintains the land database
  - Agencies are required to provide RES a copy of records, deeds, abstracts and other title instruments showing the description of and relating to any and all such lands or interests therein
  - This also includes any and all lands of public trusts having a state agency as the primary benefactor

# Land Database, continued

- RES will contact your agency for necessary documentation before entering information into the database

# Research

- RES researches all real estate transactions through deeds, county courthouses, state agency records, libraries, and archived files
- RES will be in visits with state agencies and other state entities within the year to collect information of real estate transactions for the purpose of updating and compiling the RES database to ensure that all land transactions are available upon request

# Other Service Requests

- RES provides services for other service requests such as:
  - Inquiries into state owned land to verify ownership
  - Provide maps and GIS Aerials of state owned land and buildings to establish ownership
  - Background history information on state owned land
  - Tracking ownership of real estate transactions
  - Any other inquiries into state owned land
  - Mineral inquiries

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DCS/Construction and Properties Division/RES

# Contract Management

Construction and Properties Division  
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DCS/Construction and Properties Division

# Managing Construction Contracts

- Acquisition of Construction Services (the basics)
- Construction Contracting – view from 30,000 feet
- Post Award Contract Management – Large Projects  
(Publically Bid with a Design Consultant)
  - ◆ Goals
  - ◆ Project Team
  - ◆ Components of Contract Management
- Q & A Wrap-Up

[www.ok.gov/DCS](http://www.ok.gov/DCS)

DCS/Construction and Properties Division



# Before we start ...

## Nomenclature

- CAP (“Division”): Construction and Properties Division
- Agency or Using Agency: state agency that engages CAP to acquire construction services

## ❖ CAP Forms

- Referred to throughout
- Available on CAP Web site
- [www.ok.gov/dcs](http://www.ok.gov/dcs)
  - Go to Construction and Properties
  - Go to Forms

# Acquisition of Construction Services

## Basics – Procuring Construction Services

- Public Building Construction & Planning Act
  - 61 OS § 202-220
  - Procurement Authority for Construction Services
  - Establishes CAP as “Owner” on behalf of state agencies
  - CAP awards all contracts for consultant and construction services

*Establishes the “who” regarding procurement of construction services for the State.*

# Acquisition of Construction Services

## Procuring Construction Services

- Public Competitive Bidding Act of 1974
  - 61 OS § 101-138
  - Requirements for construction contracting
  - Applies to all public entities
  - Sets requirements by dollar amount of contract

*Establishes the “how” for public construction contracting by the State.*

# Acquisition of Construction Services

## Procuring Construction Services

- Consultants and Construction Managers
  - OS 61 § 60-65
  - Sets forth qualifications-based selection process to retain architects, engineers and other consultants necessary to plan and design a construction project
  - Also applies to Construction Managers

*Establishes the “how” for contracting with Consultants by the State.*

# Acquisition of Construction Services

## Construction Contracting – Bidding Act

- Projects > \$50,000 are publicly bid
  - ◆ CAP assembles final bid documents
  - ◆ CAP places statutory advertisements
  - ◆ CAP holds public bid opening
  - ◆ CAP awards contract on behalf of Agency

# Acquisition of Construction Services

## Construction Contracting – Bidding Act

- Projects < \$50,000 awarded by receipt of written bids
  - ◆ State Agency solicits min. 3 bids using CAP Form M800
  - ◆ Procurement package sent to CAP for contract award
  
- Projects < .2,500 , .5,000 , ending in SB1303,
  - ◆ State Agency awards to any suitable vendor using CAP Form M601

*By Policy, CAP has delegated these responsibilities to all State Agencies.*

# Acquisition of Construction Services

## Consultant Services

- Major projects (generally > \$1M)
  - Selection Process: Solicitation, Screening, Interviews, Fee negotiations
  - CAP Form M100
- Minor projects (Generally < \$1M)
  - CAP IDIQ or On-Call Consultant Contracts
  - CAP Form M302
  - Agency may solicit and select dedicated IDIQ Consultants

# Construction Contracting @ 30K Feet

## Project Delivery Methods

- Design-Bid Build: Traditional Model
- Construction Management @ Risk
- Construction Management – Agency
- Design-Build



# Construction Contracting @ 30K Feet

## Design-Bid-Build: Traditional Project Delivery for Public Bid

- Plans and Specifications
  - Consultant – Architect or Engineer
  - No Consultant – Agency provides
- Requisition to CAP
  - ❖ CAP Form M701
  - Funding Requisition (normally Peoplesoft)
    - Use Term Codes available on CAP web site
    - Do not put special terms or conditions on Requisition
  - One original – Plans and Specifications
  - One original – Special Conditions or unique contract requirements
    - Federal Provisions
    - Administrative Provisions – security, working hours, etc.

# Construction Contracting @ 30K Feet

## Design-Bid-Build, continued

- CAP Assigns:
  - Contracting Officer  
...and a
  - Project Manager
- Bid Documents – Public Bid
  - Project Manager prepares Bid Solicitation and Bid Documents
    - Instructions to Bidders
    - General Conditions
    - Form of Agreement
    - Special Conditions (from agency)
    - Plans and specifications

# Construction Contracting @ 30K Feet

## Design-Bid-Build, continued

- Public Bidding
  - Contracting Officer
    - Arranges advertisements
    - Posts bid opportunity on web site
    - Reviews final bid package for completeness
    - Insures funds are in place prior to releasing for bid

# Construction Contracting @ 30K Feet

## Design-Bid-Build, continued

- Contract Award
  - Public Bid Opening
    - Bids opened and read aloud
    - Bids checked for completeness
  - CO prepares Bid Tabulation
    - Agency and CAP review for lowest responsible
    - Agency recommends award
  - CO Awards Contract
    - Notice of Award
    - Prepares contract and routes for signatures
    - ❖ CAP A101 Owner/Contractor Agreement
      - Reviews bonds, insurance and contract prior to signature by SCA
  - ❖ Notice to Proceed Issued by CAP CO

# Construction Contracting @ 30K Feet

## A Note on Lowest Responsible Bidder

- Statutes
  - Law is general in nature
- Administrative Rules
  - Ability to perform work
    - Lack of responsibility of previous projects
    - Any other information
- Case Law
  - Awarding agency not only has a right, but has a duty to make such examination as necessary to determine that a bidder is “responsible”...

*“Unless otherwise provided by law, all public construction contracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the **lowest responsible bidder**, by open competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974.”*

- 61 OS §103

# Post-Award Contract Management

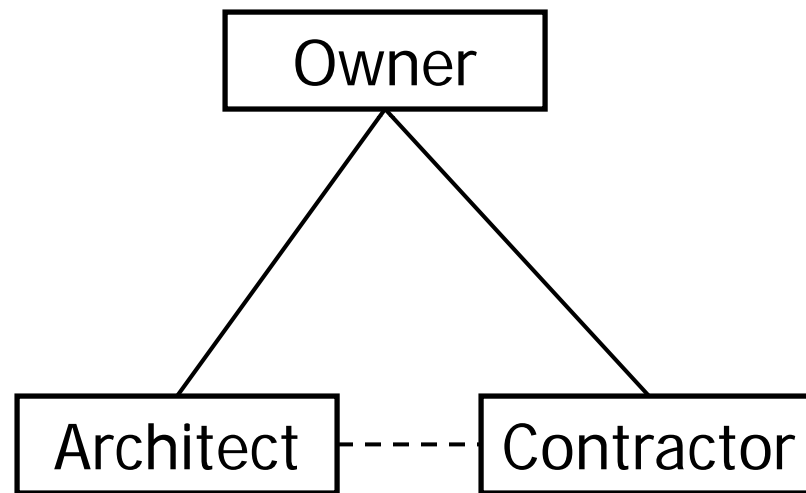
Lar\_e Project with Consultant

## Goals

- Achieving Predictable Results
- Completing Project On-Time
- Completing Project within the Budget
- Quality Work
- High Customer Satisfaction
- No Lawsuits

# Post-Award Contract Management

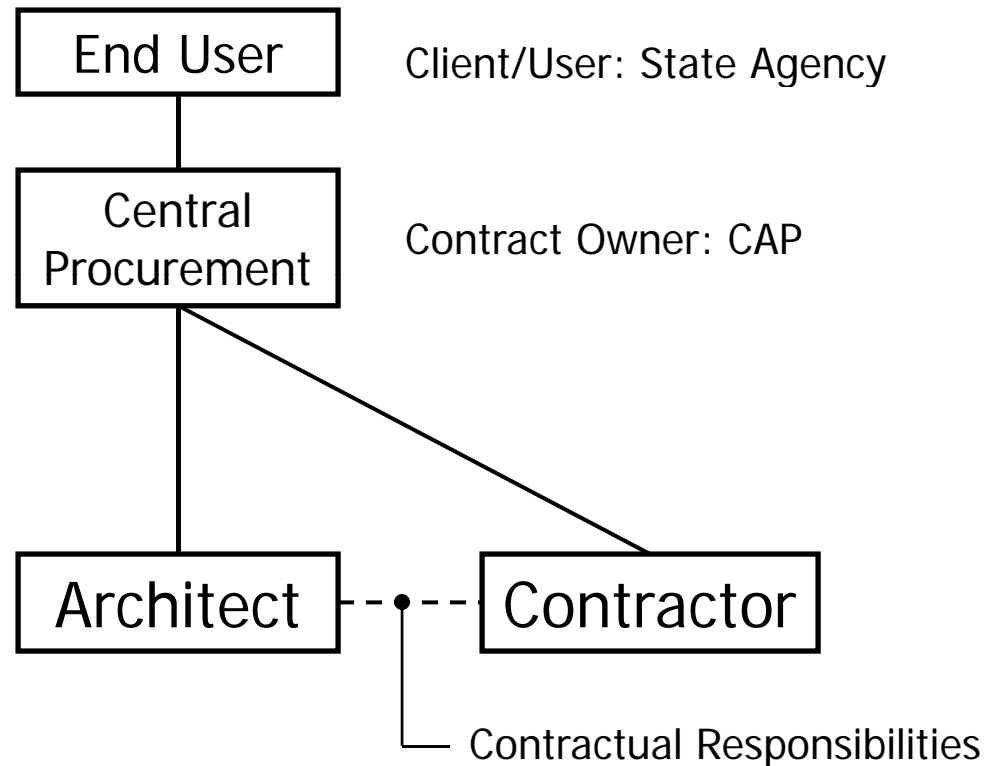
Project Team



Traditional Relationship

## Contract Management

Project Team  
(as envisioned  
By State Law)



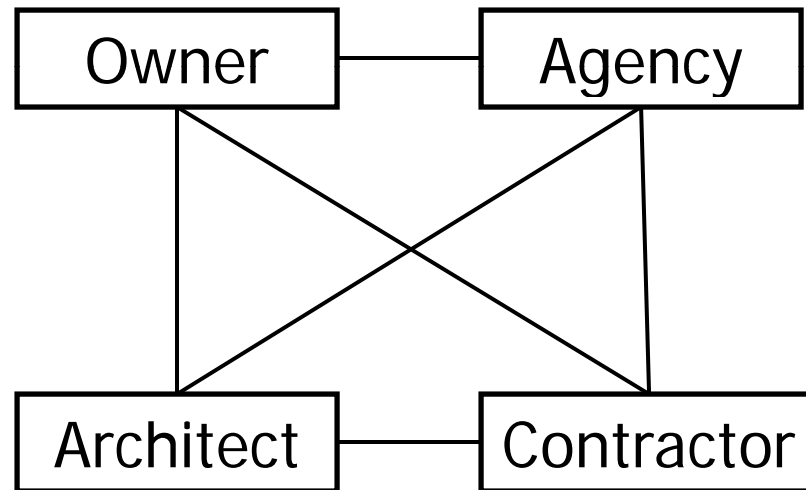
## Central Procurement Model "Outsourcing"

DCS/Construction and Properties Division



## Contract Management

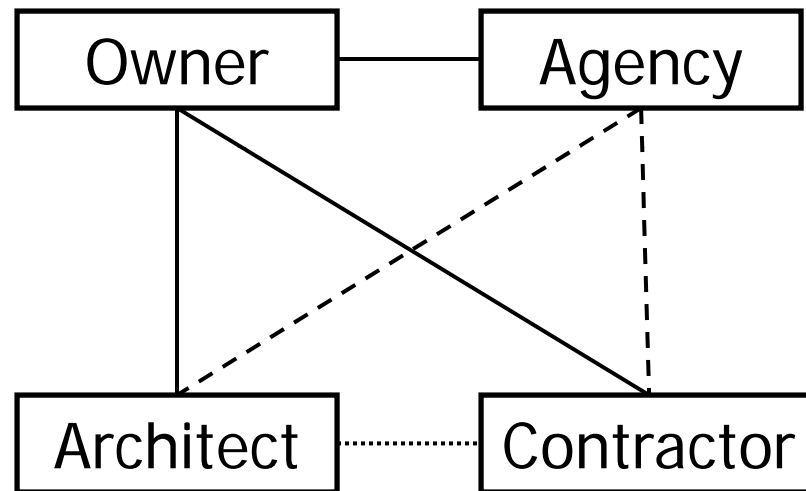
Project Team  
(common perception)



Confusion Model

# Contract Management

Project Team  
(reality)



## Communication Model

- Official/Legal Communication
- ..... Contractual Communication
- - - - Vital Communication

# Contract Management

## Project Team Roles

Agency

Establishes the Requirement

Owner

Contracts for services on behalf of Agency to fulfill the Requirement

Consultant

Designs a solution that meets the Requirement

Contractor

Builds the solution that meets the Requirement

*Clearly, most important element is "The Requirement"*

# Contract Management

## Project Team Responsibilities

Agency

Communicate the *Requirement*, Compare results to *Requirement*

Owner

Manage schedule, budget, contract performance

Consultant

Translate Agency *Requirement* into technical intent documents; specific construction administration duties

Contractor

Deliver the physical solution of technical intent documents; execute the contract “at risk”

*Neither the Agency nor the Owner have responsibility for technical decisions.*

# Contract Management

## Project Team Responsibilities



*"I think I've spotted your problem."*

*However, once in a while, the Owner needs to step in...*



# Managing the Contract for Success



Bill Harrell, CAP Project Manager

## Components of Contract Management

- Pre-Construction Conference
- Communication Protocol
- Schedule of Values
- Progress Meetings
- Process Pay Applications
- Issue Resolution
- Change Orders
- Substantial Completion
- Final Completion
- Warranty Period

## Components of Contract Management

*The concept is to set the Contractor up to succeed, by establishing good communication, streamlined administrative processes and a forum to provide situational awareness to the entire Project Team.*



## Best Practices for Contract Management

### Plumbers Rate Schedule

\$20 per hour

\$30 per hour if you watch

\$50 per hour if you help

*If you only take one thing away for this presentation...*

## Components of Contract Management

- **Pre-Construction Conference**
  - CAP PM Schedules Pre-Construction Conference Meeting after Contractor receives Notice to Proceed
    - **Contractor**
    - **Key Subcontractors**
    - **Using Agency**
    - **Consultant**
    - **CAP PM**
  - ❖ Follow Pre-Construction Conference Checklist (CAP Pre-Con Agenda)
  - **Pin down Pay-App Process**

## Components of Contract Management

- **Communication Protocol**
  - Establish Contacts for each party
  - Compile email distribution list
  - Owner and Contractor communicate in writing through the Consultant – Official Transactions
  - All communication is copied to CAP PM and Agency Representative
  - Decide what kind of information is important – Avoid unnecessary transactions

## Components of Contract Management

- Schedule of Values
  - Exact amount of each subcontract or portion of the Work it represents
  - Consultant verifies that the schedule represents realistic division of monetary values
  - Used as a basis for reviewing Contractor's Payment Applications
  - ❖ Schedule of Values-G703 – Attachment to monthly pay application

## Components of Contract Management

- **Progress Meetings**
  - Schedule Progress Meetings at the Pre-Construction Meeting
  - Normally held Monthly
  - Review:
    - Schedule and Progress to date
    - RFI Log – need timely resolution of questions
    - Contract Issues – ongoing and new
  - **Review upcoming Pay Application**
  - Consultant records & distributes meeting minutes

## Components of Contract Management

- Process Pay Applications
  - **Fair Pay for Construction Act! 30 Days!**
    - ❖ Contractor submits Pay App per Checklist (CAP Form A140)

## Components of Contract Management

- **Fair Pay for Construction Act**
  - O.S. 61, § 221-227
  - Applies to any State Agency or Political Subdivision
  - Pay Contractor within 30 days
  - Interest of 1 ½% due Contractor after 45 days

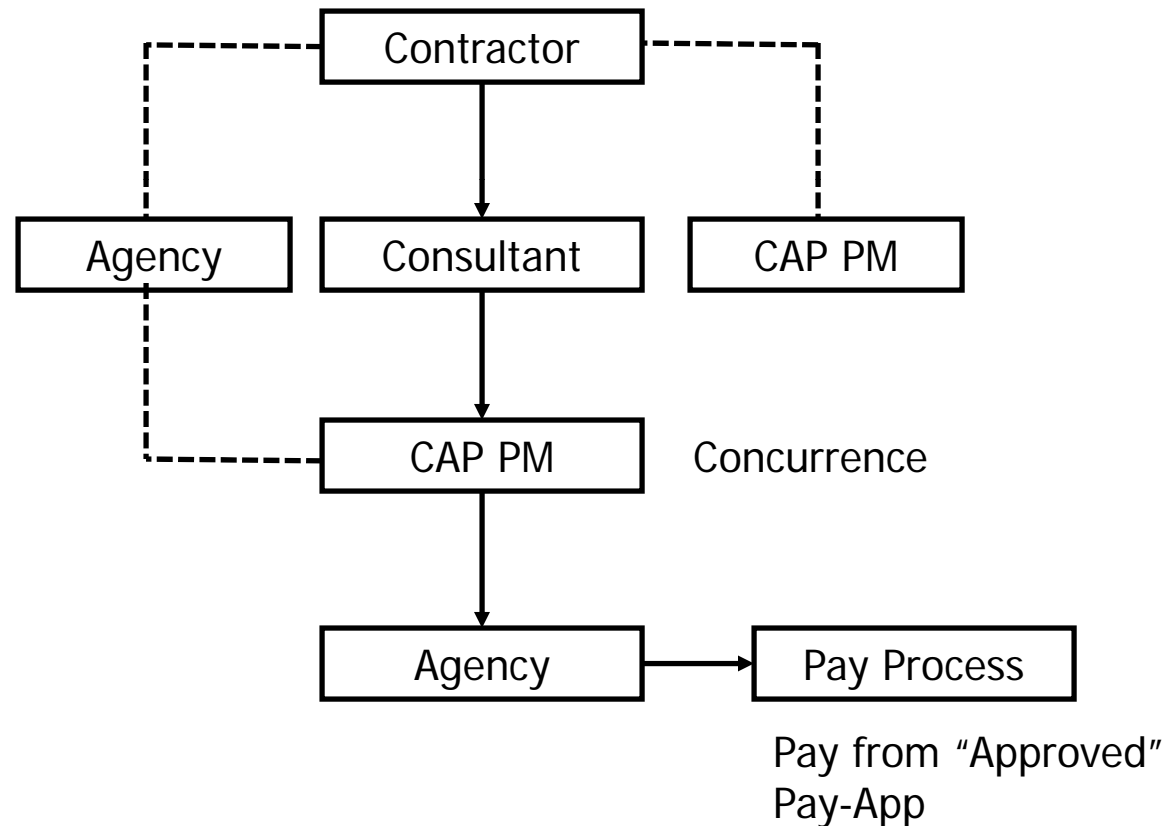
## Components of Contract Management

- Pay-App Process
  - Contractor submits to Consultant
  - Consultant reviews, verifies, corrects, rejects or approves
  - Consultant submits to CAP PM
  - CAP PM logs, reviews, verifies, corrects, rejects or approves
  - CAP PM submits approved Pay-App to Agency for payment



## Components of Contract Management

- Pay-App Process



## Components of Contract Management

- Issue Resolution
  - ❖ Communications Facilitating Contract Administration (CAP Form A201, 4.2.4)
  - ❖ Resolution of Claims and Disputes (CAP Form A201, 4.4)
    - Contractor submits written Claim to Consultant
    - Consultant reviews and approves or rejects
    - If approved, Contractor prepares Change Order
    - If disapproved, Contractor has appeal option
    - CAP PM/SCA will attempt resolution before appeal

## Components of Contract Management

- Change Orders
  - Based upon Agreement between all parties
  - ❖ Change in Work, adjustment in Contract Sum & Contract Time (CAP G701e)
  - Based upon Agreement between all parties

## Components of Contract Management

- Substantial Completion
  - ❖ CAP Form A113
    - Definition: Owner can occupy or utilize the Work for its intended use.
  - ❖ Contractor follows procedure in General Conditions ( CAP Form A201, 9.8.2)
  - CAP PM verifies that Consultant has received Punch List from Contractor
  - CAP PM verifies that Consultant has performed inspections to confirm that Substantial Completion has been achieved.
  - Notify DCS/Risk Management of Substantial Completion
  - UA takes responsibility for Safety, Security, Heat, Utilities, & Insurance

## Components of Contract Management

- Substantial Completion
  - Certificate of Occupancy, (if applicable), must be issued by Fire Marshall, prior to issuance of Substantial Completion
  - Certificate of Substantial Completion is issued, establishing Time and Date that UA takes possession of Work. This Time and Date is also the start of the Warranty Period, (CAP Form A201, 12.2.2)
  - Within one year of Substantial Completion, any work not in compliance with Contract Documents, shall be corrected by Contractor.

## Components of Contract Management

- Certificate of Final Completion
  - ❖ CAP Form A106
  - Contractor notifies Consultant in writing that project has reached Final Completion
  - Contractor submits Final Pay-App
  - Consultant makes inspection to verify work is complete and acceptable
  - Consultant will issue a final Certificate for Payment stating that Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance
  - Contractor, Consultant and Owner sign Certificate

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