Cx Contracts: Liability, Indemnity, Insurance

Bruce Pitts, CPMP, CSBA, LEED AP
Ujjval Vyas, PhD, JD
AIA Quality Assurance

The Building Commissioning Association is a Registered Provider with The American Institute of Architects Continuing Education Systems (AIA/CES). Credit(s) earned on completion of this program will be reported to AIA/CES for AIA members. Certificates of the Completion for both AIA members and non-AIA members are available upon request.

This program is registered with AIA/CES for continuing professional education. As such, it does not include content that may be deemed or construed to be an approval or endorsement by the AIA of any material of construction or any method or manner of handling, using, distributing, or dealing in any material or product.

Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.
Learning Objectives

1. Identify contract language that may need to be edited
2. Evaluate ways to limit liability with insurance companies
3. Express modifications to liability and indemnity clauses in professional contracts to reflect a scope of work for a commissioning project
4. Demonstrate to clients appropriate contract clauses that are mutually beneficial
Your experts today

Bruce Pitts, CPMP CSBA LEED AP

Ujjval K. Vyas, PhD, JD

Please interject as we go along!
Contract Qualifications

• Person or firm
Non-Discrimination

- Small business
- MWBE
- EOE
Scope of Work

- Definition
- Codes, standards, and best practices
- Duties
October 17, 2014

Ms. Teine Wilton
Edmonds School District
20420 66th Ave. West
Lynnwood, WA 98036

Subject: Commissioning Fee Proposal

Dear Ms. Wilton:

Wood Harbinger is pleased to provide our proposal for commissioning services for the Alderwood Middle School Replacement. Our commitment to this contract is that we will represent the District’s interests and provide a facility that is tested, documented, and meets the Owner’s Project Requirements (OPR). Our service offering is modeled to achieve the Washington Sustainable School Protocol (WSSP) commissioning credits, and we will adhere to the tenants of the Living Building Challenge.

The basic services we will provide are based on the activities and deliverables needed to meet the WSSP Fundamental Commissioning program requirements.

Design-Phase Services—Wood Harbinger will attend design coordination meetings with the design team to offer our perspective on system operability and maintainability as the design progresses. We will write the commissioning plan to guide the commissioning program, and we will provide commissioning specifications for incorporation into the bid documents to ensure commissioning requirements are included in the contract. Our experience with your district maintenance staff will allow us to evaluate the design decisions during this stage to help ensure District preferences and priorities are achieved.

Construction-Phase Services—As the project moves into construction, our commissioning field effort will begin. We will supplement the commissioning plan narrative with installation checklists and equipment functional testing documentation. A list of the systems to be commissioned is provided in the attached task hour breakdown. Following functional testing, we
Subcontracting

- Criteria
- Constraints
Insurance

- Indemnity
- Risk
- Liability
8. Indemnification. Contractor agrees to defend, indemnify and hold Owner and its affiliates and their respective officers, agents, servants and employees harmless from any and all claims, demands, losses, and liabilities to or by third parties arising from, resulting from, or connected with the Work performed or to be performed under the Agreement by Contractor or contractor’s agents, employees, lower-tier subcontractors and suppliers of any tier, even though such claims may prove to be false, groundless, or fraudulent, to the fullest extent permitted by law and subject to the limitation provided below.
Contractor’s duty to defend is independent of its duty to indemnify. Contractor agrees to defend Owner regardless of whether its duty to indemnify is disputed. If the allegations raised in the claim, lawsuit, or Demand for Arbitration, or any party against Owner, allege the claim arose in whole or in part by the actions of the Contractor, Contractor agrees to defend the Owner.
6.1 CONSULTANT hereby releases and agrees to defend, indemnify, and hold harmless the OWNER, its successors and assigns, and the directors, employees and agents of each of the foregoing, from and against any and all claims, losses, harm, costs, liabilities, damages and expenses (included, but not limited to, reasonable attorneys’ fees) in any way arising out of or in connection with the negligent successors and assigns of the CONSULTANT, the directors, offices, employees and agents of the foregoing, or anyone acting on the CONSULTANT’S behalf in connection with this Agreement or its performance; PROVIDED that the CONSULTANT shall not be required to so indemnify against indemnities against liability for damages caused by or resulting from the sole negligence of the OWNER, its agents or employees; PROVIDED FURTHER that if such damages are caused by or result from the concurrent negligence of the OWNER and the CONSULTANT, then the CONSULTANT’S indemnity hereunder shall be limited to the extent of the negligence by the CONSULTANT.
Owner Relationships
Safety Standards/Criteria

- OSHA
- Safety
- Infection Control
- PPE
Working Conditions

- Time/hours of the day you’re allowed to work
- Badging or background checks to satisfy site access requirements
- Site conditions
- Good Faith surveys
Billing and Payment

- Methodology
- Timing
Change in Work

- Owner-generated
- Condition-generated
Claims and Dispute Resolution
Termination Agreements
Bruce Pitts, CMPM CSBA LEED AP
Principal, Commissioning
Wood Harbinger, Inc.
bpitts@woodharbinger.com
woodharbinger.com

Ujjval Vyas, PhD, JD
Principal
Alberti Group
uvyas@albertigroup.net