

# **KENTUCKY DEPARTMENT OF EDUCATION**

## **STAFF NOTE**

### **Action/Consent Item:**

Waiver Request from the Boone County School District of the Requirements of Documents Related to Construction Management as Adviser Incorporated by Reference into 702 KAR 4:160, Capital Construction Process

### **Commissioner's Recommendation:**

It is recommended that the Kentucky Board of Education (KBE) approve the waiver from the required documents related to Construction Management as Adviser contained in 702 KAR 4:160 to permit the Boone County School District to utilize the Construction Manager as Constructor delivery method for the Ballyshannon Middle School project.

### **Rationale:**

The Boone County Board of Education seeks to utilize the Construction Manager as Constructor delivery method in lieu of the Construction Manager as Adviser method. The proposed delivery method necessitates a waiver of the regulation. The regulation only contemplates Construction Manager as Adviser delivery method and only related documents are incorporated by reference. The documents referenced for the regulation must be waived to allow the use of Construction Manager as Constructor documents.

### **Action Question:**

Should the KBE approve a request from the Boone County School District to waive the required documents related to Construction Management as Adviser in 702 KAR 4:186 for the proposed construction of the Ballyshannon Middle School?

### **Applicable Statute or Regulation:**

KRS 156.160, KRS 162.065, and 702 KAR 4:160

### **History/Background:**

**Existing Policy:** 702 KAR 4:160 governs the capital construction process and provides an option for a construction management delivery method for school construction projects. The regulation contemplates projects will utilize the Construction Manager as Adviser (CM-Adviser) model. 702 KAR 4:160 incorporates by reference certain American Institute of Architects (AIA) documents. These documents are only applicable to a CM-Adviser relationship between a construction manager and project owner.

**Summary:** The Boone County School District requests a waiver from the requirements of 702 KAR 4:160 to permit a Construction Manager as Constructor (CM-Constructor) delivery method for the Ballyshannon Middle School project. A waiver is necessary because the regulation incorporates by reference and requires usage of the aforementioned AIA documents. These documents relate to a CM-Adviser for school construction project management.

Under the CM-Adviser method, the construction manager acts as the owner's independent professional adviser from project design through construction. The CM-Adviser is the owner's advocate responsible for monitoring the budget, scheduling and project costs. The contracts for the actual construction are between the owner and the individual trade contractors. The construction manager does not have a financial interest in labor or materials. Fees for a CM-Adviser are typically lower than under other delivery methods, but there is no guarantee of project cost.

Under the CM-Constructor delivery method, the construction manager performs the same design phase services as the CM-Adviser and then acts as a general contractor after the bids are received. The CM-Constructor is legally responsible for delivering the project on-time and on-budget. The construction manager enters into an agreement with the owner for a stipulated project price. The construction manager also enters into contracts for construction services with the trade contractors. The CM-Constructor is both construction manager and contractor. The manager's fees are determined by the amount of risk assumed.

The proposed waiver will allow the Boone County School District to employ a CM-Constructor delivery method. The CM-Constructor will provide the school district project owner with the same pre-construction services as under the existing management method. The construction manager and owner will enter into a single prime construction contract. The contract will contain performance and payment bonds for the total construction amount, and the manager will assume total project responsibility (similar to a general contractor). The CM-Constructor will parcel out the project into separate bid packages and then enter into subcontracts after bids are received. Under the CM-Constructor model, the administrative burden on the district related to multiple prime contracts is reduced and the responsibility of the construction manager is increased.

KRS 156.160 allows the Kentucky Board of Education to approve a written request from a local board of education to waive an administrative regulation when an alternative approach will achieve the same result.

The Boone County Board of Education voted unanimously to request a waiver of this requirement from the Kentucky Board of Education.

**Budget Impact:** There is no budget impact at the state level.

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**Commissioner of Education**

**Date:**

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