

UC Procurement Services & UCOP Office of General Counsel present:

Is it construction or is it maintenance?



March 9, 2017

Presenters:

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Learning Points:

- Distinguish between **construction** and **maintenance**
- Distinguish between **construction *procurement*** and **non-construction *procurement***
- Understand the role of Procurement Services & UC Office of General Counsel in assisting with the distinctions above

Is it **Construction** or **Maintenance**?

Resources

- The FACMAN!
 - www.ucop.edu/facil/fmc/facilman/
 - Volume 6 – Operations and Maintenance
- [Public Contract Code § 10500](#), et seq.- University of California Competitive Bidding (the Stull Act)

What is Construction?

- **Construction** consists of moving, demolishing, altering, upgrading, renovating, installing, or building a structure, facility, or system according to a plan or by a definite process
- Exterior and interior painting or repainting of new or existing structures is **construction**
- Upgrading or replacing a building system in its entirety when it has exceeded its useful life is generally **construction**, not maintenance



What is maintenance?

- **Maintenance** is the upkeep of property, machinery, systems, and facilities, including buildings, utility infrastructure, roads, and grounds.
- **Maintenance** consists of those activities necessary to keep facilities and systems operational and in good working order.
- It consists of the preservation, but not the improvement, of buildings and grounds, other real property improvements and their components.
- **Maintenance** may include replacement of components of equipment or building systems (roof, flooring, HVAC, etc.) if replacement is performed:
 - 1) on a routine or recurring basis,
 - 2) to bring the equipment or building system back to its fully functional state,
 - 3) to ensure the equipment or building system retains its functionality for its anticipated useful life

Maintenance requires in-kind components

- Replacement of a component of a building system is a form of **maintenance** when the replacement component is a duplicate, i.e., replacement-in-kind, **-or-**
- if not, the replacement item is an upgrade because a duplicate component is obsolete or is no longer reasonably available



Building System

Definition: “a regularly interacting or interdependent group of items forming a unified whole”

- Systems related to University facilities are specifically defined in the **FIRM (Facilities Infrastructure Renewal Model)**

Examples of “building system” and “components”

Building System	Components
HVAC – Equipment, Controls	Circulating pumps, fan coil units, thermostat, exhaust and ventilation units, heat exchangers, vacuum pumps
Electrical equipment	Building transformers, service panels, fuses, emergency power, lighting, and generators, light fixtures, controls, power receptacles, motors


Certain maintenance is considered construction....

- 50% Rule
- Minor Cap Rule
- Upgrades/Improvements

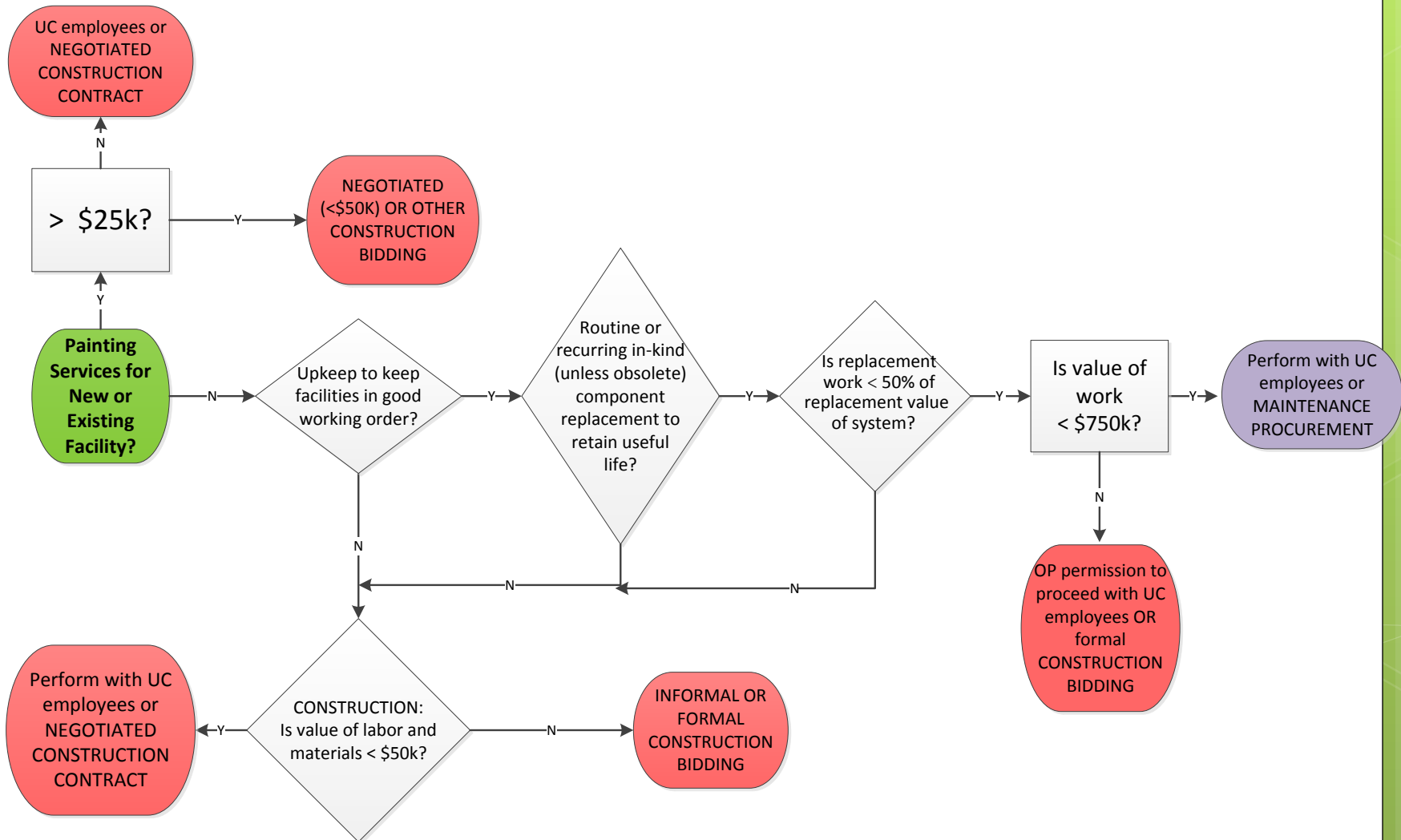
The 50% Rule

- If the work associated with replacement of a system's component(s) is greater than 50% of the replacement value of its system, such work should be considered a system replacement and ...shall be considered repair (therefore **construction**) and beyond the scope of **maintenance**.

The Minor Cap Rule

- If the value of the work associated with replacement of component(s) exceeds current University Minor Capital Project limits (\$750k),  the Facility shall obtain Office of the President concurrence prior to proceeding with the work as **maintenance**.

CONSTRUCTION OR MAINTENANCE?



Construction

- Handled by FM PM via ***Construction Contracts***

Maintenance

- Handled by FM Procurement via ***Purchase Order***

SCENARIOS



Construction vs. Maintenance

Scenario 1

On a \$700k construction project, the PM requests a PO for a \$2k tree removal. The \$2k would come from the overall construction project budget. Can you procure the tree removal under purchasing procurement rules for a \$2k tree removal?

Construction vs. Maintenance

Scenario 1

On a \$700k construction project, the PM requests a PO for a \$2k tree removal. The \$2k would come from the overall construction project budget. Can you procure the tree removal under purchasing procurement rules for a \$2k tree removal?

No. The entirety of the \$700k construction project, including the \$2k tree removal, must be bid in accordance with construction competitive bidding rules for a \$700k project.



Construction vs. Maintenance

Scenario 2

UC entered into a purchase order for maintenance work for \$230k which required some incidental drywall patching and painting valued at \$5k. Can this work legally proceed on a purchase order? Is such a purchase order in compliance with UC policy?

What if the maintenance work included painting valued at \$56,000?

Construction vs. Maintenance

Scenario 2

UC entered into a purchase order for maintenance work for \$230k which required some incidental drywall patching and painting valued at \$5k. Can this work legally proceed on a purchase order? Is such a purchase order in compliance with UC policy?

Yes and yes. Incidental work typically will not transform a maintenance job into a construction job.

What if the maintenance work included painting valued at \$56,000?

Because the painting is not incidental, the least risky course of action would be to bid the entire scope as a construction project.

Construction vs. Maintenance

Scenario 3

Campus wants to replace the wall tile, light fixtures, bathroom fixtures, partitions, and floor tile in twenty different large restrooms across the campus on a 25 year basis. Is this **maintenance**?



Construction vs. Maintenance

Scenario 3

Campus wants to replace the wall tile, light fixtures, bathroom fixtures, partitions, and floor tile in twenty different large restrooms across the campus on a 25 year basis. Is this **maintenance**?

This work would typically be characterized as a renovation or remodel construction job. The multiple trades and the entirety of the replacement signal construction. Is it upkeep? Regularly recurring? Would a reasonable person consider this to be maintenance or construction?

Construction vs. Maintenance

Scenario 4

UC wishes to remove an existing deteriorated stair and install a new accessible sidewalk, ramp and stair to meet current ADA code requirements.

Construction vs. Maintenance

Scenario 4

UC wishes to remove an existing deteriorated stair and install a new accessible sidewalk, ramp and stair to meet current ADA code requirements.

Even though required by code, this work is an improvement and/or upgrade and would be considered construction. If the cost is <\$50k, then UC employees may perform the work, or it may be done via a negotiated construction contract.

Construction vs. Maintenance

Scenario 5

Campus wants to **upgrade** light fixture and lamps for energy efficiency across the campus. The first phase will cost \$300k for labor and materials. Is this **construction** or **maintenance**? Can UC employees perform the work?


Construction vs. Maintenance

Scenario 5

Campus wants to **upgrade** light fixture and lamps for energy efficiency across the campus. The first phase will cost \$300k for labor and materials. Is this **construction** or **maintenance**? Can UC employees perform the work?

This is an upgrade and, therefore, will not qualify as maintenance services. Because the cost is > \$50k, the work may not be performed by UC employees.

Some exceptions to construction competitive bidding rules:

- Emergencies: 
 - **PCC 10504.** ...when that work or those remedial measures are required *immediately* and are necessary to protect the *public health, safety, and welfare.*
- Specialized research equipment
- **Construction** * < \$50k

*Even though bidding is not required, **construction** contracts should still be utilized for **construction** work

Immediate Emergency Repair - UCSD

Emergency immediate repair work will be done on PO, but anything after will need to be handled by FM PM

Example: Gas leak underground - need to stop leak and assign to FM PM for construction repairs

Questions?

Contact Procurement or FM PM



**"Thank you for calling Customer Service.
If you're calm and rational, press 1.
If you're a whiner, press 2.
If you're a hot head, press 3...."**

Contacts

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