

WHAT IS “CONSTRUCTION”?

- According to Texas Labor Code:
 - “Building or construction” includes:
 - (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
 - (B) remodeling, extending, repairing, or demolishing a structure; or
 - (C) otherwise improving real property or an appurtenance to real property through similar activities.
- AG: Section 406.096 “applies to every ‘building or construction contract’ entered into by the State or a political subdivision of the State, no matter how small the subject matter of the contract may be.”

Tex. Labor Code § 406.096(e)(1)

Tex. Att’y Gen. Op. No. DM-300 (1994)

AUTHORIZED DELIVERY METHODS FOR CONSTRUCTION SERVICES

- Competitive Bidding (defined project)
- Competitive Sealed Proposals (defined project)
- Construction Manager at Risk (defined project)
- Design-Build (defined project)
- Job Order Contracting or Coop (projects not yet defined; to be determined/assigned later)
- Construction Manager Agent (defined project(s) or program)

COMPETITIVE BIDDING

- District shall hire an engineer or architect to prepare construction documents for the project
- Request for bids must include construction documents, estimated budget, project scope, estimated completion date and other necessary information
- District selects the “lowest responsible bidder”
- No changes in scope, deadlines or price may be negotiated prior to contract award

COMPETITIVE SEALED PROPOSALS

- District shall hire an engineer or architect to prepare construction documents for the project
- Solicitation must include construction documents, weighted selection criteria, estimated budget, project scope, estimated completion date and other necessary information
- District must score and rank proposer within **45 days**; may negotiate modifications in scope or time, and price changes associated with modifications
- Can only negotiate with 1st ranked vendor; if unable to agree, must terminate negotiations and move to 2nd ranked, and so on until contract reached

CONSTRUCTION MANAGER-AT-RISK

- Provides pre-construction services during the design phase (alongside the A/E), including cost estimating, scheduling, feasibility and constructability reviews, and long-lead item procurement
- The CMR serves as the general contractor during the construction phase; holds the contracts with the subcontractors
- District pays for actual costs of construction, plus a markup, up to a guaranteed maximum price
- Procured using two-step or one-step procurement process
- Step 1 is RFQ; in Step 2 up to 5 finalist may submit costs proposals for pre-construction services, fee, general conditions

CONSTRUCTION MANAGER-AGENT (PROGRAM/PROJECT MANAGER)

- Acts as a fiduciary of the District, providing consultation, management or administration services during design and construction phase
- Must be competitively procured using a **publicly advertised RFQ process**; price competition prohibited
- Selected in the same manner as a professional service, but is NOT a professional service such that it is exempt from procurement requirements
- A CM-Agent may not act as a contractor or subcontractor on the project(s) and does not hold any construction contracts with any party
- District still must procure prime contractors or trade contractors for the project(s) in compliance with procurement laws
- CMA must carry a minimum of \$1,000,000 in professional liability or E&O insurance; not required to furnish bonds

DESIGN-BUILD

- Single firm ***or team*** provides both design and construction of a project
- Selected by two-step **publicly advertised RFQ process**
- District must hire independent architect or engineer to represent District during project
- May not seek competitive pricing at the time you procure and select the firm/team, may seek “cost methodology” from up to five finalists in Step 2 of the RFQ process.
- Pricing negotiated after selection, typically a design fee during the design phase, and “cost-plus a fee” during the construction phase, up to a guaranteed maximum price
- Beware of contractors offering “turnkey” services – contractors not procured by design-build method should not provide professional design services either directly or by subcontract

JOB ORDER CONTRACTING

- “A procurement method used for maintenance, repair, alteration, renovation remediation, or minor construction” of facilities “when the “work is of a recurring nature, but the delivery times, types, and quantities of work required are indefinite”
 - Only construction method that allows for use of a cooperative in lieu self-procurement
 - Only method allowed to select contractors for future, undefined projects or tasks

A/E SERVICES FOR JOC PROJECTS

- District must independently hire A/E if services required
- Districts may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000, **unless**:
 - A person designated by the local government certifies in writing that:
 - The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under the Texas Engineering Practice Act or the Texas Board of Architectural Examiners; or
 - Required plans and specifications have been prepared

Tex. Gov't Code § 791.011(j)

JOB ORDER CONTRACTING

SEC. 2269.408: USE OF ARCHITECT OR ENGINEER

- “If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, *the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.*”

PUBLISHED WEIGHTED SELECTION CRITERIA

The District may consider:

- (1) Price;
- (2) Offeror's experience and reputation;
- (3) Quality of offeror's goods and services;
- (4) Impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) Offeror's safety record;
- (6) Offeror's proposed personnel;
- (7) Whether the offeror's financial capability is appropriate to the size and scope of project; and
- (8) Any other relevant factor listed in the solicitation

Evaluation Matrix

valuation Factor	Typical Weight	Focus Area Under Texas Law
Purchase Price / Fee Proposal	30% – 50%	The total cost of construction or the management fees, general conditions, and pre-construction services costs.
Vendor Reputation & Past Performance	10% – 20%	Quality of construction, references from other Texas school districts, safety records, and litigation history.
Experience & Qualifications	10% – 20%	Key personnel experience (Project Manager, Superintendent) and history with educational facilities.
Project Schedule & Timeline	5% – 15%	Proposed construction duration and ability to meet the critical substantial completion date (often aligned with the start of a school year).
Financial Capability / Stability	5% – 10%	Bonding capacity, financial statements, and insurance compliance.
Closeout & Warranty Support	0% – 5%	Warranty and Support

Evaluation Committee