



# Wharton County Junior College

## Proposed Agenda Item Board of Trustees Meeting

Complete this form and submit it to the Office of the President by noon on Friday, 11 days prior to the Tuesday evening meeting of the Board of Trustees. If this form does not provide enough space, you may use an expanded version *as long as you follow the format specified below.*

Date of Board Meeting: March 27, 2018      Date of This Proposal: March 7, 2018

### SUBJECT:

Approve the method of construction and the solicitation of requests for qualifications from Design /Build companies for the construction of a baseball stadium.

### RECOMMENDATION:

Approve the Design / Build method of construction and solicit requests for qualifications from Design / Build companies for the design and construction of a baseball stadium.

### BACKGROUND/RATIONALE:

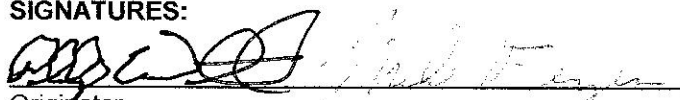
The College has a donor that is willing to assist in the possible construction of a new baseball stadium on campus. In reviewing the different methods of construction allowed by the State of Texas, the Design / Build method seems to provide the best overall value for the College. This method would allow the majority of any architectural fees to be directed toward the cost of construction. The College will have a committee review the qualifications submitted, and rank the responding companies according to their qualifications. The committee will then report back to the Board of Trustees for approval of that list.

**Estimated Cost & Budgetary Support (how will this be paid for?): Estimated \$1,500,000.00**

### RESOURCE PERSON(S) [name(s) and title(s)]:

Bryce D. Kocian, Vice President of Administrative Services  
Mike Feyen, Director of Facilities Management  
Philip Wuthrich, Director of Purchasing

### SIGNATURES:

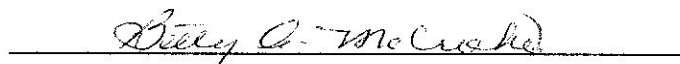
  
\_\_\_\_\_  
Originator

3-7-18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Cabinet-Level Supervisor

3/8/18  
\_\_\_\_\_  
Date

### PRESIDENT'S APPROVAL:

  
\_\_\_\_\_

3-9-18  
\_\_\_\_\_  
Date

**Estimated Dates****Steps**

April 1st	<b>Phase One</b> District Prepares RFQ to evaluate experience, technical competence, ability to perform. Except price related and cost related items are not permitted. Must have selection Criteria
April 15th	<b>Design / Build Criteria Package</b> Our document that provides sufficient information for a firm to prepare their RFQ and has criteria for selection. Should have information that the District considers necessary for the project.
Before April 30th	The District shall select an engineer or architect independent of the Design/Build firm to act as our representative for the duration of the work.
Advertise 4-14 & 4/24/2018 Open in May	<b>Next Step</b> Advertise for Qualified Contractors & open offers
Complete in May	<b>Phase Two</b> Evaluate and interview Rank on the basis of the selection criteria Negotiate a contract in order of ranking.
Work on Design in June	<b>Phase Three</b> Firm's engineer or architect shall complete the design. Scope and Design agreed on. Compliance w Occupations Code Chapter 1051  Payment and performance bonds are only required for construction only. Not for design services. Bonds are due no later than 10 days after the execution of the contract.
7/17/2018	<b>Phase Four</b> Board of Trustee Approval & schedule of work

methods of procurement of construction services, except Interlocal Contracts (see section III.D.7 below) and Energy Saving Performance Contracts (see section III D.8 below) from Chapter 44 of the Education Code and moved them, with some changes, to Chapter 2267 (now Chapter 2269) of the Government Code. The purpose of this change was to place procurement of construction services for school districts, cities, counties and most other political subdivisions under the same statute. The methods, described below are: Competitive Bidding, Competitive Sealed Proposals, Construction Manager-Agent, Construction Manager-At-Risk, Design-Build for Facilities, Design-Build for Civil Works and Job Order Contracts. Construction contracts less than \$50,000 are not required to be procured by the methods in Chapter 2269, but procurement should be done in a reasonable manner. Additionally, under Chapter 44 of the Education Code it is a criminal violation to divide up contracts that in normal purchasing practice would be purchased in one purchase in order to avoid the requirements of Chapter 44. TEX. EDUC. CODE § 44.032. Districts should avoid engaging in this activity.

**C. Selection of method of procurement of construction services.** TEX. GOV'T CODE § 2269.

1. The governmental entity (Board) may adopt rules and procedures for acquisition of goods or services. TEX. GOV'T. CODE § 2269.051, § 2269.054 (1). *See* TASB Policy CH and CV.

2. Unless the school district uses the Competitive Bidding method, the Board **must** select the method of procurement of construction services that provides the best value to the district **before advertising**. A Board may select the method for each project, a series of projects such as all projects in a bond issue, or for all of the district's construction projects, but it must be by express Board action, it cannot be delegated to the administration. TEX. GOV'T CODE § 2269.056(a).

3. Emergency exception.

(a) Facility destroyed, severely damaged or experiences a major unforeseen operational or structural failure, and the Board determines that methods otherwise required would prevent or substantially impair the conduct of classes or other school activities, the school district is not required to comply with normal procurement requirements. TEX. EDUC. CODE § 44.031(h).

(b) Note that use of the emergency exception requires Board action which may not be possible when an immediate response is required due to a fire, flood or hurricane. In 2009, the Texas Legislature enacted new Texas Education Code § 44.0312(c) which permits a Board of Trustees to delegate to the Superintendent or another designated person the authority to contract for repair work in an emergency. School districts should consider whether to

## **SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD**

Sec. 2269.301. **CONTRACTS FOR FACILITIES: DESIGN-BUILD.** In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.302. **APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS.** This subchapter applies only to a facility that is a building or an associated structure, including an electric utility structure. This subchapter does not apply to:

- (1) a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
- (2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.303. **CONTRACTS FOR BUILDINGS: DESIGN-BUILD.** A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. In using that method, the governmental entity shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.304. **DESIGN-BUILD FIRMS.** A design-build firm under this subchapter must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.305. **USE OF ARCHITECT OR ENGINEER AS INDEPENDENT REPRESENTATIVE.** The governmental entity shall select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.306. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package 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, those services shall be provided in accordance with the applicable law.

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

(d) The governmental entity may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

(b) Each firm must certify to the governmental entity that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004.

(c) The governmental entity shall qualify a maximum of five responders to submit proposals that contain additional information and, if the governmental entity chooses, to interview for final selection.

(d) The governmental entity shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

(e) The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. As used in this subsection, "costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

(f) The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.308. SELECTION OF DESIGN-BUILD FIRM. (a) The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

(b) The governmental entity shall first attempt to negotiate a contract with the selected firm.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the governmental entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2269.307(f) public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.  
Amended by:  
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(12), eff. September 1, 2013.

Sec. 2269.309. SUBMISSION OF DESIGN AFTER SELECTION. After selection of the design-build firm, that firm's architects or engineers shall submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's architect or engineer before or concurrently with construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.310. FINAL CONSTRUCTION DOCUMENTS. The design-build firm shall supply a set of construction documents for the completed project to the governmental entity at the conclusion of construction. The documents must note any changes made during construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.  
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.311. PERFORMANCE OR PAYMENT BOND. (a) A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm under this subchapter.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the design criteria package.

(c) The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.