

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

METHODS OF PROCURMENT FOR CONSTRUCTION SERVICES

PRESENTED BY:



O'HANLON
DEMERATH
& CASTILLO

METHODS FOR CONSTRUCTION SERVICES

TEX. GOV'T CODE, CHAPTER 2269

The Texas Government Code, Chapter 2269, states that the governing body of a governmental entity that considers a construction contract using a method authorized by the chapter, other than competitive bidding, must determine which method provides the best value for the governmental entity before advertising it. The governmental entity should do the following:

- Base its selection among offerors on applicable criteria listed for the method used.
- Publish, in the RFP or qualifications, the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion document the basis of its selection.
- Make the evaluations public no later than the seventh day after the date the contract is awarded.

METHODS FOR CONSTRUCTION SERVICES

- Competitive bidding
- Competitive sealed proposals
- Construction manager-agent
- Construction manager-at-risk
- Design-build contracts
- Job order contracting
- Reverse auction procedure

*References: Texas Government
Code, Chapter 2269*

COMPETITIVE BIDDING

COMPETITIVE BIDDING

Competitive Bidding Competitive bidding is a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

The governmental entity should select or designate an architect or engineer in accordance with the Texas Occupations Code, Chapter 1051 or Chapter 1001, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

COMPETITIVE SEALED PROPOSALS

COMPETITIVE SEALED PROPOSALS

Competitive sealed proposal is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

The governmental entity should select or designate an architect or engineer to prepare construction documents for the project.

CONSTRUCTION MANAGER-AGENT

CONSTRUCTION MANAGER-AGENT

Construction manager-agent method is a delivery method by which a governmental entity contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

CONSTRUCTION MANAGER-AGENT (CONT.)

A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services for the construction, rehabilitation, alteration, or repair of a facility.

CONSTRUCTION MANAGER-AGENT (CONT.)

The governmental entity should select or designate an architect or engineer in accordance with the Texas Occupations Code, Chapter 1051 or Chapter 1001, as applicable, to prepare the construction documents required for a project.

CONSTRUCTION MANAGER-AT-RISK

CONSTRUCTION MANAGER-AT-RISK

The construction manager-at-risk method is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

CONSTRUCTION MANAGER-AT-RISK (CONT.)

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

CONSTRUCTION MANAGER-AT-RISK (CONT.)

A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility. On or before the selection of a construction manager-at-risk, the governmental entity should select or designate an architect or engineer to prepare the construction documents for the project.

DESIGN-BUILD CONTRACTS

DESIGN-BUILD CONTRACTS

Design-build is a method of project delivery in which the district contracts with a single entity to take responsibility for both the design and construction of a project. All design, including construction drawings, is done by a single entity, the design-build contractor.

DESIGN-BUILD CONTRACTS (CONT.)

Districts should adopt general criteria to be used to determine which projects will be delivered using the design-build method. In accordance with the TEC, §44.031(g), the district must publish in the request for bids, proposals, or qualifications for construction services the criteria that will be used to evaluate the offerors and relative weights given to the criteria.

Additional criteria that may be used to determine when to use design-build include the following:

- Time constraints for delivery of the project
- Capability and experience of potential teams with the design/build process
- Suitability of the project for the use of the design/building process
- Capability of the district to manage the project, including personnel to oversee the project who are familiar with the design/build process

DESIGN-BUILD CONTRACTS

Districts should develop formal and documented guidelines and procedures for obtaining qualifications, evaluation, ranking and award of contracts for selecting design-build entities and for managing design-build projects. Formal documented and adopted procedures will allow the public and the design and construction communities to comment on the procedures and will assure that fair, uniform, and effective procedures are followed.

DESIGN-BUILD CONTRACTS

The goal of all procurement methods is to provide the best value to the district. Consequently, design-build should be carefully selected and monitored to ensure that the district receives the highest quality products and services at a fair value.

There are several legal considerations concerning the use of design-build contracts. See the Texas Attorney General Opinion JC-0037 (1999).

JOB ORDER CONTRACTING

JOB ORDER CONTRACTING

Job order contracting (JOC) is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, and type and quantities of work required are indefinite.

The district should establish the maximum aggregate contract price when it advertises the proposal, and the board should approve each job, task, or purchase order that exceeds \$500,000. If a specific project utilizing the JOC method is \$500,000 or greater, it must be approved by the district's board.



CONSTRUCTION

VS.

MAINTENANCE
SERVICES

CONSTRUCTION VS. MAINTENANCE SERVICES

Determining if a contractor is engaged in maintenance operations rather than construction activities must be made on a case-by-case basis, considering all information available at a site.

Factors that determine if a project is maintenance or construction include the following:

- one-for-one replacement (“like for like”): replacement parts, components, or equipment should be equal in grade, quality, and capacity to the original, without the addition of any new or upgraded components, appurtenances, features, or functions
- the scale and complexity of the project, including the amount of time and material required to complete the job, should be relatively simple and routine
- the physical size of the object being worked on

CONSTRUCTION VS. MAINTENANCE SERVICES (CONT.)

References: TEC, §44.031; Texas Government Code, Chapter 2253, Chapter 2258, and Chapter 2269; Texas

Labor Code, Chapter 406; Texas Occupations Code, Chapter 1001 and Chapter 1051

If architect or engineering services are required for the services, the work triggers requirements for compliance with updated building codes, or building permits or inspections are required for the work, the services likely constitute construction services rather than maintenance services.

CONSTRUCTION VS. MAINTENANCE SERVICES (CONT.)

Construction services must be procured using one of the methods set out in the Texas Government Code, Chapter 2269. These services include both traditional construction and contracts to alter or repair a building. Contracts for construction services are subject to laws applicable to public works, including, but not limited to, prevailing wages (Texas Government Code, Chapter 2258); payment and performance bonds (Texas Government Code, Chapter 2253); mandatory workers' compensation coverage for laborers (Texas Labor Code, §406.096); and requirements related to the use of licensed architects and engineers (e.g., Texas Occupations Code, §§1001.407, 1001.053, and 1051.703).

CONSTRUCTION VS. MAINTENANCE SERVICES (CONT.)

Maintenance services may be procured using one of the methods set forth in the TEC, §44.031(a), or through the JOC method set forth in the Texas Government Code, Chapter 2269. Maintenance services are defined as ordinary upkeep or repairs necessary to preserve something in good condition. Maintenance services can also be to “keep up, keep from change; preserve” a building and its components, including “ordinary repairs necessary and proper from time to time for that purpose.



THANK YOU