Construction Delivery Methods for School Districts

May 17, 2023

1 THRIVING STUDENTS

2 ENGAGED COMMUNITY

3 EMPOWERED STAFF

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Construction Delivery Methods

Texas Education Code 44.031 – 44.041 PURCHASING CONTRACTS.

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at $50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

(1) competitive bidding for services other than construction services;

(2) competitive sealed proposals for services other than construction services;

(3) a request for proposals, for services other than construction services;

(4) an interlocal contract;

(5) a method provided by Chapter 2269, Texas Government Code, for construction services;

Construction Procurement

Texas Government Code (TGC) chapter 2269 provides for the procurement of construction services via:

1. Competitive bidding (TGC 2269.101, CVA Legal)
2. Competitive sealed proposals (TGC 2269.151, CVB Legal)
3. Construction manager-agent (TGC 2269.201, CVC Legal)
4. Construction manager-at-risk (TGC 2269.251, CVD Legal)
5. Design-build (TGC 2269.301, CVE Legal)
6. Job order contracts (TGC 2269.401, CVF Legal)

1. Competitive Bidding

Competitive Bidding: A procurement method where detailed construction documents are first prepared by a licensed engineer or architect, before bids are solicited and awarded to the lowest responsible bidder. Whether a bidder is responsible is determined based upon safety records alone, specified in Board Policy CVA (Local) which states *"the safety record shall be defined as a bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the bidder's insurance carrier, and a loss history covering all lines of insurance coverage carried by the bidder".* In effect, this typically goes to the bidder of the lowest price.

Pro – Lowest cost.

Cons – Negotiations are not permitted, no value engineering, lowest bid may be higher than budget, no guaranteed maximum price, subject to change orders and schedule delays.

The Board is not forced to select a bid, and may reject all responses

2. Competitive Sealed Proposals

Competitive Sealed Proposals (CSP): Detailed construction documents are first prepared by a licensed engineer or architect. Then, the District requests proposals, ranks the offerors based on published criteria, negotiates with the selected, and then contracts with a general contractor for the project.

Pros – Can use ranking evaluation and negotiate project scope and time modification.

Cons – Cannot release early package, can be adversarial if lowest price is not chosen, no guaranteed maximum price, and is subject to change orders.

*Where Competitive Bidding is rigid, Competitive Sealed Proposals allow for an evaluation and negotiation. Both methods are subject to change orders and schedule delays.

3. Construction Manager-Agent

Construction Manager-Agent (CMA): A delivery method by which a district 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 s*ub-contractors*. The owner contracts with trade contractors directly (multi-prime) or with a separate general contractor to provide the actual construction of the work. On or before the selection of a construction manager-agent, the district shall select or designate an architect or engineer.

The CM-Agent advises the District in procuring subcontractors to perform the construction tasks, via competitive bids or sealed proposals. The Manager-Agent does not take on any risk regarding the project timeline or budget. This risk is on the District.

Pros – District selection of sub-contractors, District controls the design, CMA serves in a fiduciary capacity and advises the District on project decisions.

Cons – CMA does not have contractual leverage over sub-contractors, the District contracts directly with sub-contractors, the District assumes risk of schedule and budget, no guaranteed maximum price, and work is subject to change orders.

4. Construction Manager-at-Risk

Construction Manager-at-Risk (CMaR): A delivery method where the District separately contracts with an architect or engineer for design and construction phase services, and also contracts with a construction manager-at-risk to serve as the general contractor at a guaranteed maximum price, while also advising the District on the overall project. The CMaR contracts directly with the sub-contractors.

Pros – District selection of sub-contractors, District controls design, CMaR has leverage over sub-contractors, Guaranteed maximum price, CMaR assumes risk of schedule and budget, and no change orders unless scope change is requested by the District or additional work is required by municipality where facility is built.

Cons – Not typically used for small projects

*Districts widely use CMaRs for larger projects, for its greater assurance that oversight and responsibility will be provided by Manager-at-Risk—who bears direct risk to ensure efficient completion.

5. Design-Build

Design-Build: 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. In this method, the District must yield much of the control over design details to the design-builder and team. This method does not include a guaranteed maximum price or bid for overall design or construction.

Pros – project schedule can be accelerated.

Cons – District must be able to clearly define project scope, no guaranteed maximum price, District does not select sub-contractors, and subject to change orders.

6. Job-Order Contract

Job Order Contract (JOC): 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, type, and quantities of work required are indefinite.

Pros – One contract for multiple projects (i.e. fencing, concrete, flooring).

Cons – Limited scope of projects, owner must be able to clearly define project scope.

Choosing a Contractor

Mandatory Considerations. When awarding a construction contract using a method other than competitive bidding (where the District accepts the lowest bid), the District MUST :

(1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and

(2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Texas Government Code 2269.055

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Choosing a Contractor

TGC 2269.055. CRITERIA TO CONSIDER.

(1) the price;

(2) the offeror's experience and reputation;

(3) the quality of the offeror's goods or services;

(4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;

(5) the offeror's safety record;

(6) the offeror's proposed personnel;

(7) whether the offeror's financial capability is appropriate to the size and scope of the project; (*financial statement from previous two years along with latest balance sheet and income statement)* and

(8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Choosing a Contractor

(8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Historically Underutilized Business and Minority-and-Women-Owned Businesses

The District establishes the 20 percent minimum percentage goals for District work to be performed by HUBs or M/WBEs as prime contractors or as subcontractors for work valued at or above $50,000 and advertised for competitive bid or competitive sealed proposals: However, nothing in CH(Local) board policy shall operate in violation of law, including the provisions of the revised civil statutes of Texas, Texas Education Code 44.031, or any other provision of state or federal law.

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Recent Construction Manager at Risk Projects:

Project	Original Contract Sum	Project Close-out Sum	Cost Avoidance Savings	Remaining Funds
June W. Davis Elementary	$25,169,004	$25,156,097.82	$12,906.18	Capital Fund Balance
Bill R. Johnson CTE Center	$72,977,909	$70,798,090	$2,179,819	Used for Aviation and Barbering
CHS/NCHS Fine Arts and Athletic Improvements	$35,215,881	$35,091,824	$124,057	Capital Fund Balance
Operations Facility	$15,779,754.51	$15,662,357.51	$117,397	Capital Fund Balance
Indoor Practice Facilities	$10,797,043	$10,026,923	$770,120	SCMS, RAMS track resurface, DW Early Childhood renovations, NC9 renovation for art rooms, Capital Fund balance
Multi-purpose Stadium and Central Administration	$51,934,785 and $17,962,690 respectively	Not closed out		
Natatorium	$5,498,452	Not closed out		

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the YMCA
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CELEBRATE WITH US!
GRAND SPLASH
JUNE 2 @ 10 A.M.
AT THE RYAN FAMILY YMCA

Construction Delivery Methods

2023 Bond Projects

- Elementary #17
- Replacement of Crowley High School
- Additions to North Crowley High School
- Additions to North Crowley Ninth Grade
- Inclusive Outdoor Learning Center
- Indoor Track Facility
- Expansion of Crowley Ninth Grade Cafeteria
- Renovation of Deer Creek Elementary kitchen/cafeteria
- Renovation of Sycamore Elementary kitchen/cafeteria
- Renovation of Meadowcreek kitchen
- Land Purchases

Construction Delivery Methods

- Additions/renovations at Crowley Middle and H.F. Stevens
- Elementary #18
- Elementary #19
- Middle School #5
- CCA/P-Tech/Global Prep Facility and renovation of CCA wing at Bill R. Johnson CTE Center
- Student Support Hub and Family Resource Center
- Satellite Transportation Facility
- Outdoor track
- Phase two of Elementary #16

District wide facility upgrades, safety upgrades, technology upgrades, and district wide transportation fleet items will be addressed through priority district needs and life cycle replacements.

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May 11, 2023

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