



The Pros and Cons of Construction Delivery Methods Available to Community College Districts



Community College Facility Coalition
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Panel

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Foundation

The Heart of Public Contracting

- California Public Contract Code § 100
- Protect the public from misuse of public funds
- Provide all qualified builders a fair opportunity to compete
- Stimulate competition in a fiscally sound manner
- Eliminate favoritism, fraud, and corruption

2

Main Delivery Methods

- Design-Bid-Build – Public Contract Code § 20651
- Lease-Leaseback – Education Code § 81335
- **Construction Manager** – Government Code §§ 4526 & 4529.5 – all in conjunction with Public Contract Code § 20651
 - Construction Manager Agency
 - Construction Manager Multi-Prime
 - Construction Manager At-Risk
- Design-Build – Education Code §§ 81700 - 81709

3



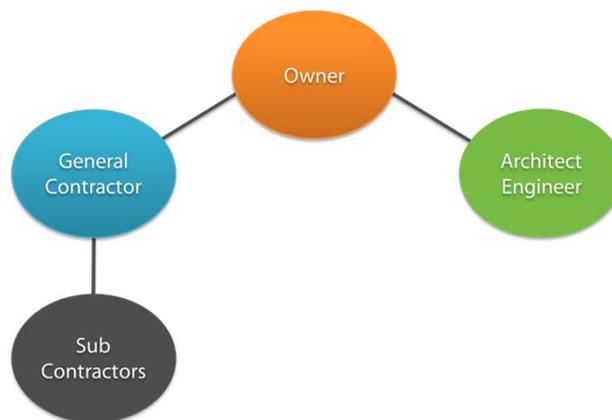
Design-Bid-Build

- Public Contract Code § 20651(b)
- For Public Projects – Public Contract Code § 22002
- The governing board shall let
 - To the lowest **responsible** bidder
 - Who shall give security **as the board requires** in cash, cashier's or certified check payable to the district, or a bond executed by an admitted surety insurer, made payable to the community college district
- Any contract involving an expenditure of fifteen thousand dollars (\$15,000) or more

4

Design-Bid-Build

Traditional Design-Bid-Build



5



Design-Bid-Build

- Prequalification – Public Contract Code § 20651.5
- Advertising requirements – Education Code § 81641
- Product substitutions – Public Contract Code § 3400
- Bid evaluation – bid protests
 - Responsiveness
 - Responsibility

6

Design-Bid-Build

PROS	CONS
Owner controls design and construction	No contractor preconstruction services
Design is complete prior to construction	Owner at risk to contractor for design errors
Design changes easily made prior to start of construction	Design and construction and sequential – longer schedules
Construction cost fixed at time of contract award	Owner has separate contracts for design and construction
Low bid (maximum competition)	Award to lowest, responsive, responsible bidder.

7



A Quick Note

On the Uniform Public Construction Cost Accounting Act

- Public Contract Code §§ 22000 et seq.
 - Provides an alternative system of bidding
 - Contract without bidding up to \$60,000
 - Informal bidding for contracts over \$60,000 up to \$200,000
 - Formal bidding procedures for contracts over \$200,000
 - Follow the Cost Accounting Policies and Procedures Manual of the California Uniform Public Construction Cost Accounting Commission

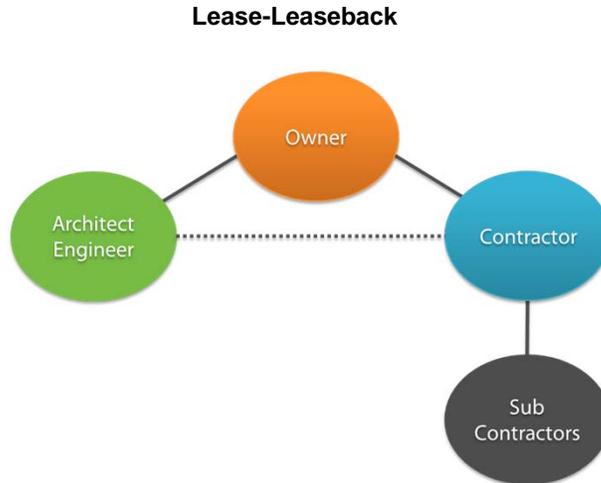
8

Lease-Leaseback

- Education Code § 81335
 - The governing board may lease property owned by the district to any person, firm, or corporation for a minimum of \$1 per year as long as the lease requires the other party construct (or provide for the construction of) a building or buildings that the district will use throughout the lease and own at the expiration of the lease
 - The California Attorney General concluded that the predecessor to Education Code section 81335 does not require competitive bidding (56 Ops.Cal.Atty.Gen. 572 (1973))
 - Board must adopt Field Act compliant plans & specifications
 - No revisions to Ed. Code § 81335, since it was codified in 1957.
 - K12 LLB statute, Ed. Code § 17406, has undergone major revisions

9

Lease-Leaseback



Lease-Leaseback

- Education Code § 81332
 - One or more buildings located or to be located on one or more sites - *New Construction*.
 - The remodeling of any building located on a site to be leased pursuant to this article - *Modernization*.
 - Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased - *Infrastructure*.
 - The permanent improvement of school grounds - *Catch-all*.
 - "...includes one or more sites, and also may include any building or buildings located or to be located on a site."
 - The District must own the site or hold an option to purchase the site.



Lease-Leaseback

PROS	CONS
Team concept – owner, architect, and builder work as a team	No bidding
Preconstruction services	Lack of familiarity
Guaranteed maximum price	Process has detractors
Can be awarded based on best value	May not be the least expensive option
No change orders	K12 lawsuits

12

Construction Management

- Government Code § 4526
- A “local agency head” may select providers of construction project management services
- Based on demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required
- This should not be used if the services needed are “more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest”

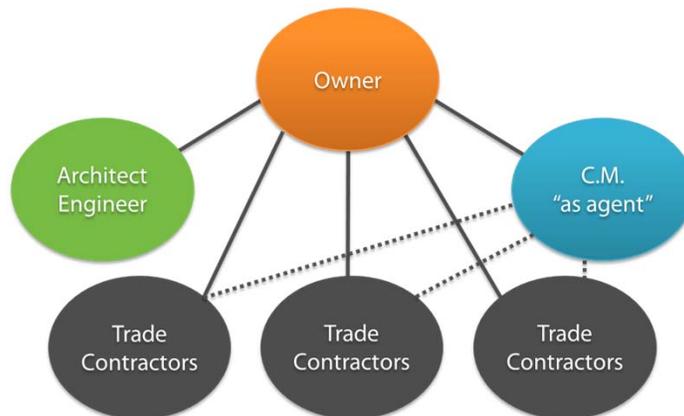
13

Construction Management

- Government Code §§ 4529 and 4529.5
 - Construction project management applicants must “provide evidence that the... personnel carrying out onsite responsibilities have expertise and experience in...”
 - construction project design review and evaluation
 - construction mobilization and supervision
 - bid evaluation
 - cost-benefit analysis
 - project scheduling
 - claims review and negotiation
 - general management and administration of a construction project.

Construction Manager

Construction Manager





Construction Management

- All Construction Procured Under Public Contract Code § 20651
 - NO CM CAN PERFORM CONSTRUCTION OR SUPPLY MATERIALS OR EQUIPMENT - *City of Inglewood-Los Angeles Civic Center Authority v. Superior Court* (1972) 7 Cal.3d 861
- Agency – the CM acts as the district's agent to manage a traditional design-bid-build project
- Multi-Prime – the CM acts as the district's agent to manage a group of multiple prime contractors with complimentary scopes of work
 - Both of these models use the CM as a replacement for district personnel who would otherwise oversee prime contractors

16

Construction Management

- At-Risk – begin with a multi-prime, then assign the multiple prime contracts to the CM
 - The CM takes on the risk of delivering the project on time (at the scheduled completion date)
 - The CM takes on the risk of delivering the project on budget (a Guaranteed Maximum Price)
- Limitations from *City of Inglewood-Los Angeles Civic Center Authority v. Superior Court* (1972) 7 Cal.3d 861
 - The CM cannot take on the traditional role of a prime contractor
 - The CM should not provide any bonds
 - The CM should not provide any builder's risk insurance
 - The CM is compensated on a fee basis just like an architect

17



Construction Management

PROS	CONS
Construction costs known and fixed at award	Owner at risk for design errors
Transfer risk to the CM (CMAR)	Design changes during construction are costly
May be the least expensive delivery method	Owner must process multiple trade contracts pay applications each month
Owner without in-house construction expertise	CMAR not specified by law
Bidding of trade packages	

18

Design-Build

- Education Code §§ 81700 - 81709
 - Written finding that use of the design-build method will:
 - Reduce comparable project costs
 - Expedite project completion
 - Provide features not otherwise achievable
 - The design-build method is in the community college district's best interests
 - Allows selection based on “best value” – but must be specified
 - Must use a prequalification procedure established by the Department of Industrial Relations
 - Project must “exceed” \$2,500,000
 - Skilled and Trained Workforce – after July 1, 2020

19



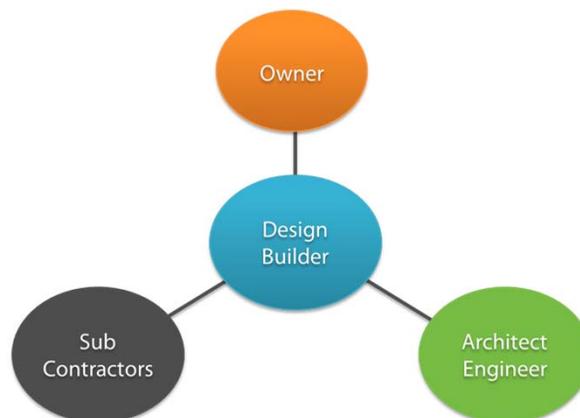
Design-Build

- Education Code §§ 81700 - 81709
 - The RFP must:
 - Describe the scope and needs of the project and expected cost range
 - Describe all significant factors to be considered in evaluating proposals
 - Describe the methodology and rating scheme for evaluating proposals
 - Describe the relative importance of each factor for evaluating proposals
 - Describe how non-price factors will be weighed in relation to price
 - Indicate whether the community college district will hold negotiations and discussions with respondents and the rules and conditions for negotiations

20

Design-Build

Design-Build



21



Design-Build

PROS	CONS
Owner contracts with one entity for both design and construction	Loss of control over design – less collaboration
Shorter project timelines	Owner does not have an architect acting as its agent.
Risk of design errors is transferred to the design-build entity	Less competition and potentially higher prices as smaller contractors cannot effectively create a design-build team
Contractor is involved in the design phase which will reduce changes and conflicts during construction	Potentially conflicting interests as both contractor and designer
Emphasis on cost control	



THANK YOU FOR ATTENDING



If you have questions or comments, please contact

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