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

Community College Facility Coalition 25th Annual Conference September 11, 2018

Panel

- Alan Kroeker - Principal PMSM Architects/19six Architects

- Steve Garcia – Exec. Dir. Facilities Construction & Operations Victor Valley Community College District

- Marty Hom – Partner Atkinson, Andelson, Loya, Ruud & Romo
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

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
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
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

## Design-Bid-Build

<table>
<thead>
<tr>
<th>PROS</th>
<th>CONS</th>
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<tbody>
<tr>
<td>Owner controls design and construction</td>
<td>No contractor preconstruction services</td>
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<tr>
<td>Design is complete prior to construction</td>
<td>Owner at risk to contractor for design errors</td>
</tr>
<tr>
<td>Design changes easily made prior to start of construction</td>
<td>Design and construction and sequential – longer schedules</td>
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<tr>
<td>Construction cost fixed at time of contract award</td>
<td>Owner has separate contracts for design and construction</td>
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<tr>
<td>Low bid (maximum competition)</td>
<td>Award to lowest, responsive, responsible bidder.</td>
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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 $45,000
    - Informal bidding for contracts over $45,000 up to $175,000
    - Formal bidding procedures for contracts over $175,000
    - Safe harbor up to $187,500
  - Follow the Cost Accounting Policies and Procedures Manual of the California Uniform Public Construction Cost Accounting Commission
  - AB2249 (Cooley), chaptered on August 20, 2018.
    - Increases no bid to $60,000
    - Increases informal bid to $200,000
    - Increases formal bids to over $200,000

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
  - 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
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

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

![Diagram of construction project stakeholders: Owner, Construction Manager (C.M. “as agent”), Architect Engineer, Trade Contractors]
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

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
Construction Management

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

- Education Code §§ 81700 - 81709
  - The RFP must:
    - Describe the scope and needs of the project and expected cost range
    - Invite interested parties to submit competitive sealed proposals
    - 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
## Design-Build

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

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