

Alternative Project Delivery Methods For Texas Public Projects For Cities, Counties and River Authorities

(Chapter 271, Subchapter H Local Government Code)

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Introduction

For years cities and counties in Texas, like most other public entities, were required to award construction contracts pursuant to competitive bidding laws that required that the contract be awarded to the lowest responsible bidder. This is the familiar design-bid-build delivery method which, with the exception of a few statutes which authorized alternative delivery methods for particular projects, such as jail facilities, has been the dominant method of contracting for public works in Texas.

In 1995 the Texas Legislature passed Senate Bill 1 which was largely an education reform bill. However Senate Bill 1 also introduced, on a large scale, the use of alternative project delivery methods for public school districts and institutions of higher education. The initial law lacked procedural detail, but has been substantially revised and clarified by amendments passed in the 1997, 1999 and 2001 legislative sessions of the Texas Legislature.

While there was the usual hesitation and problems one would expect in such a transition, school districts and institutions of higher education have utilized the alternative project delivery methods to a far greater extent than many predicted.

With the generally successful implementation of alternative delivery methods by school districts and institutions of higher education came the interest of other public entities, which contract frequently for construction services, to have the same flexibility and alternatives for project delivery.

The result was the introduction of legislation in the 77th Texas Legislature in 2001 to enable cities, counties and river authorities to use, if they wished to, the same

alternative project delivery methods that were available to public education institutions in Texas. The result was Senate Bill 510 passed by the Legislature and signed into law by Governor Perry effective September 1, 2001 which created a new Subchapter H as part of Chapter 271 of the Local Government Code.

This presentation is intended to provide an overview of the alternative project delivery system that may now be utilized by counties and cities in Texas, but is by no means a substitute for obtaining appropriate legal counsel regarding specific projects or questions.

Initial Considerations

Some of the “large” questions that cities and counties will face as they consider the use of alternative project delivery systems are the following:

- ❑ Do we have the authority to utilize the alternative project delivery methods provided by under Subchapter H of Local Government Code (“LGC”) Chapter 271? As discussed below, conflicting provisions in charters and regulations of cities and counties are not automatically overridden by the provisions of Subchapter H and may need to be revised to permit use of the alternative delivery methods.
- ❑ Is the project in question eligible for an alternative project method? As discussed below, civil engineering construction which comprises a significant percentage of the type of construction typically contracted by cities and counties is not eligible for the alternative delivery methods provided by Subchapter H.
- ❑ What are the government entities’ capabilities and priorities with respect to the project in question? The answers to these questions will be important in determining which delivery method to utilize.
- ❑ What project delivery method will produce the “best value” for the public entity? The public body will have to choose the method it believes produces the best value, very early in the project history.

Procurement Under Subchapter H, Chapter 271, LGC

Senate Bill 510 did not do away with the traditional competitive bidding process, but rather maintains that form of competitive bidding as a project delivery option in addition to the six alternative delivery methods described in Subchapter H of Chapter 271 of the LGC. Subchapter H includes a delivery method, described in detail below, titled “Competitive Bidding” but it is not the traditional competitive bidding process where the responsible bidder with the lowest price must be awarded the contract. Rather, this new “Competitive Bidding” requires award to the bidder offering the “best value”. Senate Bill 510 did clearly provide that traditional competitive bidding is to be retained as an option separate and apart from the six new alternative project delivery methods. [§252.021(a) and §262.023(a) LGC]

Subchapter H provides for six relatively (for cities, counties and river authorities) alternative project delivery methods. The project delivery methods are design-build, Construction Manager-Agent (“CMA”), Construction Manager at Risk (“CMAR”), job order, competitive bidding (based on “best value”), and competitive sealed proposals. These are each discussed in detail below.

These alternative project delivery methods are available to procure contracts for the construction of project which qualifies as a “facility”. A “facility” is defined as any building, the design and construction of which are governed by accepted building codes. The term “facility” is further defined so as to not include civil engineering construction projects, (e.g., airport runways, roads, streets, bridges, highways, wharves, utilities, and buildings that are incidental to projects that are primary civil engineering construction projects.) [§271.111-7 LGC] If the competitive sealed proposal requirement applies to such civil engineering construction projects, the alternative delivery methods may not be used and the contract must be awarded to the lowest responsible bidder. [§252.043(d) LGC]

In addition to having a project that qualifies as a “facility” for which the alternative project delivery methods are available, a governmental entity must determine whether it has the legal authority to utilize these methods. The provisions of SB 510 did not override provisions in the charter of a home rule municipality or any regulation of a county or river authority that requires competitive bidding or prescribes procurement procedures that conflict with Subchapter H. [§271.112 LGC] Thus a governmental entity must elect to have Subchapter H supercede the

conflicting charter or regulation provision to the extent the governmental entity wishes to use the Subchapter H methods. General law municipalities may use Subchapter H methods.

Section 271.112(d) of the Local Government Code provides for the proper method of advertising for bids or proposals by municipalities and river authorities. With respect to a municipality, notice must be placed in a newspaper of general circulation in the county in which the municipality's central administrative office is located, (or in the newspaper nearest the municipality if the municipality has no newspaper of general circulation), once a week for at least two weeks prior to the deadline for receiving bids, proposals or responses. If a two-step procurement process is used, (e.g., design-build), then the time and place for receipt of the second-step bids or proposals need not be advertised separately.

Section 271.112(e) of the Local Government Code provides for the proper method of advertising for bids or proposals by a county. Notice of the time and place bids, proposals, etc. will be received must be placed in a newspaper of general circulation in the county (or at the courthouse door and in a newspaper of general circulation in the nearest county if the county has no newspaper of general circulation) once a week for at least two weeks prior to the deadline for receiving bids, proposals or responses. For some reason, the advertising provision for counties does not mention the two step procurement process, as the provision applicable to municipalities does.

Any contract made in violation of Subchapter H is void. Any interested party, including government attorneys, etc, may bring suit for an injunction to enjoin performance. A party who prevails in an action seeking an injunction is entitled to reasonable attorneys' fees as approved by the court. [§271.112(f) LGC]

Subchapter H provides that any governmental entity using a method other than competitive bidding, must first determine which method provides the best value for the governmental entity. This must be done before advertising for bids or proposals for the project. The governing body may delegate this authority to a designated representative. [§271.114(a) LGC]

The governing body may base its selection of the contractor on the criteria allowed by Section 271.113(b) of the Local Government Code and must publish in its request for bids, proposals, etc., all the criteria that will be used and the relative weights to be given to each of the criteria [§ 271.114(b) LGC] Those criteria are as follows:

- ❑ the purchase price;
- ❑ the reputation of the vendor and of the vendor's goods or services;
- ❑ the quality of the vendor's goods or services;
- ❑ the extent to which the goods or services meet the governmental entity's needs;
- ❑ the vendor's past relationship with the governmental entity;
- ❑ the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- ❑ the total long-term cost of the governmental entity to acquire the vendor's goods or services; and
- ❑ any other relevant factor specifically listed in the request for bids or proposals.

The basis for the governing body's selection among the offerors must be documented and evaluations of the offerors must be made public no later than seven days after the contract is awarded. [§271.114(c) LGC]

Competitive Bidding Method

The competitive bidding process for governmental entities under Subchapter H of the Local Government Code incorporates the “best value” method for selecting the winning bid, rather than the “lowest responsible bid” concept inherent in traditional competitive bidding. Subchapter B of Chapter 271 of the Local Government Code does not apply to the competitive bidding method under Subchapter H, except for Section 271.026 (dealing with public opening of bids and changing bids after opening), 271.027(a) (government entity’s right to reject any and all bids), and 271.0275 (right to consider safety record of bidders). Section 271.115 of the Local Government Code mandates the selection of the bid offering the best value to the governmental entity according to the selection criteria that were established. Note, however, that the contract must be awarded at the bid amount offered by the bidder whose bid is considered to offer the best value.

Selection criteria and relative weighting of the criteria must be established in the bid specifications. The governmental entity may consider the following criteria in determining who offers the “best value”:

- ❑ the purchase price;
- ❑ the reputation of the vendor and of the vendor’s goods or services;
- ❑ the quality of the vendor’s goods or services;
- ❑ the extent to which the goods or services meet the governmental entity’s needs;
- ❑ the vendor’s past relationship with the governmental entity;
- ❑ the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- ❑ the total long-term cost of the governmental entity to acquire the vendor’s goods or services; and
- ❑ any other relevant factor specifically listed in the request for bids or proposals.

Note that a governmental entity may elect to use the traditional competitive bidding procedures. If it does so, and the contract is of a size that requires competitive proposals (i.e. \$25,000 or more) than the contract must be awarded to the lowest responsible bidder.

Competitive Sealed Proposal Method

In the competitive sealed proposal method, the governmental entity must first hire an independent architect or engineer to prepare construction documents according to the process required by Section 2254.004 of the Government Code if the governmental entity does not employ, as a full time employee, its own architect or engineer to perform this service. [§271.116(b) LGC]

The governmental entity prepares a Request for Competitive Sealed Proposals, (RFCSP), which includes construction documents, estimated budget, project scope, schedule, and other information contractors may require to respond to the request. The governmental entity must also state the selection criteria and relative weighting of the criteria that will be used to select the successful offeror. Unlike an RFQ under the design-build method, price information may be requested in the RFCSP and may be a selection criteria. [§271.116(d) LGC]

The governmental entity must publicly open and read aloud the proposals, including price information if such was required, and evaluate and rank the proposals in relation to the published selection criteria within 45 days after the opening. Then the governmental entity selects the proposal that offers the best value based on the published selection criteria and its ranking evaluation. [§271.116(e)-(f) LGC]

Following the selection of the offeror that offers the best value for the governmental entity, the contract negotiation process begins. The governmental entity negotiates first with the highest ranked offeror. At this stage, the governmental entity and its architect or engineer may discuss proposed modifications to the proposed scope and time and any price change associated with such modification. If the two parties are unable to reach an agreement, the governmental entity must inform that offeror in writing that negotiations are ended, and then may negotiate with the next ranked offeror. This continues in the order of the selection ranking until a contract is reached or all proposal are rejected. In this form of contract procurement, the governmental entity is not restricted to considering price alone in its selection, but may consider any other factor from among the established selection criteria to determine which offeror offers the governmental entity the best value. [§271.116(f)-(g) LGC]

The governmental entity must provide for independent testing, verification, and inspection of the finished work required for acceptance of the work by the governmental entity. [§271.116(c) LGC] Testing services must be procured in accordance with Section 2254.004 of the Government Code.

Construction Manager-Agent Method

This method allows governmental entities, who may not have the in-house expertise and/or sufficient staff to effectively oversee a construction project, to employ an agent to oversee a project on their behalf. The party hired by the governmental entity to act on its behalf in overseeing the project is known as a Construction Manager-Agent, (CMA). [§271.118 LGC]

A CMA is defined as a legal entity that provides consultation to the governmental entity regarding construction, during and after the design of a facility. [§271.118(b)] A CMA acts as an overseer on behalf of the governmental entity to manage the project, and to consult with the governmental entity during the procurement process by providing recommendations on the selection of the contractor, for example. A construction manager-agent is intended to represent the governmental entity in a fiduciary capacity, and may not self-perform any portion of the actual design or construction of the project, with the exception of the general conditions as provided by the contract. General conditions when used in the context of a facilities construction contract customarily include on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials. [§271.117(b) LGC]

Prior to or concurrent with the selection of a CMA, the governmental entity must hire an architect or engineer according to the requirements of Section 2254.004 of the Government Code to design the project if the governmental entity does not utilize for the design an architect or engineer which it employs on a full-time basis. The design architect or engineer may not serve, alone or in combination with any other person, as the CMA, unless hired as the CMA in a separate or concurrent CMA procurement process. This does not prevent the design architect or engineer from providing customary construction phase services under the architect or engineer's original professional services agreement and applicable licensing laws. [§271.117(c) LGC]

The governmental entity then selects a CMA based on the same professional services procurement rules provided for the selection of an architect or engineer under Section 2254.004 of the Government Code, except that the advertising requirements of Section 271.112(d) of the Local Government Code (applicable to municipalities and river authorities, but not counties) must be met.

Under the CMA method, the governmental entity may engage a single prime contractor, or multiple trade contractors to serve as prime contractors for their respective part of the work in any manner authorized by the statutes governing the particular governmental entity. [§271.117(e) LGC]

The governmental entity or the CMA (i.e. not the contractor(s)) is responsible for procuring all inspection, testing, and verification services required for the governmental entity's acceptance of the facility in accordance with 2254.004 of the Government Code. [§271.117(f) LGC]

Construction Manager-At-Risk Method

A construction manager-at-risk, (CMAR), assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price in the same manner as a general contractor; but also provides consultation to the governmental entity regarding construction during and after the design of the facility. [§271.118(b) LGC]

The governmental entity must, prior to or concurrently with selecting a CMAR, select or designate an architect or engineer who will be responsible for the preparation of the design and construction documents for the project. This architect or engineer, if not a full-time employee of the governmental entity, must be selected according to Section 2254.004 of the Government Code. The governmental entity's architect/engineer may not serve, alone or in combination with another, as the CMAR unless he or she is also chosen to act as CMAR under a separate or concurrent selection process. [§271.118(c) LGC]

The governmental entity must provide for inspection, testing, and verification required for its acceptance of the work independently of the CMAR. Those testing services shall be selected according to Section 2254.004 of the Government Code. [§271.118(d) LGC]

The CMAR is required to be selected according to either a one-step or a two-step process.

One-Step CMAR Selection Process

In the one-step selection process, the governmental entity issues a request for proposals, (RFP). This RFP should include general information on the project site, scope, schedule, selection criteria and relative weighting of selection criteria, estimated budget, time/place for receipt of the proposal, whether a one or two-step selection process will be used, and other information that would assist the governmental entity in its selection of a CMAR.

In the one-step process, the governmental entity may request, as part of the requested proposals, information regarding proposed fees and prices for the fulfillment of the general conditions. In other words, both qualifications and pricing are evaluated in one step if a one step process is selected at the outset. [§271.118(e) LGC]

Two-Step CMAR Selection Process

In the two-step selection process, the governmental entity first produces a Request for Qualifications, which is identical to the RFP as described above in the one-step process, except that no cost or price information may be requested of offerors in the first step.

In the second step, the governmental entity selects a maximum of five offerors to provide additional information, which may at this step include proposed fees and prices for the completion of the CMAR's general conditions. This process is similar to the two-step method for selecting a design-build firm. [§271.118(e) LGC]

Selection of CMAR

In both the one-step and two-step processes, the governmental entity must evaluate and rank the offers according to its published selection criteria within 45 days of their being opened. All proposals must be publicly opened and read aloud, including pricing information included in the proposal at the appropriate step. [§271.118(f) LGC]

The governmental entity then is to select the proposal that offers the best value for the governmental entity according to the published selection criteria, and the ranking evaluation. Following the selection of the offeror that offers the best value for the governmental entity, the contract negotiation process begins. The governmental entity negotiates first with the selected offeror. If the two parties are unable to reach an agreement, the governmental entity is to give formal written notice to that offeror that negotiations are ended and then may negotiate with the next ranked offeror. This continues until a contract is reached or negotiations with all ranked offerors ended. [§271.118(g) LGC]

The CMAR is required to properly advertise, according to Section 271.025 of the Local Government Code, for bids or proposals from trade contractors or subcontractors for all work except minor work that may be included in the general conditions. The CMAR administers this process, and selects the contract procurement method determined to provide the best value from among the various methods available to the governmental entity. The CMAR may seek to perform any part of the work on the project as long as the CMAR presents its bid or proposal in the same manner as any trade contractor or subcontractor, and the CMAR's bid or proposal is determined by the governmental entity to provide the best value. [§271.118(h) LGC]

The CMAR, governmental entity, and its representative architect/engineer review the bid and proposals and select the various trade contractors or subcontractors in a manner so as not to

disclose the price of the bids or proposals to the public. All bids or proposals are to be made public after the award of the related contract, or seven days after the final selection of bids or proposals, whichever is later. [§271.118(i) LGC]

The CMAR may recommend the acceptance of a particular bid or proposal, but the governmental entity has the right to require another bid or proposal be accepted. If the governmental entity overrides the recommendation of the CMAR in selection of any trade contractor or subcontractor, it must compensate the CMAR for any changes in price, time, guaranteed maximum cost, or any additional cost or risk associated with the governmental entity's choice of a trade contractor or subcontractor different from that recommended by the CMAR. [§271.118(j) LGC]

The CMAR contracts directly with the selected trade contractors and subcontractors. If any trade contractor or subcontractor defaults the CMAR may complete the work itself, without advertising for completion bids, or may select a replacement trade contractor or subcontractor. [§271.118(k) LGC]

If no fixed contract amount or guaranteed maximum price has been determined when the CMAR's contract is executed, the performance and payment bonds shall be in the amount of the estimated budget of the project as set out in the RFP or RFQ. The CMAR must deliver the required bonds not later than the tenth day after the CMAR executes the contract unless the CMAR furnishes a bid bond or other financial security acceptable to the governmental entity to ensure the CMAR will provide the performance and payment bonds once the price is fixed. [§271.118(l) LGC]

Design-Build Method

Under the design-build method of construction contract procurement, the governmental entity awards a single contract to a firm who both designs and constructs the facility. A design-build firm is defined as any legal entity or team that includes an architect or engineer, and a builder qualified to engage in the building construction in Texas. The architect/engineer member of the design-build team is the architect/engineer of record for the project, however the governmental entity must designate an independent architect or engineer to act as its representative for the duration of work on the facility. The governmental entity must select the architect or engineer in accordance with the Professional Services Procurement Act, Section 2254.004 of the Government Code, if the governmental entity does not employ as a full time employee, its own architect or engineer who can serve as that representative. [§271.119(b)] The design-build team contracts directly with the trade contractors or subcontractors, and assumes complete responsibility for both the design and construction of the project.

Once a governmental entity has decided that the design-build is the best value method, it must prepare a request for qualifications and a design criteria package. The design criteria package must specify the criteria for selection as well as the criteria the governmental entity considers necessary to design the project. This may include such information as: a legal description of the project site, survey information, interior space requirements, special material requirements, material quality standards, conceptual criteria, special equipment requirements, cost/budget estimates, schedules, quality assurance and control requirements, site development requirements, applicable codes/ordinances, utility provisions, parking requirements, and other requirements as applicable. [§271.111(5) LGC]

The procedure for the selection of a Design-Builder is a two-step process:

Phase One – Evaluate Statements of Qualification

- After preparing its request for qualification (RFQ) and design criteria package, and advertising for proposals, the governmental entity evaluates statements of qualifications submitted by the potential offerors. The governmental entity may evaluate qualifications according to the following criteria:
 - offeror's experience
 - technical competence

- capability to perform
 - past performance of offeror's team and members thereof
 - other appropriate factors submitted by the offeror in response to the RFQ.
- The governmental entity may not consider cost-related or price-related evaluation factors during this first phase, nor should such information be requested or submitted.
 - The design-build offerors have to certify to the governmental entity in this phase that each architect or engineer that is a member of its team was selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code. [§271.119(d)(1) LGC]
 - The governmental entity then selects no more than five offerors to submit additional information and, if the governmental entity chooses, to interview for final selection. [§271.119(d)(1) LGC]

Phase Two – Selection

- The governmental entity evaluates and ranks the selected offerors on the basis of the criteria stated in the RFQ and the results of an interview. Additionally, the governmental entity may request information on demonstrated competence, safety & durability considerations, feasibility of project as proposed, ability of offeror to meet scheduling requirements, costing methodology, and other appropriate factors.
- The governmental entity then ranks the offerors according to the criteria in the RFQ, and selects the design-build firm that offers the best value for the governmental entity based on the published selection criteria and its ranking evaluations. [§271.119(d)(2) LGC]

Post Selection Procedure

Following the selection of the design-build firm that offers the best value for the governmental entity, the contract negotiation process begins. The governmental entity negotiates first with the selected offeror. If the two parties are unable to reach an agreement, the governmental entity is to formally and in writing inform that offeror that negotiations are ended, and then may negotiate with the next offeror in the order of the selection ranking process from

Phase Two. This continues until a contract is reached or negotiations with all ranked offerors ends. [§271.119(d)(2) LGC]

Following selection and contract award, the chosen design-build firm then completes the design, and submits all design elements to the governmental entity or its architect/engineer representative for review and determination of scope compliance. This may be done prior to or during construction. [§271.119(e) LGC]

The governmental entity must contract for testing, inspection and verification necessary for acceptance of the facility independently of the design-build firm. Testing services must be procured in accordance with Section 2254.004 of the Government Code. [§271.119(g) LGC]

The design-build firm has the responsibility to provide the governmental entity with a signed and sealed set of construction documents, (as-built drawings), at the conclusion of the construction. [§271.119(h) LGC]

The design-build firm's payment and performance bonds are not required to, and may not provide coverage for that portion of the design-build contract that includes design services only. If no guaranteed maximum price or fixed price has been established when the contract is awarded, the performance and payment bonds are required to be in the penal sum of the estimated budget for the project as specified in the Design Criteria Package. The design-build firm must deliver the performance and payment bonds not later than the 10th day after the firm executes the contract. However, if the design-build firm provides a bid bond or other financial security acceptable to the governmental entity to ensure it will provide the performance and payment bonds, the delivery of those bonds can be postponed until a fixed or guaranteed maximum price is established. [§271.119(i) LGC]

Job Order Method

The Job Order Method for procurement may be used when the contract is for the minor repair, rehabilitation or alteration of a facility; the work called for by the contract is of a recurring nature, but delivery times and quantities are indefinite; and the orders are awarded substantially on the basis of pre-described and pre-priced tasks (e.g., unit prices). Examples of the type of work that would qualify for job order procurement would be ceiling tile replacement, door hanging, sidewalk construction, and repainting. [§271.120(a), (b)(1)-(2) LGC]

The governmental entity must properly advertise for and publicly open sealed proposals for job order contracts. [§271.120(c) LGC] The base term of the job order contract is for any period plus any renewal option set forth in the RFP. If the governmental entity does not advertise that term, it cannot exceed two years, and is not renewable without further advertisement and solicitation of proposals. [§271.120(h) LGC]

The governmental entity may award job order contracts to one or more of the offerors in the same solicitation. The governmental entity is not required to award a contract to whoever submits the lowest rates. [§271.120(e) LGC] Instead, the governmental entity may award on the basis of a combination of price and other factors including:

- ❑ Experience,
- ❑ Past performance,
- ❑ Proposed personnel,
- ❑ Methodology,
- ❑ Safety record, and
- ❑ Other appropriate factors.

[§271.120(d) LGC]

Under a job order contract, specific work projects are authorized by the execution of a job order by the governmental entity and the contractor. The order may be a fixed price, lump sum order or a unit price order based on estimated quantities. [§271.120(f) LGC]

If the amount or estimated amount of the job order is in excess of \$25,000, then the contractor must post a payment bond on the job order. If the job order is \$100,000 or more, a performance bond is also required. Note, however, that the bonds are provided on each specific job order and not on the overall job order contract. Given the nature of job order work, it is possible that many job orders may not be of a size that would require performance bonds.

However, it also means that a contractor may be required to post multiple bonds for multiple job orders during the same time period.

Alternative Project Delivery Method Summary Checklists

1. Competitive Bidding
2. Competitive Sealed Proposals
3. Construction Manager-Agent
4. Construction Manager-at-Risk
5. Design-Build Contracts for Facilities
6. Job Order Contract for Facilities Construction or Repair

Summary Checklist: COMPETITIVE BIDDING

1. **Advertising/Public Notice Requirements** – Government entity must advertise according to provisions in Section 271.112(d) (municipalities and river authorities) or §271.112(e) (counties), of the Local Government Code. Advertisement must be at least once a week for at least two weeks before the bid or proposal deadline.
2. **Solicitation/RFP Information Requirements** – Government Entity to utilize A/E for design and preparation of construction documents for the project. Selection criteria and weighting must be stated.
3. **Owner A/E Services Required** – Government entity must engage A/E to prepare the design and construction documents for the project.
4. **Contract Award Criteria** - Contract award at the bid price to bidder whose bid offers the best value determined by the government entity.
5. **Contract Pricing** - Lump sum fixed-price or guaranteed maximum price.
6. **Inspection And Testing** – Government Entity to independently obtain inspection and testing services using professional services procurement process in Section 254.004, Local Government Code.
7. **Bonding Requirements** - Payment bond for contract in excess of \$25,000; performance bond (in addition to payment bond) for contract in excess of \$100,000.
8. **Subcontracting Requirements** - None.
9. **Contractor Self-Performance Limitations** - None.
10. **Bid/Proposal Disclosure Requirements Or Restrictions** - Public bid opening and bids read aloud. Government entity must document basis of its selection and make evaluations public not later than the seventh day after award of contract.
11. **Term Of Contract Limitations** - None specified.

Summary Checklist: COMPETITIVE SEALED PROPOSALS

1. **Advertising/Public Notice Requirements** - According to provisions in Section 271.112(d) (municipalities and river authorities) or §271.112(e) (Counties), of the Local Government Code. Advertisement must be at least once a week for at least two weeks before the bid or proposal deadline.
2. **Solicitation/RFCSP Information Requirements** - RFCSP to include construction documents prepared by independent A/E, selection criteria and weighting of criteria, estimated budget, project scope, schedule, and other information necessary for contractors to respond to RFCSP.
3. **Owner A/E Services Required** – Government Entity must select an A/E to prepare the construction documents for the project.
4. **Contract Award Criteria** – Government Entity is to select offeror that offers “best value” and attempt to negotiate a contract with that offeror. May negotiate options for scope/time modifications and associated changes in price. Government entity must formally end negotiations before starting to negotiate with next ranked offeror.
5. **Contract Pricing** - No limitations (except for constitutional limits). Modifications to pricing in proposal may be negotiated before award.
6. **Inspection And Testing** – Government Entity to independently obtain inspection and testing services using professional procurement process in Section 254.004, Government Code.
7. **Bonding Requirements** - Payment bond for contract in excess of \$25,000; performance bond (in addition to payment bond) for contract in excess of \$100,000.
8. **Subcontracting Requirements** - None required.
9. **Contractor Self-Performance Limitations** - None.
10. **Bid/Proposal Disclosure Requirements Or Restrictions** - Proposals publicly opened and names of offerors and monetary proposals, if any, read aloud. Proposals to be evaluated and ranked within 45 days after opening. Government entity must document basis of its selection. Evaluations to be made public not later than the seventh day after the date the contract is awarded.
11. **Term Of Contract Limitations** - None specified.

Summary Checklist: CONSTRUCTION MANAGER-AGENT

1. **Advertising/Public Notice Requirements** – Municipalities and river authorities must advertise according to provisions in Section 271.112(d) of the Local Government Code. Advertisement must be at least once a week for at least two weeks before the bid or proposal deadline. Unclear as to whether counties must advertise per Section 271.112(e) of the Local Government Code.
2. **Solicitation/RFP Information Requirements** – RFQ, including selection criteria and weighting.
3. **Owner A/E Services Required** – Government entity’s A/E required to prepare the design and construction documents for the project. A/E may not be CMA unless selected to do so under a separate procurement from the procurement for the A/E services.
4. **Contract Award Criteria** - Selection of CMA is to be based on demonstrated competence and qualifications in accordance with Section 2254.004, Government Code.
5. **Contract Pricing** - None specified other than fair and reasonable price; pricing to perform construction manager services, including general conditions, normally will be cost reimbursement with fee and a guaranteed maximum price.
6. **Inspection And Testing** – Owner or CMA may contract for independent inspection and testing services using the professional services procurement process in Section 254.004, Local Government Code.
7. **Bonding Requirements** - None required.
8. **Subcontracting Requirements** - None.
9. **Contractor Self-Performance Limitations** - CMA may only self-perform work that is within “general conditions”.
10. **Bid/Proposal Disclosure Requirements Or Restrictions** – Public opening not required but government entity must document basis of its selection. Government entity must make its evaluations public not later than the seventh day after the date the contract is awarded.
11. **Term Of Contract Limitations** - None specified.

Summary Checklist: CONSTRUCTION MANAGER-AT-RISK

1. **Advertising/Public Notice Requirements** - According to provisions in Section 271.112(d) (municipalities and river authorities) or §271.112(e) (counties), of the Local Government Code. Advertisement must be at least once a week for at least two weeks before the bid or proposal deadline.
2. **Solicitation/RFQ/RFP Information Requirements** - RFQ to include information on project site, project scope, schedule, selection criteria, estimated budget, and other info useful in selection of CMAR.
3. **Owner A/E Services Required** – Government entity must engage A/E to prepare the design and construction documents for the project. Government entity's A/E may not serve as CMAR unless hired to do so in a separate procurement.
4. **Contract Award Criteria** - Selection criteria may include experience, past performance, safety record, proposed personnel and methodology, and other factors demonstrating capabilities of CMAR. Selection to be based on published selection criteria and ranking evaluation.
5. **Contract Pricing** – Guaranteed maximum price or lump sum.
6. **Inspection And Testing** – Government Entity must independently obtain inspection and testing services using professional services procurement process in the manner provided by Section 2254, Government Code.
7. **Bonding Requirements** - Payment bond for contract in excess of \$25,000; performance bond (in addition to payment bond) for contract in excess of \$100,000. If contract price is not determined at award the bonds shall be in amount equal to the project budget. If the CMAR furnishes a bid bond or other financial security acceptable to the governmental entity, delivery of the bonds may be postponed until price is determined, otherwise the bonds are due within ten days of the execution of the contract by the CMAR.
8. **Subcontracting Requirements** – CMAR must publicly advertise and solicit competitive bids or competitive sealed proposals for all major elements of work other than the general conditions.
9. **Contractor Self-Performance Limitations** – CMAR may self perform any of the major elements of work; but must first submit a bid or proposal in the same manner as other trade contractors or subcontractors and the governmental entity must determine that the CMAR's bid or proposal provides the best value.
10. **Bid/Proposal Disclosure Requirements Or Restrictions** – CMAR proposals to be publicly opened and names of offerors and monetary proposals, if any, read aloud. Government entity must document its basis for selection of CMAR and make evaluations public not later than seventh day after contract award. All trade contractor or subcontractor bids or proposals are to be made public upon award of the contract or seven days after the final selection of bids or proposals, whichever is later.
11. **Term Of Contract Limitations** - None specified.

Summary Checklist: DESIGN-BUILD CONTRACTS FOR FACILITIES

1. **Advertising/Public Notice Requirements** - According to provisions in Section 271.112(d) (municipalities and river authorities) or §271.112(e) (Counties), of the Local Government Code. Advertisement must be at least once a week for at least two weeks before the bid or proposal deadline. Municipalities are not required to advertise separately the time and place the “second step” bids, proposals, etc. will be received.
2. **Solicitation/RFP Information Requirements** - Phase I - RFQ to include information on project site, project scope, budget, special systems, selection criteria and other information that may assist offerors. In addition government entity must prepare a design criteria package. Phase II - RFP goes to maximum of five top ranked offerors and may request cost and pricing information.
3. **Owner A/E Services Required** – Government entity must designate an engineer or architect to act independent of the design-build firm for duration of work on the utility; preparation of design criteria package may require A/E services; Government Entity’s A/E must review all design elements submitted by design-builder for scope compliance.
4. **Contract Award Criteria** - Phase I - qualification of maximum of five potential offerors based upon past experience, technical competence, capability to perform, past performance, and other appropriate factors. No cost related or pricing information permitted at this phase. Phase II - selection of proposal offering best value based on published selection criteria. Contract is then negotiated.
5. **Contract Pricing** - None specified. Normally lump sum, fixed-price or cost reimbursement plus fee with guaranteed maximum price.
6. **Inspection And Testing** – Government Entity to independently obtain inspection and testing services using in the manner provided by Section 2254, Government Code.
7. **Bonding Requirements** - Payment bond for contract greater than \$25,000; performance bond (in addition to payment bond) for contract greater than \$100,000. Design services excluded from coverage of payment and performance bonds. If contract amount not determined at award, bonds shall be in amount equal to project budget as specified in design criteria package. If design-build firm furnishes a bid bond or other financial security acceptable to the government entity, delivery of bonds may be postponed until price is determined; otherwise the bonds are due within ten days after the design-build firm executes the contract.
8. **Subcontracting Requirements** - A/E team member of design-build firm must be certified by design-build firm as having been selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code; no other limitations.
9. **Contractor Self-Performance Limitations** - None.
10. **Bid/Proposal Disclosure Requirements Or Restrictions** – Government entity must document basis for its selection and make its evaluations public not later than the seventh day after the contract is awarded.
11. **Term Of Contract Limitations** - None specified.

Summary Checklist: JOB ORDER CONTRACT FOR FACILITIES CONSTRUCTION OR REPAIR

1. **Advertising/Public Notice Requirements** - According to provisions in Section 271.112(d) (municipalities and river authorities) or §271.112(e) (Counties), of the Local Government Code. Advertisement must be at least once a week for at least two weeks before the bid or proposal deadline.
2. **Solicitation/RFP Information Requirements** – Government entity may establish contract unit price by including in the RFP: (1) specifications of one or more construction unit price books and applicable divisions and line items or (2) providing a list of work items and requiring offerors to propose pricing based on price books or otherwise.
3. **Owner A/E Services Required** – If a job order contract or an individual order requires A/E services, the government entity should procure those services from an appropriate licensed design professional in accordance with Section 2254.004, Government Code.
4. **Contract Award Criteria** – Government entity may award contracts to one or more contractors based upon pricing, experiences, past performance, proposed personnel and methodology, safety record, and other appropriate criteria as set forth in RFP.
5. **Contract Pricing** - Fixed price lump sum based substantially on contractual unit pricing applied to estimated quantities or may be unit price based on quantities and line items delivered.
6. **Inspection And Testing** - Nothing specified.
7. **Bonding Requirements** - Bonds are provided on individual job orders, not on overall job order contract. Payment bond for job order in excess of \$25,000; performance bond (in addition to payment bond) for job order in excess of \$100,000.
8. **Subcontracting Requirements** - None required.
9. **Contractor Self-Performance Limitations** - None.
10. **Bid/Proposal Disclosure Requirements Or Restrictions** – Sealed proposals publicly opened. Government entity must document basis of its selection(s) and make evaluations public not later than seventh day after the contract is awarded.
11. **Term Of Contract Limitations** – Any base term with renewal options that governmental entity sets forth in its RFP. If none set forth in RFP, the term, including renewals, cannot exceed two years.