

# PROCUREMENT PROCEDURES FOR HIGHER EDUCATION

By R. Carson Fisk (as seen in *Texas Construction* March 2006)

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Procurement procedures for the construction of and improvements to institutions of higher education are governed by Chapter 51 of the Texas Education Code. An institution generally includes public colleges or universities with the exception of junior colleges.

Prior to advertising for bids, an institution is required to determine the method that provides the best value and establish criteria to select among bidders. The basis of the selection is made available to the public.

The competitive bidding method is the default manner in which contracts are secured and, unless otherwise authorized, contracts secured through other methods are void.

**Design-Build** Under this method, offerers are evaluated in two phases. First, the institution prepares the request and evaluates each offerer. Up to five offerers may qualify to submit additional information and an interview. Second, the institution evaluates the submitted information and the results of any interviews. Following a ranking of each proposal, the firm offering the best value is selected. If a contract cannot be negotiated, the institution will end all negotiations and negotiate with the next ranked offerer. The process continues until a contract is reached or negotiations end. After the selection, the completed design is submitted for review. The institution may provide inspection and testing services or contract out such services. Any payment or performance bond is not required for, and may not provide coverage for, the design services.

**Construction Manager Agent** Under this method, the manager provides construction consultation services. The manager represents the institution in a fiduciary capacity and may be required to provide certain services. The design professional who prepares the construction documents is generally barred from serving as the manager but is not barred from providing customary services. The institution selects the most qualified candidate and attempts to negotiate a contract at a fair and reasonable price. The institution is to retain the prime contractors and either the institution or the manager is tasked with retaining all required inspection and testing services.

**Construction Manager-At-Risk** The CMAR assumes the risk of construction as a general contractor and provides construction consulting services during and after the design phase. The selection of the engineer or architect under this method is similar to the process used under the construction manager-agent method. The institution retains, independent of the CMAR, all required inspection and testing services. The CMAR is selected in either a one- or two-step process. In either, the proposal offering the best value is selected. The CMAR is to retain subcontractors. Under certain conditions, a CMAR is permitted to perform the major elements of the work. If the CMAR

recommends a subcontractor the institution does not approve, the CMAR is compensated for additional cost and risk incurred.

**Competitive Sealed Proposals** The institution selects a design professional to prepare the construction documents and provides or contract for all inspection and testing services independent of the contractor. The institution advertises its request for competitive sealed proposals, which includes the construction documents, certain project information and selection criteria. Selection is made on the stated criteria and the institution is not restricted to considering price alone. The names of the offerers are to be publicly open and read as are all prices. The institution is to evaluate and rank each proposal. The candidate offering the best value is selected. The parties may negotiate changes to scope and time and any price change as a result.

**Job-Order Contracts** For recurring minor construction or repair, an institution is permitted to use job order contracts. Orders are awarded substantially on the basis of pre-described and pre-priced tasks. More than one job order contract may be awarded with each solicitation. Work on a job order may be a lump-sum contract or a unit-price contract. Generally, the term of a job order contract and renewal options are included in the request for proposals. If not included, the term may not exceed two years and is not renewable without further solicitation.