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CASBO Partner Webinar: Don't Miss Out on Design-Build

Deidree Sakai and Reid Shannon

Tuesday, March 17, 2020

Statutory Authority

- Education Code section 17250.10 et seq.

EDUCATION CODE - EDC

TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Title 1 enacted by Stats. 1976, Ch. 1010.*)

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Division 1 enacted by Stats. 1976, Ch. 1010.*)

PART 10.5. SCHOOL FACILITIES [17210 - 17653] (*Part 10.5 repealed (by Sec. 4) and added by Stats. 1996, Ch. 277, Sec. 3.*)

CHAPTER 2.5. Design-Build Contracts [17250.10 - 17250.55] (*Chapter 2.5 repealed (in Sec. 1) and added by Stats. 2015, Ch. 752, Sec. 2.*)

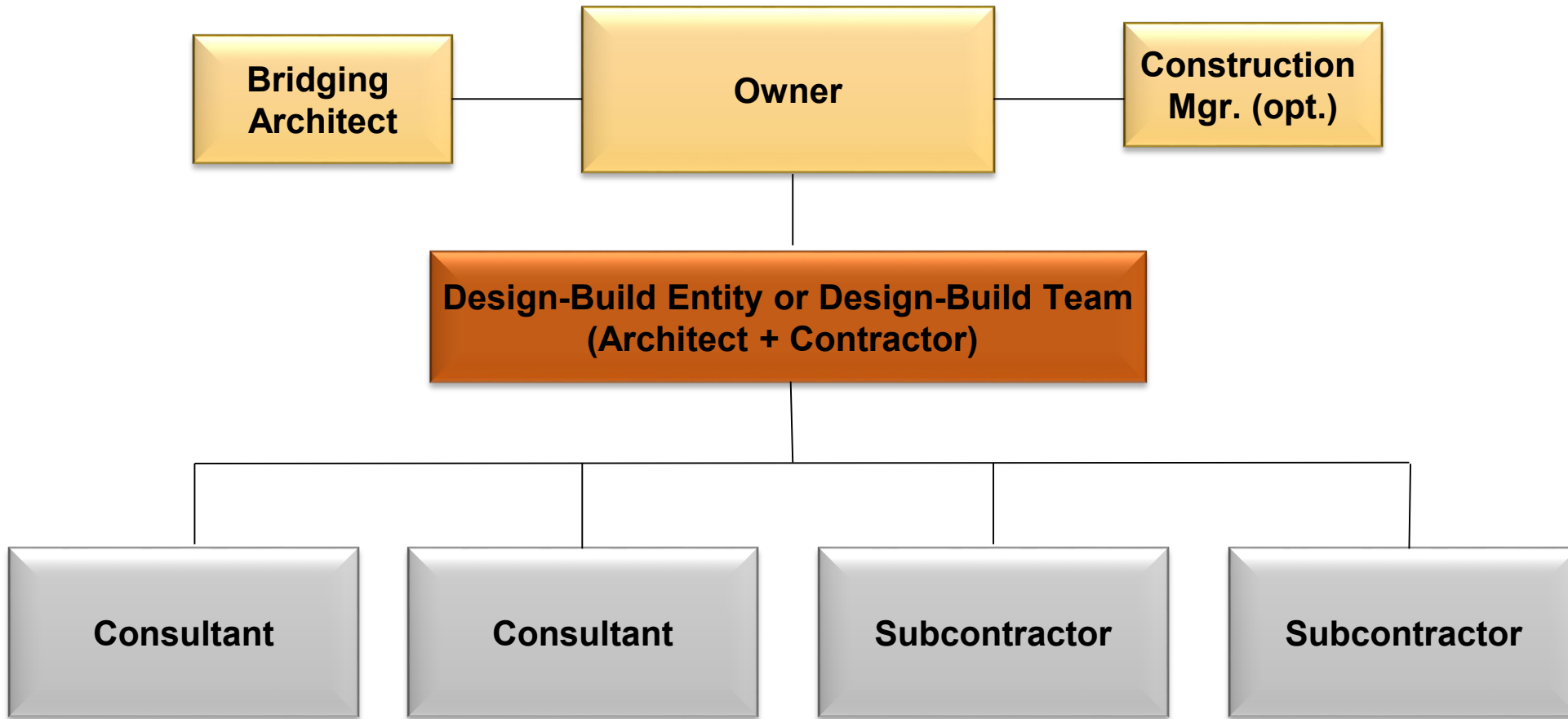
- Amended July 1, 2016
- Sunsets January 1, 2025



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Structure



Potential Advantages

- District deals with single point of contact
- Design risk shifts to DBE
- Lock in builder early (no wait for DSA approval of plans)
- Collaboration between designer and builder (vs. adversarial)
- Selection can be best value or lowest responsible bid
- Project can be turn-key (low owner involvement)
- Time savings
- Cost savings (unit cost, mitigates change orders/claims, less likelihood of litigation)

Potential Challenges

- Less day-to-day control by district
- Multipart procurement process
- Negotiated contract (vs. hard bid)
- Skilled and trained workforce compliance
- Small, local business enterprise requirements (if required)
- Stipend expectation (if design competition)
- Costs aren't flushed out up front because no approved plans

Good Projects to Use DB

- Well-defined scope
 - Potential for change orders if scope creep
- Tight project delivery schedule
- Prefabricated buildings/modular construction
 - Avoids potential conflict of interest
- Specialized projects (e.g., regulation swimming pools)

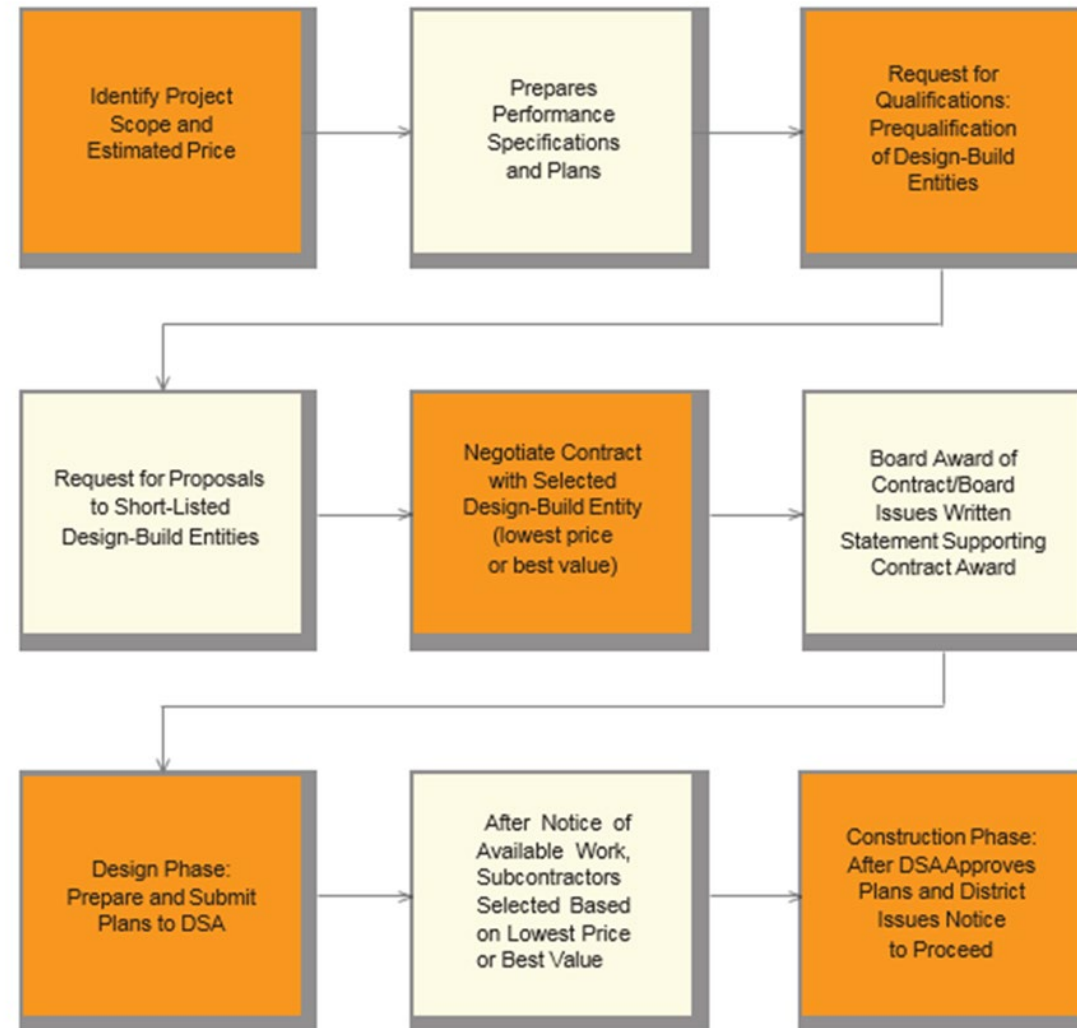
DB Threshold Requirements

- Must be in excess of \$1M
- Conflict of Interest Policy
- Design Professional (i.e. Bridging Architect) to prepare desired design character of the project, including performance specifications and preliminary plans or building layouts
- Procurement via Competitive Selection:
 - RFQ, including enforceable commitment to use skilled and trained workforce; and
 - RFP

Conflicts of Interest

- Must adopt conflict-of-interest policy for design-build project delivery
 - Account for time needed to amended Board Policy
- Prohibits design professional that performs services relating to the solicitation for the project from proposing as a DBE or joining a DBT

Procurement Process Overview



Bridging Architect

- Procure bridging architect (a.k.a. criteria architect) based on qualifications
- Develops performance specifications (bridging or criteria documents)
 - Establishes desired design requirements of project
 - Input from board, district staff, M&O, stakeholders
 - Lots of variation in level of detail
- Optional additional roles for bridging architect:
 - Selection phase
 - Design phase
 - Construction phase

Initial Resolution Authorizing Design-Build

- Note: Since July 1, 2016, schools districts do not need to adopt an initial authorizing resolution to use design-build

Request for Qualifications (RFQ)

- Must include:
 - Scope and expected cost range of project
 - Methodology and procedure for proposal selection
 - Evaluation criteria for qualifications
 - Standard template questionnaire
 - Similar to mandatory contractor prequalification
- Other considerations:
 - Coupling project-specific qualifications and standard template
 - Finding “Goldilocks” level for qualifications

Skilled and Trained Workforce

- To prequalify, DBE must provide enforceable commitment that it and all subcontractors will use a skilled and trained workforce for all work on the project that falls within an “apprenticeable occupation” (see PCC 2600 et seq.)
- Does not apply if:
 - District has a PLA that requires all contractors/subcontractors to use a skilled and trained workforce and DBE agrees to be bound by the same;
 - Project is performed under an extension or renewal of a district PLA entered before 1/1/17; or
 - DBE has entered a PLA that will bind DBE and its subcontractors performing the project to use a skilled and trained workforce

Request for Proposals (RFP)

- Must include:
 - Project information – attach performance specifications
 - Methodology for evaluation – best value or low bid
 - Evaluation factors and weight
- If best value:
 - Design-build competition – may need stipend agreement
 - Minimum factors: price (unless stipulated sum), technical design and construction expertise, and life-cycle costs
 - May reserve right to hold discussions/negotiations with responsive proposers

Proposal Evaluation (Best Value)

- Selection committee
 - District staff? M&O?
 - Bridging Architect? Other consultants?
 - Site principal?
 - Staff from another school district?
- Interviews
 - Include points for interview in best value scoring matrix
 - Procedure for handling drafts, notes and final score sheets
- Rank proposers based on best value criteria
 - No more than 3 proposers required to be ranked

Contract Negotiation Then Award

- Attach complete form of Agreement to RFP
- Require proposers to identify objections/changes in proposal
- Discuss key contract terms at interview
- Negotiate with top-ranked proposer before award is made
- *Build negotiation time into schedule – 1 month or more*
- Publically announce award, identifying DBE along with basis of award
 - Contract file must provide sufficient information to satisfy an external audit

Contract Negotiation: Price

- Stipulated Sum – rarely used
- Compensation for design services
 - Lump sum or Not-to-Exceed (NTE)
 - Not included in payment/performance bonds
- Compensation for construction services
 - Develop contract price after DSA-approval and subcontractor bids
 - But how is the contract price defined?
 - NTE?
 - Guaranteed Maximum Price (GMP)?
 - Trade Buyout?

Other Requirements

- Professional liability insurance
- Payment and performance bonds
- Subletting and Subcontracting Fair Practices Act applies
- District shall not withhold more than 5% retention from DBE
 - DBE may withhold higher percentage from subcontractor unable to provide bond, if written notice provided

Essential Documents for Getting Started

1. Conflict-of-Interest Policy
2. RFQ
3. Prequalification Template
4. RFP
5. Design-Build Contract
6. Design-Build Contract Documents (Division 0)

ANY QUESTIONS?





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