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

Deidree Sakai and Reid Shannon
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Statutory Authority

- Education Code section 17250.10 et seq.

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

- Owner
  - Bridging Architect
  - Construction Mgr. (opt.)
  - Design-Build Entity or Design-Build Team (Architect + Contractor)
    - Consultant
    - Consultant
    - Subcontractor
    - Subcontractor

= Owner Team
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

1. Identify Project Scope and Estimated Price
2. Prepares Performance Specifications and Plans
3. Request for Qualifications: Prequalification of Design-Build Entities
4. Request for Proposals to Short-Listed Design-Build Entities
5. Negotiate Contract with Selected Design-Build Entity (lowest price or best value)
6. Board Award of Contract/Board Issues Written Statement Supporting Contract Award
7. Design Phase: Prepare and Submit Plans to DSA
8. After Notice of Available Work, Subcontractors Selected Based on Lowest Price or Best Value
9. Construction Phase: After DSA Approves Plans and District Issues Notice to Proceed
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?

THANKS FOR PAYING ATTENTION
Deidree Y.M.K. Sakai  
Shareholder  
San Francisco 
(415) 543-4111  
dsakai@DWKesq.com

Reid Shannon  
Special Counsel  
San Francisco 
(415) 543-4111  
rshannon@DWKesq.com