

Title 6. Education

Chapter III. Division of Public School Academic Facilities and Transportation, Department of Education

Subchapter A. Generally

Part 331. Use of Construction Management as a Project Delivery Method

Subpart 1. Generally

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Regulatory authority[.] This rule is promulgated pursuant to Act 2154 of 2005 and Ark. Code Ann. §§ 19-11-801 and 25-15-201 et seq."

6 CAR § 331-101. Purpose.

The purpose of this part is to clarify the Arkansas laws governing the use of construction management as a project delivery method for public school districts.

Authority. Arkansas Code § 6-21-114.

6 CAR § 331-102. Definitions.

For the purpose of this part:

(1)(A) "Agency construction management" means a public school district selects a construction manager to serve as an agent for the purpose of providing administration and management services.

(B) The construction manager agent coordinates and monitors the various trade contractors who are contracted directly with the school district.

(C) The construction manager agent shall not:

- (i) Hold subcontracts for the project; or
- (ii) Provide project bonding for the project.

(D) The competitive bidding shall not be used for construction management agent services.

(E) The construction manager agents shall competitively bid all construction trade work following all state procurement laws;

(2) "At-risk construction management" means a public school district selects a construction manager who provides services during the preconstruction period, serves as the general contractor, and the following conditions are met:

(A) The construction manager provides a maximum guaranteed price to perform the work as a general contractor;

(B) After a competitive bidding process, the public school district holds all of the trade contracts and purchase orders;

(C) The portion of the project not covered by the trade contracts is to be bonded and guaranteed by the construction manager;

(D) At-risk construction managers shall be permitted to submit bids and self-perform work if they are the successful bidders; and

(E) At-risk construction managers shall competitively bid all construction trade work following all state procurement laws;

(3) "Construction management" means a project delivery method in which a public school district acquires from a construction entity a series of services that include, but are not limited to:

(A) Design review;

(B) Scheduling;

(C) Cost control;

(D) Value engineering;

(E) Constructability evaluation;

(F) Preparation and coordination of bid packages; and

(G) Construction administration; and

(4) "General contractor/construction manager" means a public school district selects a construction manager who provides services during the preconstruction period, serves as the general contractor, and the following conditions are met:

(A) The construction manager provides a maximum guaranteed price to perform the work as a general contractor;

(B) The general contractor/construction manager:

- (i) Holds all trade contracts and purchase orders; and
- (ii) Shall bond and guarantee the project; and

(C) The general contractor/construction manager shall secure at least three (3) bids on all trade and vendor contracts/purchase orders when required by state law.

Authority. Arkansas Code § 6-21-114.

6 CAR § 331-103. Selection of a construction manager.

(a)(1) The use of a construction manager shall be carefully considered by a school district.

(2) A school district shall compare the benefits and risks of employing a construction manager using a clear set of criteria for analysis.

(3)(A) The following items shall be considered when a district decides whether or not to use a construction manager.

(B) The project has significant schedule ramifications and concurrent design and construction is necessary to:

- (i) Meet these critical deadlines; and
- (ii) Shorten the overall duration of the construction process.

(C) A project where the phasing and/or complexity are so extremely difficult that complete design and other preconstruction services cannot be completed effectively without the direct involvement of the construction manager agent.

(D) The school district finds that early construction manager input during the design process will contribute to significant cost savings.

(E) The school district finds that the project presents significant technical complexities that will require the hiring of additional personnel to manage the process.

(b)(1) School districts shall follow the procurement procedures set forth in Arkansas Code §§ 19-11-801 – 19-11-805 in selecting a construction manager.

(2) The selection will be made by considering and evaluating the agent's annual statement of qualifications that outlines:

- (A) Background;
- (B) Experience;
- (C) Prior work; and
- (D) Personnel.

(3)(A) Procuring these services by competitive bidding is prohibited.

(B)(i) The school district's solicitation document shall be designed to clearly communicate the:

- (a)* Needs of the project;
- (b)* Requirements for submission; and
- (c)* Evaluation and selection criteria.

(ii) The solicitation shall request, at a minimum, the firm's:

- (a)* History;
- (b)* Financial health;
- (c)* Experience;
- (d)* Proposed staff; and
- (e)* Project experience.

(iii) School districts shall have the latitude to include additional criteria which reflect the specific goals for the project and that the weight of the scoring criteria shall be left to the school district's discretion.

(C) A school district's request for qualifications shall include the following information:

- (i) An explanation of what the school district is attempting to accomplish with the project;
- (ii) A thorough description of the project, background information, special requirements, etc.;
- (iii) A clear description of preconstruction, construction, and postconstruction deliverables;

(iv) Project timeline/milestones including critical dates, estimated or desired time of completion;

(v) Minimum requirements for the proposer to be considered as construction manager for the project, such as insurance requirements and demonstrated capabilities with projects of similar size and complexity;

(vi) The school district's project team;

(vii) Scoring criteria; and

(viii) The school district's intended selection panel.

(D) A school district's request for proposal shall contain the following submittal requirements:

(i) Company overview/history including:

(a) Years in business;

(b) Bankruptcies; or

(c) Contract default;

(ii) Company experience with similar types of projects relative to:

(a) Size;

(b) Program;

(c) Complexity;

(d) Schedule; and

(e) Budget;

(iii) Qualifications, education, and experience of the personnel to be assigned to the project;

(iv) If applicable, the qualifications to perform preconstruction services including:

(a) Conceptual estimating;

(b) Detailed estimating;

(c) Value analysis;

(d) Systems analysis;

(e) Scheduling;

(f) Constructability reviews;

(g) Bid package development;
(h) Cultivation of contractor and supplier interest; and
(i) Design support; and
(v) Company's qualifications to perform construction management services including:

- (a) Critical path method schedules;
- (b) Cost control and cost forecasting;
- (c) Contractor coordination;
- (d) Change order management;
- (e) Contractor and supplier procurement;
- (f) Punch-list closeout and warranty programs;
- (g) Management strategies; and
- (h) Safety plans.

(E)(i) Upon evaluation and scoring of the submissions, the school district shall create a short list of the top-ranked firms to be interviewed.

(ii) The procedures to be followed during the interview process shall include:

- (a) Management and supervisory personnel who will be assigned to the project shall be present at the time of the interview;
- (b) Interview committee shall be comprised of at least three (3) members representing perspectives of the school district;
- (c) Upon identifying the entity most qualified to provide services, the school district shall enter into contract negotiations with the firm; and
- (d) School districts shall provide postselection debriefing to all companies who make the request.

Authority. Arkansas Code § 6-21-114.