

**Department of Procurement Services
Utilizing Construction Management or Design-Build Contracts
2023-R004**

Overview and Chronology

- In 2017, the General Assembly enacted Va. Code §2.2-4382(A) which permits a local public body to enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis. That local public body must, by ordinance or resolution implement procedures consistent with those adopted by the Secretary of Administration for utilizing construction management or design-build contracts.
- In 2017, the City Council amended City Code § 21-44, which provides, the City may enter into a contract for construction on a fixed-price or not-to-exceed price construction management or design-build basis, provided that,
 - (i) the City Council, by resolution, has adopted procedures for utilizing construction management or design-build contracts that meet the requirements of Code of Virginia, title 2.2, ch. 43.1, art. 4 (Va. Code §2.2-4382 et seq.) and
 - (ii) the City complies with the requirement of Code of Virginia title 2.2, ch. 43.1, art. 4 (Code of Virginia, § 2.2-4382 et seq.) and such procedures adopted by the City Council.
- On June 25, 2018, through Res. No. 2018-R060, the City Council adopted the current procedures for utilizing construction management or design-build contracts (City of Richmond Procurement Services Policy No. 50 "Design-Build and Construction Management Contracting").
 - At the time, City Code section 21-44, Virginia Code section 2.2-4382 and Policy No. 50 were consistent with the Commonwealth's Secretary of Administration procedure for utilizing construction management or design-build contracts.
- January 1, 2020 the Secretary of Administration adopted a new construction management procedure.

Action Needed

- For the City to utilize the construction management procedure, Policy No. 50 needs to be revised and be consistent with the Secretary of Administration construction management procedures.
- This action is to adopt those changes so that DPS and City procedures are in alignment with the Commonwealth's Secretary of Administration procedure.

Why Now?

- In 2020 when the new construction management procedure was adopted, there was an understanding between Operations and Procurement Services that there were no forecasted projects that would meet this requirement and would be procured under these procedures.
- If and when those projects were identified and forecasted, changes to the current policy and procedures would be implemented. We're at that point.

Highlights of Updates

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Construction Manager Contracting (Construction Manager at Risk)

- Changed the use of Construction Manager at Risk contracts for construction projects from an estimated cost of less than \$10M to \$26M.
- Removed the requirement for fast tracking of construction needed to meet using agency program requirements or (ii) value engineering or constructability analyses concurrent with design.
- Removed the requirement to seek approval from the Director of Procurement Services for the use of Construction Manager at Risk contracts as well as all the documentation requirement as part of that approval.
- Changed the Agency approval requirement (above) from the Director of Procurement Services to a written determination from the Director of Procurement Services. In advance of the commencement of any procurement of a construction management the written determination must include that
 - competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and
 - such writing shall document the basis for the determination to use construction management contracting.
- During the Request for Qualification process, a new requirement for evaluation of the potential offeror's past ten years' experience to determine whether the potential offeror has constructed, by any method of project delivery, at least three projects of similar program and size.
- Added the option to submit electronic submittals.
- Changed the requirement for the number selected offerors from between 2 and 5 to 3 and 5 after the review of their submittals.
- Added the requirement that at least one Qualified MBE/ESB must be selected as one of the three and five offerors.

Additional Generic Reference Information of Project Delivery Methods

1. Design-Bid-Build (Traditional Building)

Design-Bid-Build is the most commonly used method for completing construction projects and is probably what comes to mind when most people think about the construction process. As its name suggests, this delivery method consists of three distinct phases the design phase, the **bid phase** and the build phase. **Design-Bid-Build is a good option for new commercial construction. Although it's a lengthy process, it allows owners to work in tandem with architects and engineers to get the best price for their project.**

- The **design phase** begins with an owner hiring a designer, either an architect or an engineer, to design a new facility. While designing the new building, the architect or engineer will prepare any necessary drawings and specifications that the contractor's team will need to complete the construction work. Once the design work is finished, the project is opened for bids.
- During the **bid phase**, general contractors will review construction documents, confer with any needed subcontractors and ask the architect or engineer clarifying questions in order to prepare their bid. Each bid represents a general contractor's best price for a project, and multiple bids for the same project can vary greatly. After all of the general contractors have submitted their respective bids, the designer will review each bid, ask the contractors for any additional information and, ultimately, choose the bid they think best fits the owner's needs.
- Once the winning bid has been selected, the **build phase** begins, and the general contractor's team can get to work constructing the new facility. A unique feature of the Design-Bid-Build method is that the designer will oversee the work of the general contractor and subcontractors. This helps ensure that the owner receives a quality end product.

2. Design-Build (D-B)

The Design-Build method was created to reduce the lengthy timeline that often accompanies Design-Bid-Build. It does so by replacing the designer and the contractor with a single party who fills both of these roles, called a design-builder. The design-builder, who is usually an architect, engineer or contractor, serves as the owner's single contact for the entirety of the project. And while this allows for efficient communication, it also means that the design-builder is singularly accountable for the outcome of the project.

The D-B process begins with an owner drafting an initial project design and asking for project proposals from various design-builders. These proposals, like bids in the Design-Bid-Build method, generally represent a design-builder's best price for the project. The key difference between a bid and a proposal is that proposals include notes on the project design, whereas bids don't alter the project design. Owners typically select the proposal that provides the best value for the project without sacrificing design elements.

After the owner has chosen a specific proposal, the design-builder's team can get to work securing permits and beginning construction immediately. The project can also be completed in phases, where the first phase is designed and construction begins while the second phase is designed, again allowing for a faster start to construction. This makes Design-Build ideal for large projects that require an accelerated timeline.

But the benefits of D-B also add some risk to the owner. **Owners who choose the D-B delivery method for their projects lose the advantage of having a separate party oversee the quality of construction. Instead, the design-builder has complete autonomy in the construction phase. So choosing a trustworthy design-builder is integral to success in Design-Build.**

3. Construction Manager at Risk (CMAR)

Construction Manager at Risk, also called CM at Risk or simply CMAR, is also a derivative of the Design-Bid-Build process. But instead of the designer overseeing the design process and construction quality, a **construction manager (CM) is hired by the owner to oversee the entire project. In fact, once hired, the CM stands in as the owner's representative and advocate in every step of the construction process from preconstruction, to design and bidding, through construction. This makes CMAR ideal for project owners who want an expert's help managing their project or communicating between parties, and sometimes CMAR allows owners to remove themselves from the majority of the construction process altogether.**

When an owner decides to use the CMAR delivery method for their project, they'll bring an initial design to a CM, who will then begin consulting with designers to draw up plans. During the design phase, the CM will work on the owner's behalf to value engineer and find cost-saving opportunities where possible. **About halfway through the design phase, the CM will present the owner with their Guaranteed Maximum Price (GMP). With their GMP, the CM sets a price threshold that they promise the owner's project will not exceed. If the project comes in under this threshold, the CM will likely be rewarded by the owner through a cost-sharing agreement. But if the project exceeds the GMP, then the CM takes on the risk of making up the difference.**

Once the design phase is finished, the CM will take bids from contractors for the project and select the bid they believe best meets the owner's needs without crossing the GMP threshold. Once construction begins, the CM will work with the contractor to schedule construction phases, oversee the quality of the contractor's work and coordinate any needed change orders.

4. Job Order Contracting (JOC)

Job Order Contracting is an indefinite-delivery, indefinite-quantity (IDIQ) project delivery method. This means that multiple projects can be completed over the life of one long-term contract, as opposed to the single-project contracts used in the three previous methods. The long-term contract makes JOC an ideal choice for owners who complete a high volume of construction projects over the course of each year. Rather than needing to take each project to bid, owners take bids from contractors at the beginning of the contract, then can access their services without having to re-bid throughout the entire life of the contract.

The JOC project delivery method is predicated on a catalog of construction Tasks with preset prices, which we call the Construction Task Catalog (CTC), that lives for the entirety of the contract. Having the CTC set at the beginning of the JOC contract allows owners to access contractor services at any point during the agreed timespan without having to renegotiate prices for each project. Rather than bidding on individual projects, contractors will place bids by adding an adjustment factor to the CTC to account for their overhead, profit and other operating costs. Owners will typically award the contract to the lowest responsive, responsible bidder.

After the contract is awarded, the winning contractor can perform work for the owner at any point needed. Each project will be preceded by a Joint Scope Meeting to make sure all parties agree on what

work needs to be completed and to set a Detailed Scope of Work for the project. Once the scope is set, the contractor will submit a Price Proposal for the total project cost, the owner will review the Price Proposal and work will get started. Procurement for traditional projects can take six months or more. JOC cuts that down to a few weeks. That time savings also brings significant cost savings by reducing administrative work. And the preset pricing makes sure that cost overruns are minimized.

Because the JOC method is designed to complete a succession of pre-defined construction tasks, it's perfect for a variety of small to medium construction projects including repairs, renovations and maintenance work, especially when short timelines or fixed budgets are involved. JOC, however, isn't typically an ideal choice for new construction. Building a catalog of Pre-Priced Tasks for constructing an entire building would be burdensome, and the length of the project would negate the timesaving benefits of completing smaller projects in quick succession.

There's a lot more we could say about JOC and why we think it's an incredible innovation. If you'd like to hear more about JOC from us, you can find information here. But for now, we'll move onto other project delivery methods.

5. Multiple Award Task Order Contract (MATOC)

Like Job Order Contracting, MATOC is an IDIQ method that's commonly used by the military and the Federal government. It sets a long-standing contract under which multiple projects can be completed. MATOC is distinct, though, as it houses multiple contractors under a single master contract. While JOC doesn't prohibit the use of multiple contractors under one JOC program, it doesn't necessitate it. Because of this, the terms JOC and MATOC can be used interchangeably for certain projects.

The MATOC delivery method begins with a master contract, sometimes called an umbrella contract, which defines the parameters of work that can be completed under the program. The owner will select a pool of contractors they want to participate in bids for projects. When the owner is ready to start a project, they'll take bids from only the contractors pre-selected to participate in the MATOC program. When a winner is selected for a project, a smaller, project-specific contract will be written between the owner and the contractor who will complete the project. Although a separate contract is written for each project, the details in the master contract reduce the number of details that need to be re-negotiated for the project contract.

The benefits of MATOC largely mirror those of JOC – reducing the procurement timeline and controlling costs. However, because MATOC is used most often by the Federal government, which generally prefers to set contracts with longer timeframes than just a year or two, it can be hard for smaller, local contractors to enter into MATOC contracts. In contrast, JOC, which is used in a variety of industries, normally encourages the participation of local contractors.