

# FINAL DRAFT

## STATE BOARD OF EDUCATION

### ALTERNATIVE PROJECT DELIVERY METHODS RULES

Insert in Article 10 - School District  
Procurement Rules between  
Procurement of Construction and  
Procurement of Specified Professional  
Services

#### PROCUREMENT OF CONSTRUCTION USING ALTERNATIVE PROJECT DELIVERY METHODS

##### **R7-2-1117 Procurement of construction using alternative project delivery methods**

- A. In addition to the requirements set forth in Titles 15, 34 and 41, Arizona Revised Statutes, the following rules apply to Construction Services Contracts for Arizona School Districts. In the event of conflict or ambiguity, the more specific requirements of the rules in this division take precedence over the more general requirements of the statute.
- B. A School District shall solicit bids for Construction Contracts by Invitation for Bid (IFB), except as otherwise allowed or required pursuant to ARS 15-213. See ARS 41-2578 for the use of Alternative Project Delivery Methods' Construction Services Contracts.
- C. Use of Alternative Project Delivery Methods (APDM) shall be directed by a School District's Governing Board as alternatives to the prescribed public contracting practices in Arizona, and their use must be justified in accordance with the public contracting law and these rules. (See Findings).
- D. Findings: 'Findings' means the justification for a Governing Board's decision to use the Design Build or Construction Manager at Risk (CMAR) delivery methods for public benefits. An approved copy of the Findings shall be sent to the agency overseeing funding. These Findings shall be a positive measure of public benefit and shall include information pertaining to a minimum of seven identified areas. The seven areas to be addressed and their definitions are:
  - a. **Cost Control** – Lack of definition and many options of the project require a project delivery process where the designer, contractor and District work together to produce a best value design solution for a given budget. This is accomplished through contractor and designer value engineering efforts making trade-offs of different design solutions with the District.

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- b. **Value Engineering** – The advantages provided by early involvement of the contractor in the design phase of the project. Value engineering includes constructability reviews, materials reviews, and design consultation. These services would result in increased project quality and lower lifetime costs associated with the project.
- c. **Market Conditions** – Local and national economic conditions and the availability of various products and services in the local construction market.
- d. **Schedule** – Critical timing of construction that may have to be phased or may need to be tailored to educational schedules.
- e. **Specialized Expertise** – Unique features or functional requirements of the project that make past experience with similar situations or detailed knowledge critical to project success.
- f. **Technical Complexity** – Any unusual or particularly technically sensitive aspects of the project that require specific skills or experience. This may also include the District's need to have the CMAR or Design-Build firm provide financing for the project as well as operations and maintenance services.
- g. **Project Management** – An evaluation of the District's ability to manage the project, in terms of experience, manpower and the understanding and implementation of partnering and teambuilding concepts. These factors may indicate that an alternate or additional source of project management is warranted.

Findings shall address such things as: industry practices, surveys, trends, past experiences, evaluations of completed projects and related information regarding the expected benefits and drawbacks of particular Alternative Project Delivery Methods. To the extent practicable, such findings should relate back to the specific characteristics of the project or projects at issue.

- E. **Contract Requirements for CMAR and Design-Build:** The contract shall be written in multiple parts, or individual contracts prepared that separate any pre-construction services, design services, maintenance services, operations services and finance services from construction services.
- F. **Selection criteria shall contain a subcontractor management plan.** This plan shall be submitted by each proposing CMAR, Design-Build or Job Order Contracting (JOC) firm and contain information as to how the firm proposes to handle the subcontracting of the project or job orders. The selection panel shall use this information as part of the basis of selection and the District shall incorporate this plan, in part or in whole, into the contract as the District so decides.
- G. **Timing of the selection of the CMAR in relationship to the Architect/Engineer (A/E):** The District shall award the CMAR contract at the conceptual stage of the project prior to schematic design being completed. This helps assure the appropriate use of the delivery method by engaging the CMAR during design.
- H. **Basis of Selection:** For a one step CMAR, Design-Build or JOC selection, the District shall retain in the contract file the combined tabulation signed by all

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selection panel members and a written document detailing the basis of the decision to make the award. In the case of a two step process for Design-Build and JOC, the same basis of selection for the first step shall be retained and same information for the second step shall also be retain including the price competition evaluation.

- I. Guaranteed Maximum Price (GMP) in CMAR and Design-Build projects: The District shall perform a detailed review of the estimate that backs up the GMP. The District should consider using the A/E or professional consultant to assist the District should the review be outside the Districts expertise. In no case shall the District award the construction phase of a CMAR or Design-Build project if the presented GMP is greater than the District's budget for the project. The budget is the sum of the authorizing state agency funds plus District funds
- J. Contract negotiations in CMAR and Design-Build projects: During negotiations for the CMAR contract, the District shall determine that the preconstruction services, general conditions, schedule, construction contingency and construction fees are reasonable and justified and these shall be approved by the District's Governing Board.
- K. The District or the District's representative shall verify all supporting pay application documents for accuracy as they are submitted by the CMAR, Design-Build and JOC firm for payment. After substantial completion, but before final closeout the District shall retain the services of a qualified third party to perform a financial audit of the construction portion of the project. Final cost reimbursements shall be made subject to the final audit adjustment, and the Contract shall establish an audit process to ensure the Contract costs are allowable, properly allocated and reasonable.
- L. For JOC job orders, the District shall set administrative limits to assure the \$750,000 limit for each job order is not violated. The District shall review all job orders for accuracy of the estimate and document the basis for acceptance of the estimate. When a job order is \$100,000 or larger and is being estimated without a pre-agreed upon unit price book, the District shall have an independent analysis of the job order costs. This analysis shall be documented. When JOC job orders are accomplished under a GMP type construction with out a unit price book, the process shall be open book. JOC contracts shall have a requirement for a good faith effort to obtain a 10% small and disadvantage business goal.
- M. As required by Arizona Revised Statutes, ARS-15-213.J, each District shall file the required report on their completed projects on or before January 15 of each year. Each District shall use a reporting format defined by the State Board of Education or the Secretary of State.