

# Consultant and Contractor Procurement and Contract Amendments

**Park and Recreation Board**  
February 18, 2016



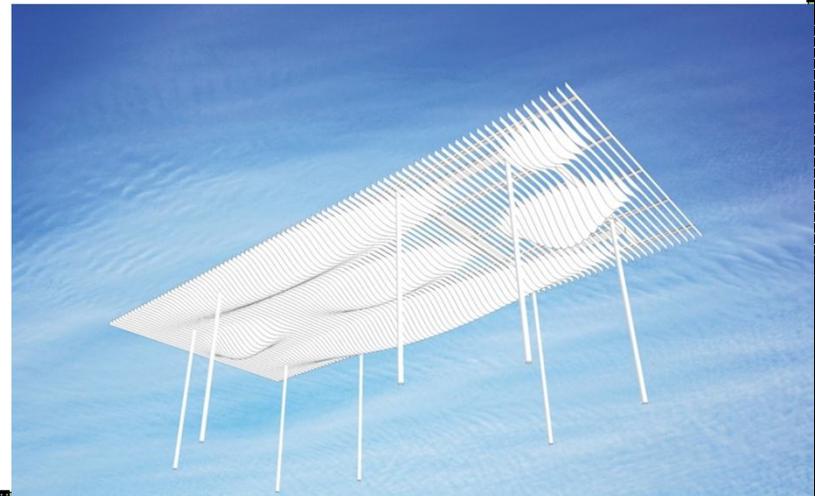
# Agenda

- Regulations for Procurement Processes
- Consultant Selection Process
- Construction Procurement
- Contract Amendments
  - Construction Contracts – Change Orders
  - Professional Services – Supplemental Agreements



# Regulations for City of Dallas Procurement Processes

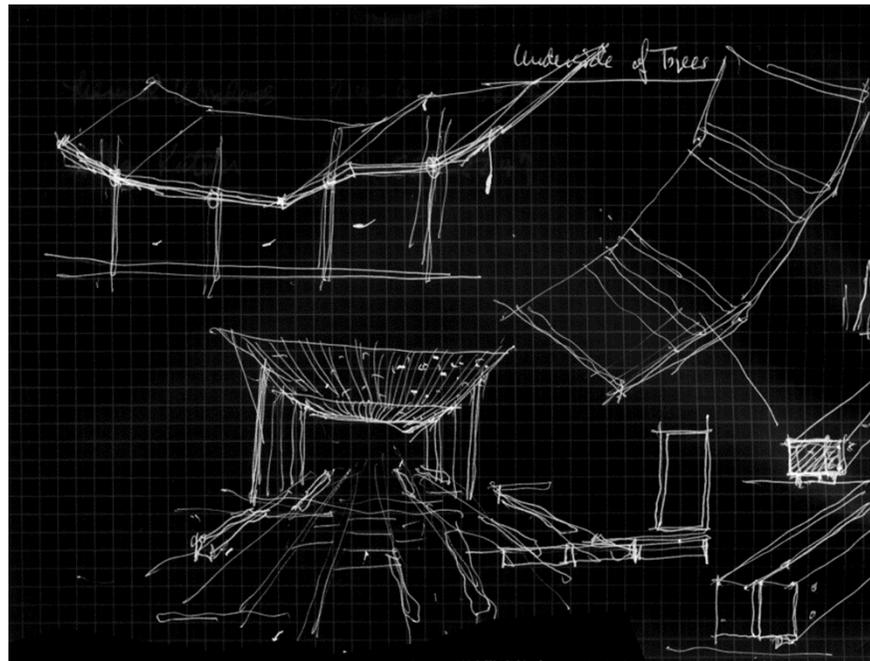
- Texas Local Government Code
- Texas Government Code
- City of Dallas Administrative Directive 4-5 (AD4-5)
- Dallas City Charter



# Importance of Selection Process

- **Consultants and contractors can have an impact on the success of a project**
  - Whether the project will be on schedule and budget
  - How well it is constructed
  - Whether it meets the needs of the end-user
  - How it fits into the surrounding community
  - Longevity of the facility and how much maintenance will be required
  - How much staff time is required in managing the design and construction processes
- **Spending time and effort on the selection process makes a difference during the design and construction processes and for the life of the improvements**

# Consultant Selection Process



# Consultant Selection Process

- Selection of Architects, Landscape Architects, Engineers, Land Surveyors, Physicians, Optometrists, Real Estate Appraisers and Certified Public Accountants:
  - Selection process is qualifications-based and cannot be “bid”
  - Requires a 2 to 3 step process:
    - Request for Qualifications (RFQ)
    - Request for Proposals (RFP)
    - Interviews (optional)

# Consultant Selection Process

- Rather than issuing a RFQ for each project, one RFQ was issued that included all the projects in the bond program for the last three bond programs
  - The RFQ listed the types of projects that were included in the bond program
  - Firms were asked to submit qualifications for projects in their discipline (i.e. Architecture, Landscape Architecture, Civil Engineering, etc.)
  - Firms were asked to specify which projects were of interest to them

# Advertisement Process

- **Business Development and Procurement Services includes the RFQ on their vendor webpage**
  - They also send notifications to their vendors' lists
- **An internet-based approach has been used for the RFQ process for the past 2 bond programs**
  - The RFQ and all documents are posted on a dedicated webpage
  - Updated information is provided to potential proposers via the webpage



# Consultant Selection Process

- Qualification Statements received are scored based on the selection criteria defined in AD4-5 and State law
- Selection criteria is provided in the RFQ



# Example of selection criteria

Item	Weighting
Qualifications to undertake the project (Firm information, technical resources, project execution plan, availability of professionals and principals)	20 points
Staffing capabilities	15 points
Project experience specific to the project (Comparable projects in the last 10 years, staffing, references)	20 points
Abilities to produce innovative solutions to resolve unique problems and issues (Projects that benchmark their abilities, design awards, approach to sustainability)	20 points
Project team organization for providing services required for the project (Sub-consultants, including listing M/WBE firms)	10 points
Respondent's compliance with Minority and Women Owned Business Enterprises Goals (scored by Business Development and Procurement Services)	15 points

# Consultant Selection Process

- The firms most qualified for the bond program projects, based on the scores, are placed in “Consultant Pools”
- The number of qualified firms selected is based on the number of projects in the bond program and number of Qualification Statements received
- An effort is made to assign at least one project to each firm in the pools



# Consultant Selection Process

- **Examples of consultant pools:**
  - Architecture
  - Landscape Architecture
  - Civil Engineering
  - Commissioning (for LEED certified projects)
  - Code Compliance / ADA
  - Archeologists
  - Zoological
  - Art conservation



# Consultant Selection Process

## Results of 2006 Bond Program Consultant Pools:

Discipline	Total in Pool	No. of M/WBEs	% M/WBEs
Architecture	32	8	25%
Civil Engineering	28	13	46.4%
Landscape Architecture	26	5	19.2%
Zoological Design	5	0	0%
Code Consultants	6	2	33.3%
Art Conservation	3	0	0%
Commissioning Services	5	1	20%
Archeological	<u>2</u>	<u>2</u>	<u>100%</u>
<b>Totals</b>	<b>107</b>	<b>31</b>	<b>29%</b>

# Consultant Selection Process

- **Step 2: Selection of a firm for a project from the “Consultant Pool”:**
  - If there is only one firm in a consultant pool that is qualified for a particular project, then that firm will be asked to submit a fee proposal
  - If there are multiple firms that are qualified, then a Request for Proposals (RFP) will be issued to no more than five firms
  - If necessary, interviews will be conducted
  - A selection committee will select the best qualified firm, based on criteria contained in the RFP
  - The selected firm will then be asked to provide a fee proposal

## Consultant Selection for Larger or Specialized Projects

- For larger or specialized projects, not included in the original RFQ process for consultant pools, a separate selection process is utilized
- This selection process includes 2 to 3 steps:
  - RFQ
  - RFP
  - Interviews (if required)



## Special Needs

- Infrequently, there may be a need to select a consultant whose qualifications best fit a particular project or the project is time-sensitive
- AD4-5 allows for a Special Needs Justification, whereby the City Managers Office approves, through a memorandum, the selection of a consultant without a RFQ and RFP selection process being required



# Contractor Procurement Process



# Construction Contracting

- **Until September 1, 2001 there were two options for construction contracting for buildings:**
  - Competitive Bid (Low Bid)
  - Construction Management
- **Effective September 1, 2001, the Texas State Legislature approved alternative delivery methods for municipalities, such as:**
  - Design-Build
  - Request for Competitive Sealed Proposals (RFCSP)



# Construction Contracting

- Since 2001 the Texas Legislature has expanded the available project delivery methods for municipalities
- Project delivery methods currently allowed by law:
  - Competitive Bids
  - Request for Competitive Sealed Proposals
  - Design-Build for buildings
  - Design-Build for certain civil projects (limited to 6/year for entire City)
  - Construction Management:
    - At Risk
    - Agent
  - Job Order Contracting



# Construction Contracting

- The project delivery method should be matched to the type and objectives of the project
- Each delivery method has advantages and disadvantages
- Certain projects lend themselves to a particular delivery method



# Construction Contracting

- Selection of a procurement method is determined by the importance of the following factors:
  - Schedule
  - Price
  - Qualifications of the contractor
  - Flexibility to make changes
  - Complexity of the project
  - Size of the project
- The type of project is matched to the most appropriate procurement method



# Competitive Bidding

- **Competitive or “low bid” is the most familiar type of procurement process for municipalities**
- **Referred to as “design-bid-build”**
- **If competitive sealed bid request is used, City must award to either the lowest responsible bidder or to the bidder who provides goods or services at the “best value”**

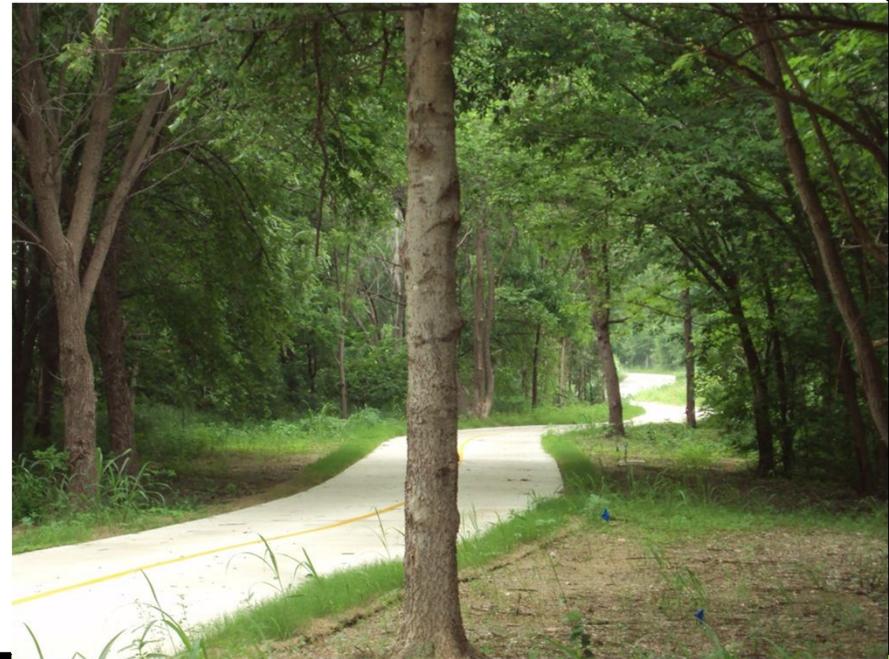
# Competitive Bidding

- **“Non-responsive” bid might be caused by:**
  - An irregularity in the bid, such as mathematical errors
  - Not providing a bid bond when required
- **“Non-responsible” bid might be caused by a bidder that had a record of poor previous performance**



# Competitive Bidding

- No negotiation is allowed after the bids are received and before contract is awarded
- If every bidder submits irregular bids, or the bids are over budget, the project might need to be re-bid



# Competitive Bidding

- **Best suited for:**

- New projects that are not schedule sensitive or subject to potential change
- Cost is important consideration

- **Least suited for:**

- Complex projects that are sequence or schedule sensitive
- Projects subject to potential change



# Competitive Bidding

## ○ Advantages:

- Most familiar project delivery method
- Provides for open and aggressive price competition
- Could provide the lowest initial cost

## ○ Disadvantages:

- The best contractor does not always have the lowest bid
- The project may end up costing more, due to the “low bid” contractor trying to compensate for the low price
- Often creates adversarial relationship – particularly if contractor left a lot of money “on the table”
- No negotiation of price before contract award

# Request for Competitive Sealed Proposal

- Contractors submit “proposals” rather than “bids”
- Contractors submit their qualifications, based on a set format
- Evaluation criteria is provided to proposers
- Selection is based on “best value” or “most advantageous”



# Request for Competitive Sealed Proposal

- Example of evaluation criteria:

Item	Example of Weighting of Score
Price	45%
Experience of prime contractor and personnel	15%
Experience of key subcontractors	15%
M/WBE participation (scored by Business Development and Procurement Services)	15%
Financial sufficiency of prime	5%
Schedule	5%

# Request for Competitive Sealed Proposal

- A selection panel reviews proposals and evaluates based on published criteria
- Most advantageous or a “Best value” proposer is determined and then staff negotiates any items that need to be changed or clarified, including value-engineering (cost savings) options
- Proposer then provides “best and final offer” (BFO):
  - BFO outlines any changes to the original proposal



# Request for Competitive Sealed Proposal

- **Types of projects that would be appropriate:**
  - Qualifications of contractor are important
  - Specialized expertise is required, such as historic preservation and zoo exhibits
  - Schedule for completion is important
  - Other factors, than just price, are important



# Request for Competitive Sealed Proposal

## ○ Advantages of RFCSP:

- Experience of prime and sub-contractors can be used as a selection criteria
- Final terms can be negotiated after proposals are received and before the contract is awarded
- Contractors who have poor or marginal prior performance would be given low ratings on qualifications, thereby not having to call them “non-responsible” in a low bid situation
- Takes more thought and time on the part of the contractor, since they submit a schedule with their price and are required to submit key subcontractors’ qualifications

# Request for Competitive Sealed Proposal

- **Disadvantages of RFCSP:**

- Potential for fewer contractors to participate in the process as there is more effort in preparing a proposal
- Initial price may not be as competitive as in a low-bid type process



# Design-Build

- **State law allows for Design-Build on building projects and certain civil projects**
  - Dallas is limited to 6 civil design-build projects per year
- **A team or firm is selected that acts as both the consultant and contractor**
- **Selection is performed in two steps:**
  - RFQ
    - City short-lists no more than 5 firms
  - Additional information requested of shortlisted firms (proposals) / interviews, if needed
  - “Best Value” firm/team is selected



# Design-Build

- The selected “Best Value” firm provides a design fee proposal
- Approval of the award of the Design-Build contract is typically a 2-step process:
  - Award of design fees
  - Award of Guaranteed Maximum Price (GMP) once the design is more fully developed



# Design-Build

- **Best suited for:**

- New or renovation projects that are schedule sensitive
- Project where it is important to have one entity responsible for the design and construction

- **Least suited for:**

- Projects that are not schedule sensitive



# Design-Build

## Advantages:

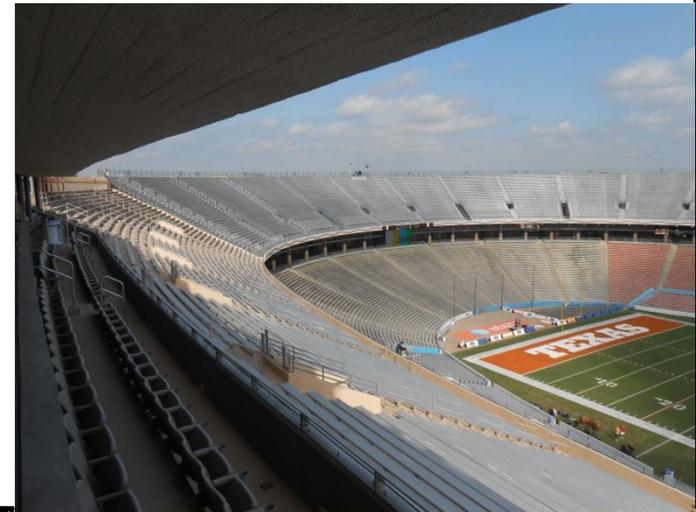
- Used when schedule is tight
- Gives more freedom to select a contractor based on qualifications
- Price can be negotiated after proposals are submitted
- One point of contact throughout the project



# Design-Build

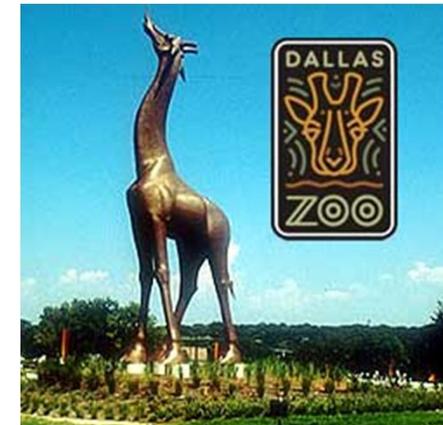
## ○ Disadvantages

- Not as many contractors may participate in the process as in a competitive bid
- No independent third-party agent to assist the Owner, unless more money is spent to hire another consultant
  - The Park and Recreation Department has professional staff to oversee the work
- Quality control may be more difficult during construction



# Construction Management

- **A company is selected to “manage” the construction process – either “at risk” or “agent”**
  - At Risk: Provides consultation to the Owner and assumes risk for construction
  - Agent: Provides consultation to the Owner, but assumes no risk for construction
- **Selection is performed with a one- or two-step process:**
  - RFP only
  - RFQ and RFP
- **This type of method would be suitable for a complex or large project**



# Construction Management

## ○ RFQ Process (if desired)

- Firms will submit their qualifications
- Previous experience with CM projects is highly desirable

## ○ RFP Process

- No more than five “short-listed firms will submit further information and their proposed fees and price for fulfilling the general conditions

## ○ Interviews (if required)



# Construction Management at Risk

- **Services provided:**
  - During Pre-Construction:
    - Cost estimating
    - Value engineering
    - Scheduling
    - Review of constructability
    - Evaluate alternative design systems and materials
  - Provide GMP
    - Includes a line item breakdown:
      - Cost of subcontracts
      - Owner's contingency
      - CM contingency
      - General Conditions
      - Fee



# Construction Management at Risk

- **Construction Phase**
  - Bids work to “sub-contractors” (trade work)
  - CM can also bid on the trade work
  - Manage construction
  - Coordinate subcontractors’ work
  - Provide quality assurance
  - Provide payment and performance bonds



# Construction Management at Risk

- **Best suited for:**
  - Larger new or renovation project
  - Projects that are schedule sensitive
  - Difficult to define
  - Subject to change
- **Least suited for:**
  - Smaller projects



# Construction Management at Risk

- **Advantages:**

- Provides flexibility in selection of firm
- Allows for cost estimating and constructability reviews during design
- Design phase assistance
- Single point of responsibility for construction
- Team concept
- Faster schedule delivery
- Change flexibility
- Pay for actual cost of work, plus CM fees



# Construction Management at Risk

- **Disadvantages**

- Difficult for Governmental Entity to evaluate GMP
- Initial GMP prices could be inflated, due to risk taken by CM
- Probably will cost more than other delivery methods  
(CM and subs must provide bonds)



# Construction Management Agent

- The CM, agent, provides pre-construction and construction phase services
- The CM, agent, holds no contracts
- The CM, agent, does not provide bonding

# Construction Management Agent

- **Best suited:**
  - Larger new or renovation projects that are schedule sensitive, difficult to define, or subject to change
- **Least suited:**
  - Smaller projects

# Construction Management Agent

- **Advantages:**
  - Provides selection flexibility
  - Provides assistance during the design phase, with estimating, value engineering, constructability reviews.
  - Faster schedule delivery
  - Flexibility to make changes
  - Non-adversarial relationship

# Construction Management Agent

- **Disadvantages:**
  - No single point of contact
  - No guaranteed price
  - Governmental Entity must manage more contracts

# Job Order Contracting

- For minor repair, rehabilitation of facilities when the work is of a recurring nature, but the delivery times, type and quantities of work required are indefinite
- Contract is usually 2 years and can be renewed for an additional 3 years
- Procured using competitive sealed proposals and selection based on “best value”.

# Job Order Contracting

- **Best suited for:**

- Schedule sensitive, multi-trade, minor repair, alteration, or renovation projects
- Single trade, simple projects

- **Least suited for:**

- Very small non-repetitive projects

# Job Order Contracting

## ○ Advantages:

- Fast response
- Reduced changes
- Reduced “up-front” time and cost
- Incentive for higher quality
- Puts more money in local business
- Up-front involvement of the contractor facilitates concurrent performance of design and execution

# Job Order Contracting

## ○ Disadvantages

- Perception of threat to “in-house” work force
- Requires teamwork to reach potential
- Need trained personnel on Governmental Entity staff, or provided by a consultant, to best administer contract
- Is not appropriate for complex projects

# Texas Cooperative Agreements

- There are several cooperative agreements that the City of Dallas is allowed to use for procurement, such as “Texas BuyBoard” and “Texas Multiple Award Schedule” (TXMAS)
- Unit prices are already established
- City can request a price without bidding, since the competitive bidding has already been accomplished
- Typically used for smaller projects



# Contract Amendments: Change Orders and Supplemental Agreements



# Construction Contract Change Orders

- During construction often the price or time will need to be amended
- Some reasons for change orders:
  - Unforeseen conditions, such as pier depth change
  - Owner wishes to add scope of work when funding is available
  - Errors or omissions in the construction documents
  - Weather conditions cause delays, so the completion date must be extended
- State law restricts change orders to no more than 25% of the original contract award

# Change Orders

- Change order prices are reviewed by staff and, if applicable, the consultant
- General Contractor's overhead, profit, general conditions, insurance, bond costs are typically limited to 15% of the cost of the work
  - Subcontractor quotes are required documentation
- **Approval process:**
  - Change orders greater than \$50K must be approved by the Park and Recreation Board and City Council
  - Change orders under \$50K can be approved administratively

# Consultant - Supplemental Agreements

- **Amendments are sometimes needed to consultant contracts, including:**
  - Changes to the scope of the project, for instance in situations where additional funding is found and additional improvements are added
  - Adding the services of a needed sub-consultant, such as archeologist
  - Additional meetings are necessary that were not covered in the original contract
  - Adding phases to the contract, if the original contract did not include all phases

# Consultant's Supplemental Agreements

- Supplemental Agreements greater than \$50K must be approved by Park and Recreation Board and City Council
- Supplemental Agreements under \$50K can be approved administratively
- There is no legal limit to the amount that can be added to a consultant contract



# Summary

- Taking time in selecting the consultant and the assignment of a consultant to a project is one of the most important factors in the overall outcome
- Fitting the best procurement process to your project will directly impact the success of the project and will impact the amount of staff time required



Questions?

