



Design/Build Handbook

2014 Texas Edition

**An Owner's Practical Guide to the Design/Build Process
With Forms and Checklists**

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Third Edition 2014

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INTRODUCTION

The Design/Build method of project development and construction can provide Counties, Cities and other Texas public entities with:

- Less cash outlay up front
- More Design Options without upfront costs
- Design Development that factors in actual costs
- Faster completion of projects
- More certainty of final costs
- Significant reduction in change orders
- Reduced risk in design and construction.

While Design/Build is not right for every project, it certainly is a process that should be considered for every public project. The combination of time savings, creativity and reduction in risk, makes Design/Build a powerful tool that should not be overlooked.

This Handbook is intended to provide Owner's (Texas public entities) with a short summary of the law and practical aspects about Design/Build so that they can decide if Design/ Build will help them provide a better project for their constituency.

NOT LEGAL ADVICE:

Nothing in this Handbook is legal advice. This is a general summary of some of the laws relating to the Design/Build process for certain Texas public entities. Each project is unique and requires that the information and forms in this book be localized and customized to fit your Project, and insure that you and your Project comply with all applicable regulatory requirements and statutes. You should consult experienced professional counsel to advise you about YOUR Project. This book is not a substitute for the advice of counsel protecting your interests.

LIMITATIONS:

This Handbook is intended to help Cities, Counties, and other governmental entities in Texas, utilize the Design/Build approach in building Jails, Courthouses, offices buildings, schools, and other BUILDINGS. This handbook will not focus on the separate Design/Build Process for Utilities and Civil Works Projects. While this Handbook can provide general information, each project, site, and public entity is unique, and must be treated that way. The suggestions and summaries included in this Handbook are ONLY suggestions as a STARTING POINT for your Project.

Local laws, special statutes that relate to your Project, your finances, and a host of other issues MUST be considered and evaluated as to how they affect your Project, and the documents you create for that project. Start with the suggestions in this Handbook, but consult your own architects, engineers, attorneys, accountants and other experienced professionals about what laws, rules, regulations and practices should be followed in using the Design/Build method for your Project.

HOW TO USE THIS HANDBOOK

This Handbook follows the basic process of a Design/Build project in Texas.

Chronological Order:

The things that typically happen first in a Design/Build project will appear first in this book. The things that happen later in a project, appear later in this book. This is not always the case, but it is the basic plan of this book.

Focus is on governmental entities using Design/Build Process.

This book focuses on governmental entities using the Design/Build process. While many of the forms and examples are written as though a County or City were using this book, as you will see, many other public entities can use the Design/Build process. Cities, Hospital Districts, school districts, state agencies, and many other types of governmental entities can use the Design/Build process. There are special statutes for many local governmental entities that may ALSO be applicable to the Design/Build process, so be certain that you comply with those special statutes as well.

The examples and descriptions in this book assume that a County or a City is using the Design/Build process for a BUILDING and not a utility or a civil works project. However, don't be misled into thinking that ONLY counties and cities can use Design/Build, or that utilities and civil works projects cannot be built the Design/Build process. That is not the case. The references to a County or a City in the examples in this Handbook were used to make the examples more realistic, rather than referring to a "governmental entity". Many entities other than Cities and Counties can use the Design/Build process, and it can be used for buildings, jails, courthouses, and warehouse space, as well as water utilities, wharves, docks, roads and bridges.

Financing Assumption.

This Handbook assumes that you have arranged financing for your Project. While there is a short chapter on how to include financing in the Design/Build process, the chapter is limited to just that subject. Describing all the alternative financing methods available to public entities for their projects, and the many different laws that apply to those financing methods, would require that 100 pages or more be added to this Handbook just to list resources. No one wants another 100 pages in this Handbook.

Operation and Maintenance Assumption:

This Handbook is written relying upon the assumption that all operations and maintenance will be the responsibility of the County, City, Hospital District or other governmental entity that will own the project being built with the Design/Build process. Chapter 8 briefly discusses the fact that operations and maintenance can be contracted out to private entities in conjunction with the Design/Build process. However, those contracts, are governed by different statutes, and are not the focus of this Handbook.

ALERTS:

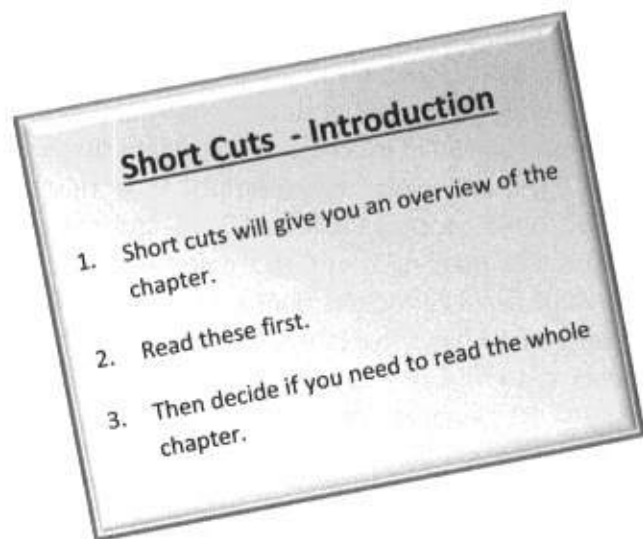
Alerts are intended to give you special practical information that will help you make the Design/Build process go smoother. Look for these throughout the book.

ALERT: Throughout this book you will see “ALERT” at the end of some paragraphs. This ALERT is typically a warning or suggestion about something that can help you avoid creating a problem.

Use the Short Cuts:

At the beginning of each Chapter (and at the beginning of each the 10 Phases of the Design/Build process) is a blue “Short Cuts” box that looks like the one to the right.

The items in the Short Cut Box are the “Short Cuts” to the Chapter. These are the main ideas, points or suggestions in the Chapter summarized for you. It is a great way to get a quick overview of the chapter in just a few seconds and see if the chapter addresses the issue you need to solve.



SPECIAL TERMS

“RFQ/RFP” is an important Term.

The Texas Design/Build process requires that the Owner publish a Request for Qualifications and then ask for additional information from the qualified respondents. The request for additional information is actually a request that certain respondents submit a full proposal for the Project. So the Request for Qualifications is really a Request for Qualifications AND a Request for Proposals. This Handbook refers to this Two-Part Request as an “RFQ/RFP”.

“Your A/E” represents your interests.

You are required to have an architect or engineer represent your interests during the Design/Build process. Whether you use a professional on your staff, or you hire an outside professional, their goal is to represent YOUR interests. This Handbook will refer to the architect or engineer that you select as “Your A/E”, to distinguish them from an architect or engineer that is part of a Design/Build Team.

Clarity over Chapters 2267 and 2269 of the Texas Government Code.

In the 82nd Legislature held during 2011, two new chapters relating to public projects were added to the Texas Government Code. Unfortunately, they were BOTH numbered ‘Chapter 2267 of the Texas Government Code’.

Luckily, in the 83rd Texas Legislature, held during 2013, the double “2267” problem was resolved. The Design/Build Statute was RE-NUMBERED as Section 2269 of the Texas Government Code. So, from 2011 through 2013, the Design/Build Statute could be found at Section 2267 Texas Government Code entitled “CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS”. During that same time frame the other Section 2267 of the Texas Government Code was entitled PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE. That statute does NOT control the Design/Build process. That is not the statute that will be the focus of this Handbook.

When this book refers to Section 2269 of the Texas Government Code, entitled “CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS” whether it is currently found at Section 2269 of the Texas Government Code, or whether it was found for two years as Section 2267 of the Texas Government Code.

TWO Design/Build Processes

“Buildings” vs. “Civil Works Projects”

Section 2269 of the Texas Government Code provides two separate Design/Build processes. One relates to “Buildings” such as jails, courthouses, office buildings, warehouses, and similar structures that are occupied.¹ The other Design/Build process involves “Civil Works” projects such as utilities, roads, bridges, docks, wharves, desalination plants, and similar projects associated with ‘civil engineering construction’.² Chapter 4 of this Handbook (“What Can and Cannot Be Built with Design/Build”) provides a more detailed analysis of the types of projects that are subject to each of these two systems.

The two systems have so many similarities that a separate handbook for each system is not practical.

This handbook will follow the Design/Build process for “Buildings” BUT, will include notes and references to the differences when compared to the Design/Build process for “Civil Works Projects”. When a difference in the two systems arises, the difference will be noted with the following title: **“Civil Works Compliance”**.

Example:

Civil Works Compliance: When you see this title, you know that the information in this paragraph relates to projects that are Civil Works Projects, and is an exception to the Design/Build process used for projects that are “Buildings”.

Chapter 6 of this Handbook is a summary of a few of the key differences between the “Building” Design/Build process, and the “Civil Works” Design/Build process. If you are considering a “Civil Works” project using the Design/Build process, review Chapter 6 as a starting point for your preparations.

Chapter 1 - What is Design/Build?

Design/Build³. Design/Build is a two-step project delivery system that gives all the design and construction responsibility to one entity.

Section 2269⁴ of the Texas Govt. Code provides the basic procedures for the Design/Build process for state agencies and local governments.⁵ The law allows the Owner to use a two-step process to enter into ONE contract to design AND build the Project. Governmental entities can adopt rules necessary to implement the requirements of the Design/Build process.⁶

In Step 1 the Owner uses an Architect or Engineer to be the Owner's representative during the Project. This Architect/Engineer does not design the whole project. A Request for Qualifications and Proposals ("RFQ/RFP") is then published. Contractors and Designers team up to submit their qualifications. Up to five finalists are selected based on their submitted qualifications. In Step 2, the finalists submit full Proposals. Each proposal typically has a different design for the Owner to consider. The Owner then selects the Proposal that provides the "Best Value" for the Owner.

In Design/Build, the Owner (You) end up with a team that you have judged to be the most qualified, whose pricing is based upon the actual cost of what you want your Project to be. If any changes are necessary, almost all of them will NOT result in a Change Order that raises the price.

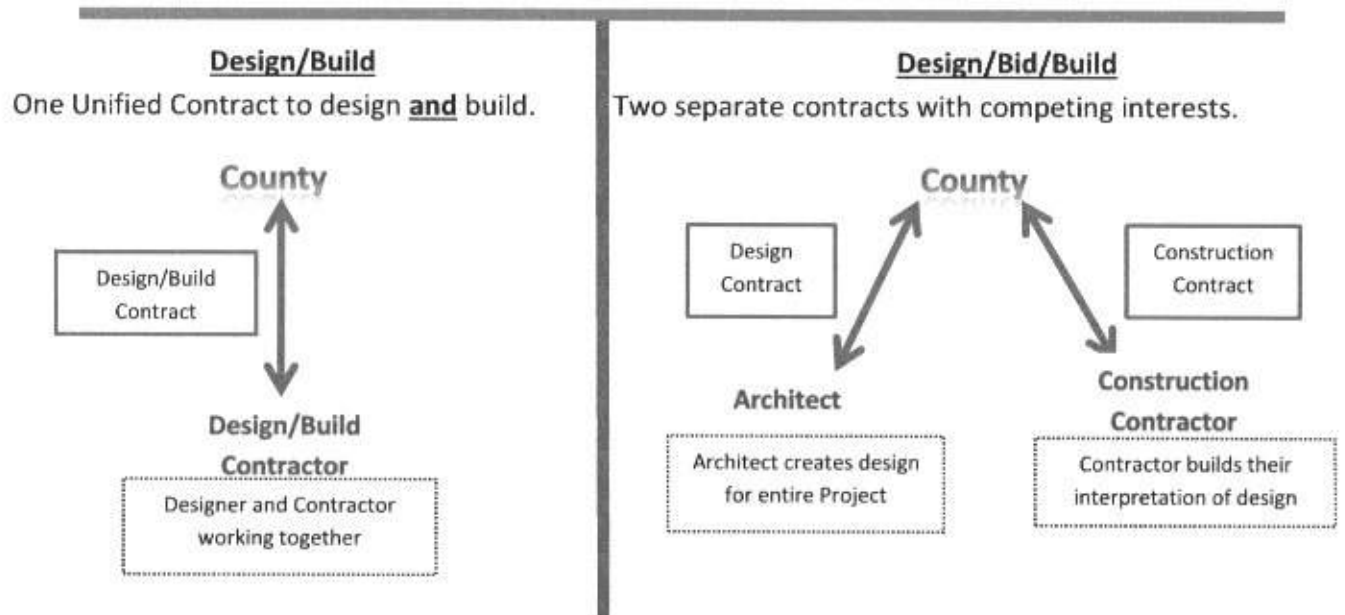
Design/Bid/Build⁷. (The way it has been done for years.) The traditional method of Design/Bid/Build requires the Owner to manage two competing contracts – one for the design of the whole Project, and another one for construction of the Project. Anything that falls in the gap between the two contracts is the responsibility of the Owner/You. In Design/Bid/Build the Owner hires and pays an Architect to draw up detailed plans and specifications to put in a bid package for the construction of the entire Project. Then the "Bid Package" is published and construction Contractors submit their bids (prices) to build what is described in the Bid Package. Since all the Contractors are bidding on the exact same design, PRICE is typically the main (if not the only) factor when picking a winner.

In Design/Bid/Build the Owner (You) end up with a team of the lowest priced (not necessarily the most qualified) subcontractors whose bids are based upon the Bid Package. Any necessary deviations from the Bid Package will result in a change order, which the Owner/You must pay.

Short Cuts - Chapter 1

1. County has ONE primary contract – with the Design/Build team.
2. County gets proposals for the Project – not bids on a pre-determined design.
3. This is a Two-Step process – an RFQ and an RFP.

Here is a simple Diagram showing how the two systems differ:



Chapter 2 - What will Design/Build do for you?

Advantages of Design/Build:

- Single point of responsibility for Owner.
 - In the Request for Qualifications & Proposals ("RFQ/RFP") only ONE contract is requested.
 - Owner has ONE point of contact.
 - Owner has ONE source of responsibility.
- Owner/County saves money
 - Initial cost of the conceptual design of the Project is paid by the Proposers who respond to the RFQ/RFP.
 - You do not pay an Architect for Plans and Specs before the RFQ/RFP is published.
 - The cost of design is included in Design/Build price.
 - Maximum Guaranteed Price protects Owner/You from cost overruns.
 - Problems with the design and construction⁸ are not a cost to the Owner/You.
 - Projects are completed 30% faster.⁹
- Faster & Lower Cost Project Delivery
 - Estimated 20% to 30% cost savings.¹⁰
 - Preliminary and duplicative steps are eliminated saving time in completion.
- Team approach creates an environment driven by accomplishment of goals.
 - Everyone is working together early in the design phase to achieve Project goals and budget.
 - Design and construction team works with Owner so that Owner can help guide the design.
 - Team focuses on solving problems, not assigning blame for problems.
- Full team Proposals promote innovation and communication
 - Each team submits its own conceptual design with its Proposal.
 - Each team is free to be as creative as possible – to get the work.
 - A/E and Contractor worked on design together for submission.
 - Teams may have past experience working together to submit proposals.
- Earlier knowledge of Project costs
 - The Team can provide actual costs as design is being developed so that the Project can stay within budget.
 - The Design/Build process is shorter than typical competitive bidding processes.
 - Pricing submissions in Proposals are more accurate than 'estimates.'

Short Cuts - CHAPTER 2

1. Designers and constructors work closer together.
2. Lower risk for Owner/County/City.
3. No big Up Front fees.
4. Faster and lower cost Project delivery.

- Typically there are very few change orders so Owner has certainty of the cost of the Project.
- As long as the scope of the Project remains constant, the pricing should not change.

You make decisions earlier – but with an understanding of Project costs.

A significant difference between the Design/Build process, and traditional competitive bidding, is that under the other available methods of project delivery¹¹ (but not Design/Build) the Owner (County, City, School District, etc.) must spend time and money early in the development process to make decisions about the scope, timing, planning and design of the Project, without knowing the impact those decisions will have on the actual cost of the Project. Additionally, when using the traditional Design/Bid/Build method, after the bids are received and the contractor has been selected based principally upon price, the Owner must negotiate (or referee) the process of “value engineering” the Project with the Architect who drew the plans and specifications, and the construction contractor. The purpose of the post-bidding “value engineering” is to try to bring the cost of the Project within the available budget. This means that the Owner, Architect and Contractor must, in some respects, re-design the Project in light of the proposed construction costs. This creates unnecessary costs, duplication of effort and wastes time.

You, as the Owner, will have to make the basic decisions about the scope of the Project at some point during the Project. It may seem simple to say that you need to “build a new jail”. In the traditional Design/Bid/Build method, you (as the Owner) would hire an architect to design the whole Project and over a period of many months, a set of plans and specifications would be prepared. During that process, you would make the many decisions that are needed to decide upon the scope and design of “building a new jail” without a clear idea of what impact those decisions may have upon the cost of the Project. These are decisions that you will need to make, but, in the traditional Design/Bid/Build method, those decisions are spread out over a significant period of time.

In the Design/Build method, you will make all those same decisions; you will just make them earlier in the time line of the Project, and you will make them when you have access to accurate costing information. Essentially, by deciding basic scope and design issues earlier, with input from the designer and the contractor, and with a clear understanding of the impact those decisions have on project costs, you are streamlining the design and construction process, thus making your Project more efficient and successful.

For example:

- o Exactly how many beds will you need today, in 5 years, or in 20 years?
- o What size dorms/multiple occupancy cells will work best for you?
- o How much office area is needed and what kind (cubicle spaces or offices)?
- o What medical facilities do you need built or renovated?

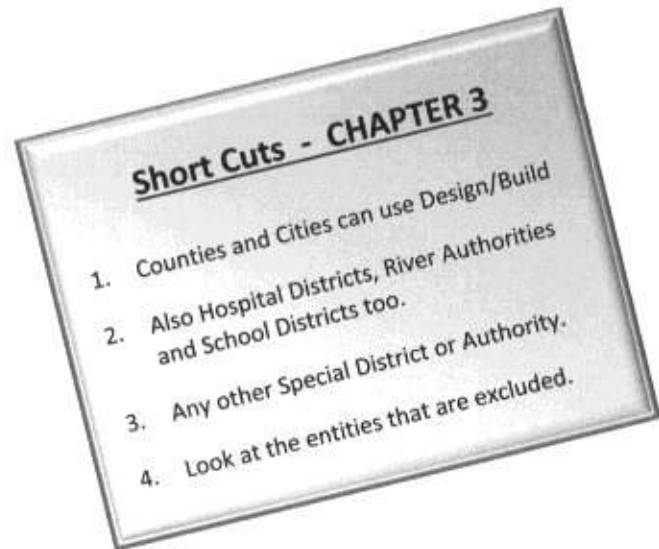
Deciding on these basic needs early on, and putting them in a form that prospective Design/Build Teams can use in preparing their Proposals, will help you get a Project that fits your needs. Costs and budgets will affect these decisions. Using the Design/Build process, the impact that design decisions have on the cost of a Project are quickly identified early in the process. This allows changes to be made as the design develops, not later, when changes can be more costly.

ALERT: This Handbook focuses on the Design/Build process that involves BUILDINGS. There is a separate Design/Build process to be used for UTILITIES and CIVIL WORKS projects. See the separate references to "**Civil Works Compliance**" in this Handbook. There is also a summary of the Civil Works Design/Build process in Chapter 6 of this Handbook. See generally Section 2269.351 Texas Govt. Code.

Chapter 3 - Who can use Design/Build in Texas ?

The Design/Build law allows “Governmental Entities” to use the Design/Build process. The following entities are included in the definition of “Governmental Entities”¹² who **CAN** use the Design/Build process for “Buildings”.

- State Agencies¹³
- Texas Facilities Commission¹⁴
- Counties
- Municipalities
- School Districts
- Hospital Districts
- Water Districts
- Water Authorities
- River Authorities
- Conservation and Reclamation Districts
- Any other Special District or Authority¹⁵
- Defense Base Development Authorities¹⁶
- Any other political subdivision of the State
- A public Junior College¹⁷
- A board of Trustees governed by Ch. 54 of the Tex. Trans. Code¹⁸



The Design/Build method authorized by Section 2269 of the Government Code specifically **EXCLUDES** the following entities from the definition of “Governmental Entities”, so the following entities **CANNOT** use the Design/Build process for any type of project (whether a Building or a Civil Works Project):¹⁹

- A contract entered into by Texas Department of Transportation ²⁰
- A project that received money from a state of federal highway fund²¹
- A university system²²
- Any institution of higher education²³ except for a public Junior College²⁴
- A Regional Tollway Authority²⁵
- Improvement project by a Local Government Corporation²⁶
- Regional Mobility Authority²⁷
- A project of a County authorized by Ch. 284 of the Transportation Code,²⁸
- A project of a Coordinated County Transportation Authority²⁹

Civil Works Compliance: If your project is a "Civil Works Project"³⁰ then the same definition of "Governmental Entity" set out above applies, with TWO EXCEPTIONS. Therefore, the same entities listed about can use the Design/Build process for Civil Works Projects, EXCEPT for TWO situations.

First, if the governmental entity is included in the definition of Governmental Entity set forth above (applicable to "Building" projects under the Design/Build statute) then governmental entity must have a population of more than 100,000 within its geographic boundary or service area to be permitted to use Design/Build for a Public Works Project.³¹

Second, if the entity is a board of Trustees governed by Chapter 54 of the Texas Transportation Code, then the Design/Build process is available to that entity for a Civil Works Project, regardless of the population within its geographic boundaries or service area.³²

Design/Build laws prevail over most other competitive bidding laws.

The Design/Build law³³ generally prevails over any other competitive bidding law, when there is a conflict between the two.³⁴ The exceptions to this rule are limited. Other competitive bidding laws will prevail over the Design/Build method, only when:

- (i) They are specifically made superior by the Design/Build Law in the Texas Government Code³⁵;
OR
- (ii) It is a law relating to contracting with historically underutilized businesses;³⁶
OR
- (iii) It is a specially adopted design/build or competitive bidding process of a municipally owned electric utility;³⁷
OR

- (iv) It is a conflicting competitive process adopted by a River Authority³⁸ or Conservation and Reclamation District³⁹, unless waived.⁴⁰

Existing Competitive Bidding Processes that conflict with Design/Build.

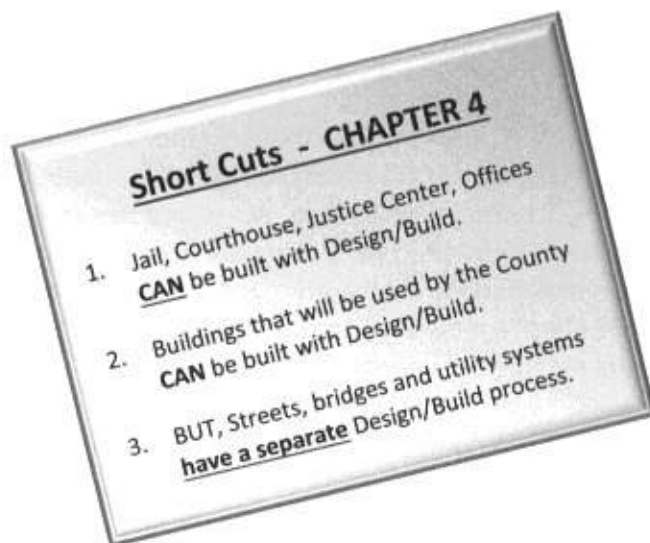
In some of the circumstances/exceptions listed above, the public entity can “elect” to have the Design/Build process supersede their previously adopted and conflicting procurement process.⁴¹

If this route is taken, and a previously adopted competitive bidding process is going to be superseded by the Design/Build Process described in Section 2269.301 et seq. of the Texas Govt. Code, then the consideration of that issue by the public entity and the “election” to supersede the previously adopted competitive process should be carefully documented to establish compliance with the waiver option provided in the Government Code.⁴²

Chapter 4 – What can/cannot be built with Design/Build?

While, not every public project can be built with the Design/Build process for “Buildings”, generally, if a project is an improvement to real estate⁴³ which is a building or an associated structure (including an electric utility structure)⁴⁴ and it is not a road or utility, then the Design/Build process can be utilized. Therefore, the following types of facilities **CAN** be built with the Design/Build process for Buildings:

- Jails
- Courthouses
- Justice Centers
- Civic Centers
- Office Buildings
- Hospitals and Clinics
- Storage facilities
- Animal Control facilities
- Data Centers
- Energy plants that serve those facilities
- Other “Buildings” (rather than “systems”) that are associated structures to the main facility.



EXCLUSIONS for Design/Build for Buildings.

However, the Design/Build process that allows for the construction of BUILDINGS listed above **CANNOT** be used for following types of projects⁴⁵. A separate Design/Build procedure is available for these projects⁴⁶:

- Highways
- Roads
- Streets
- Bridges
- Underground utilities
- Water Supply Projects
- Water Plants
- Wastewater Plants
- Water and Wastewater distribution or conveyance facilities
- Wharves
- Docks
- Airport runways and taxiways
- Drainage Projects

- Related projects associated with civil engineering projects
- Buildings or structures that are incidental to those projects.
- Transit, Desalination, Storm Drainage and Flood Control Projects⁴⁷

Roads and Utilities for Permitted Design/Build Projects.

Jails, prisons, courthouses and other 'buildings' (that CAN be built with the Design/Build process) require that roads, streets, gas, power, water and sewer lines be extended to them. Those roads, streets, as well as gas, water and sewer lines are subject to building codes, and are not utility "systems" intended to provide service to the wider public⁴⁸. Therefore, the roads and utility lines providing service to an authorized 'Design/Build Facility' can be included in the Design/Build process. The utilities and roads that service a 'Design/Build Facility' are not excluded from the Design/Build process for that Facility.⁴⁹

Civil Works Compliance: The following types of projects **CAN** use the Design/Build process, but they are subject to the Design/Build law specifically applicable to Civil Works Projects (not "Buildings"). See Section 2269.351 of the Texas Govt. Code. The types of projects listed below CAN be built using the Design/Build Process for Civil Works projects:

- Highways
- Roads
- Streets
- Bridges
- Underground utilities
- Water Supply Projects
- Water Plants
- Wastewater Plants
- Water and Wastewater distribution or conveyance facilities
- Wharves
- Docks
- Airport runways and taxiways
- Drainage Projects
- Related Projects associated with civil engineering Projects
- Buildings or structures that are incidental to those Projects.
- Transit, Desalination, Storm Drainage and Flood Control Projects

How often can the Design/Build Process be used?

No Limit for "Buildings". As long as the Project is a "Building" (and not a Civil Works Project) there is no limit on the number of Design/Build contract that a governmental entity can award in a fiscal year. The limits imposed on how often the Design/Build process can be used, apply ONLY to Civil Works projects.

Civil Works Compliance: However, if the Project in question is a Civil Works Project, then a system of limitations, generally based upon the population of the Governmental Entity, is imposed upon how often the Design/Build Process can be used for a Civil Works Project.⁵⁰ The following table provides a summary of these limitations.

| | |
|--|---|
| LARGE ENTITIES: Govt. Entity with population of 500,000 or more | Max of 6 DB Civil Works Projects in any fiscal year |
| MEDIUM ENTITIES: Govt. Entity with population of more than 100,000 but less than 500,000 | Max of 4 DB Civil Works Projects in any fiscal year |
| SMALL ENTITIES: Govt. Entities with population of less than 100,000 | Not authorized to use design/build process for civil works projects |
| <u>MUNICIPALLY OWNED WATER UTILITY OF A LARGE ENTITY</u> | Special limitations. See Section 2269.354(2) Govt code |

Chart of Limitations on use of Design/Build process for Civil Works projects.

The definition of "Project" in this circumstance is critical. If a Governmental Entity enters into contracts for more Projects than are permitted by the statute, then the Design/Build contracts are subject to being found voidable. Each Design/Build contract must cover only a "single integrated Project".⁵¹ You cannot enter into a Design/Build contract that assembles or aggregates together a group of separate Projects.⁵² There are special provisions for determining what is a single "Project" for a metropolitan transit authority created under Chapter 451 of the Transportation Code, and a water treatment plant that includes a desalination plant and other facilities.⁵³ There are also special provisions relating to Design/Build contracts entered into by municipally owned water utilities with a separate board appointed by the governing body of a municipality with a population of 500,000 or more.⁵⁴

Chapter 5 – Ten Phases of Design/Build.

In order to make the Design/Build Process more manageable, this Handbook divides the Design/Build process into 10 phases (each is described as a “D/B Phase”).

Each D/B Phase will focus on one or more interrelated components of the Design/Build process. The description of each of the 10 D/B Phases will include:

- Descriptions of the laws that apply to each D/B Phase
- Negotiating/Contracting suggestions
- Regulatory issues to consider
- Practical suggestions for your Project.

The Ten D/B Phases are:

D/B Phase 1 – Decide what you want.

D/B Phase 2 – Get experienced professional help.

D/B Phase 3 – Write the RFQ/RFP and Notice (for Step I and Step II).

D/B Phase 4 – Create the Design Criteria Package (if needed)

D/B Phase 5 – Publish the Notice of RFQ/RFP as required.

D/B Phase 6 – Rank the Qualifications and Pick the Finalist(s).

D/B Phase 7 – Rank the Proposals and Start Negotiations.

D/B Phase 8 – Performance and Payment Bonds

D/B Phase 9 – Monitor construction.

D/B Phase 10 – Complete the Project

D/B PHASE 1

Decide what you want.

The earlier you can define what you need, the better the Proposals will be from the Design/Build teams.

Get professional help early on.

As is explained in more detail in D/B Phase 2 (the next Section of this Handbook) getting professionals involved early on in the Design/Build process can be a big time saver for you. If you have an in-house architect or engineer, you can rely upon them in this early stage to help you set some of the basic parameters about the type of Project you want. Even if you decide to hire an outside architect or engineer later on in the process, your in-house professional resources can keep your early stage discussions focused on the essential issues that need to be addressed in this initial stage of the Project.

If the size or complexity of the Project warrants it, you should consider choosing/hiring the other needed professionals early on as well. D/B Phase 2 also discusses the assistance that specialty consultants and experienced attorneys can provide at this early stage as well.

Is it a "Building" or a "Civil Work Project"?

You should first determine if your Project is a "Building" or a "Civil Works Project". Each of these categories is subject to a separate Design/Build process.

BUILDING: Generally, if the Project is an improvement to real estate that is a building or structure (and is NOT associated with civil engineering construction- like a utility or a bridge), then the Project will be considered a "Building". Generally, the following types of Projects are subject to the Design/Build process for Buildings:

- Jails
- Courthouses
- Justice Centers
- Civic Centers
- Office Buildings
- Hospitals and Clinics
- Storage facilities
- Animal Control facilities
- Data Centers
- Energy plants that serve those facilities
- Other "Buildings" (rather than "systems") that are associated structures to the main facility.

Short Cuts - D/B Phase 1

1. Get professional help early on.
2. Renovate, Expand or Build New?
3. Set Size and timing early on.
4. Know the pros and cons of asking for sites to be proposed.

CIVIL WORKS PROJECT: If the Project is generally associated with civil engineering construction, or one of the specific Projects listed below, then the Project is a Civil Works Project. The specific Projects that are included in the definition of “Civil Works Projects” are:

- Highways
- Roads
- Streets
- Bridges
- Underground utilities
- Water Supply Projects
- Water Plants
- Wastewater Plants
- Water and Wastewater distribution or conveyance facilities
- Wharves
- Docks
- Airport runways and taxiways
- Drainage Projects
- Related Projects associated with civil engineering Projects
- Buildings or structures that are incidental to those Projects.
- Transit, Desalination, Storm Drainage and Flood Control Projects

After you have determined whether your Project is a “Building” or a “Civil Works Project”, you will determine which of the Design/Build Processes are applicable to your Project.

For Buildings: Follow Section 2269.301 et seq. of the Texas Govt. Code

For Civil Works Projects: Follow Section 2269.351 et seq. of the Texas Govt. Code

This Handbook will guide you through both of those Design/Build processes.

There are many similarities to the two Design/Build processes. They are so similar that creating a second handbook for either of them would be inefficient. This Handbook will follow the Design/Build process for “Buildings”, BUT, will include notes and references to the differences when compared to the Design/Build process for “Civil Works Projects”. When a difference in the two systems arises, the difference will be noted with the following title: “Civil Works Compliance”.

Renovate, Expand or Build New?

For example, if you need more space for housing county prisoners, you need to decide if a renovation, expansion, or new facility is the most cost effective solution. A correctional consultant hired at an early stage of the Design/Build process can be extremely helpful as you decide which route will be best for your particular circumstances.

Site.

If your plan is to renovate or expand an existing building, then clearly your site has already been selected. If you are focusing on a new building, then decide if you want to offer a site that all the Design/Build teams can use, or do you want each Team to offer you their own site for the Project?

Requiring each Design/Build Team to offer their own site has some disadvantages:

- Just finding a suitable site, with utilities, zoning, and community acceptance can be very difficult for public projects (such as jails and prisons)
- Securing the right to a useable site, with proper zoning, in the 21 to 30 day window of an RFQ/RFP, is not always possible.
- Requiring that a site be proposed by each Design/Build team may limit the number of Proposals you receive.

One major advantage of requiring the competing Design/Build teams to submit a site for the Project is the shifting of liability for site related problems. For example, if the site is designated by the Owner, and there are undiscovered water sources, pollution, or other adverse underground conditions, the risk of those problems arise from the site that the Owner required, so typically, any costs associated with those problems will be borne by the Owner. Alternatively, if the Design/Build teams submit their own sites for the Project, then any subsurface adverse conditions are typically shifted to the Design/Build team, because they chose that site.

Civil Works Compliance: Because most Civil Works Projects are utilities (water, wastewater, roads, bridges, etc.) it is rare that you will ask the Respondents to propose a site for these projects. Typically, the Owner has selected the site for a wastewater plant, and wants to use the Design/Build process only for the design and construction of the plant - not the selection of the site. In those instances, the Owner is typically liable for costs and expenditures relating to any unknown or differing site conditions, unless otherwise provided in the RFQ/RFP and in the Design/Build contract.⁵⁵ Additionally, the Owner/You are responsible for all site acquisition costs for a Civil Works Projects, regardless of who proposes the site.⁵⁶ However, the Design/Build team is responsible for costs associated with any easement or work area needed for staging or construction of the Project.⁵⁷

Size

You need to know the size of the Project that you want. Do you need 300 more jail beds, a 10,000 sq. ft. office complex, and a records storage facility? Or do you just need more office space, and if so how much do you need? Once again, knowing the size of what you need (number of beds, square footage of office space, or cubic footage of storage space, etc.) will need to be part of the information that you make available to each Design/Build team.

Alternatively, the RFQ/RFP can ask that Design/Build Teams submit different size options for the Project. This will give you the flexibility to choose any of the submitted options, and make the final decision about the size of the Project after you get actual costs for the various options.

Timing

If there are special timing requirements (emergencies, Court Orders, contract or lease termination dates, etc.) that affect the required completion date, make sure that you have clarified all of those requirements. Many factors can affect the timing requirements of a Project. Here are

just a few examples of things that may require an accelerated time schedule for completion of your Project:

- Court orders
- Regulatory requirements
 - Standards of the Tex. Comm. on Jail Standards for the construction of jails.
 - Title 25 of the Tex. Admin. Code on construction of hospitals.
 - Etc.
- Financing terms
- Market conditions
- Emergency situations

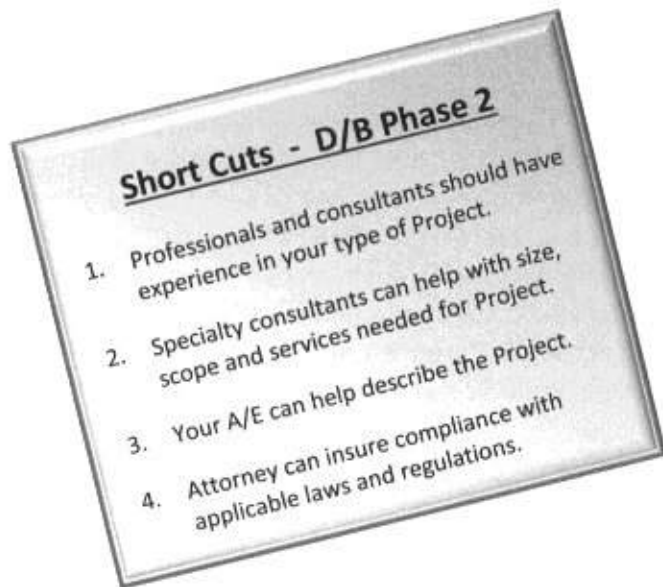
These, and many other factors, may affect the time line over which you need your Project completed.

D/B Phase 2

Get experienced professional help.

Professionals and consultants can make the planning and Design/Build selection process much easier and more certain.⁵⁸ For example, professionals can:

- Determine the right requirements for you (capacity, size, location, systems)
- Create a concise description of the mandatory requirements (size, site, timing, etc.)
- Ensure compliance with all RFQ/RFP requirements



Experience is key when hiring consultants and professionals.

The development of public projects is unique and requires different skills than purely private projects. Public Design/Build projects are in many ways a Public/Private Partnership which is a blend of public and private contracting issues. The professionals and consultants you hire should have documentable experience in your type of public or public/private project. The planning, development and regulatory compliance needed in public projects (and Public/Private projects), is not a time to provide someone with the opportunity to “learn on the job”. If the professionals you use have actual experience in the statutory, regulatory and practical issues that may arise in your type of Project, it will increase the probability of a successful and useful Project.

Specialty Consultant.

When considering any jail or justice related project, retaining a correctional consultant can be a wise choice early on. If you are considering the construction of a hospital, engaging a health care, or hospital construction consultant, early in the Design/Build process can help you identify issues you would not ordinarily consider. Typically, these types of specialty consultants know the other professionals that have relevant experience with projects within their area of specialty, and can make suggestions on which other professionals might be best for your Project. Also, they can make your choices regarding planning, size, scope, and other issues, much quicker and easier.

YOUR Architect/Engineer (“Your A/E”)

While an Architect or Engineer is required to provide assistance to You and be YOUR representative, for the “duration of the project”⁵⁹ it is wise to select them as early in the process as possible. If you have an Architect or Engineer on your staff, (such as a City, County, or District

Architect or Engineer) with the qualifications to represent your interests throughout the Project, then that Professional can fill this role, and an outside professional might not be required. A City Engineer, or County Engineer is often the best choice for this job, because they know YOU, they understand YOUR Project, and they know how YOU want the Project to be used. These factors can make your in-house architect or engineer the best choice for the person to fill the role as Your A/E.

The architectural or engineering professional, that you are required to select to represent you in a Design/Build project, will be referred to as **"Your A/E"** in this Handbook. Whether you use your in-house employee engineer or architect, or whether you use an outside architect or engineer, this Handbook will refer to them as **"Your A/E"**. This will distinguish them in the following chapters from the architects and engineers who will be part of the Design/Build Teams who are seeking a Design/Build contract with you. **REMEMBER, Your A/E will NOT design the whole Project. Your A/E will act as YOUR representative to assist you, represent you and protect your interests, through the Design/Build Process.**

Suggestions for hiring an outside Architect / Engineer.

Some Architects and Engineers embrace the concept of Design/Build; some do not. If you have decided that the Design/Build process is, or may be, the best choice for you and your Project, then search out Architects and Engineers that have real, actual, demonstrable experience with the Design/Build process. In the interviews with those professionals, ask them about:

- Their experience in the Design/Build process generally.
- References you can contact about the Design/Build projects that they have completed.
- Producing their full resume relating to their qualifications as an Architect or Engineer
- Their view of the advantages and disadvantages of the Design/Build process.

Some Architects and Engineers (not all of them) may want to steer you back to the traditional procurement process of Design/Bid/Build. If they are engaged to oversee the Design/Bid/Build process, draw a complete set of plans and specifications for your Project, and create the Bid Package, upon which contractors will submit their bids, they will probably do substantially more work, and accordingly charge you a larger fee, when compared to the faster and more economical Design/Build process.

In short, make sure that you fully evaluate the recommendations and suggestions you get regarding the use of the Design/Build process. The goal is for you to decide which method of project delivery will provide you with the Best Value.

Selection process for Your A/E.

If you don't have an in-house Engineer/Architect, or choose not to use your in-house professional, then you must use the process set out in Section 2254.004 of the Texas Government Code to hire an Architect/Engineer (this mean selecting the best candidate based on demonstrated experience)⁶⁰. Section 2254.004 of the Texas Government Code is part of the "Professional Services Procurement Act."⁶¹ No RFP or RFQ or other competitive process is required by the statute to select Your A/E.⁶² In fact, you are prohibited from using competitive bids in selecting Your A/E.⁶³ While a

RFQ or RFP is permissible, as long as no competitive BID is required, you are not obligated under the Professional Services Procurement Act to publish any notice or request, unless you are a state agency.⁶⁴

Assuming that you are not a state agency, you are not required to publish any advance notice or request, but you are required to select Your A/E using the following criteria:

- (1) on the basis of demonstrated competence and qualifications to perform the services; and
- (2) for a fair and reasonable price.⁶⁵

The negotiation process must be followed in selecting and contracting with an Architect or Engineer is clearly defined. You are required to:

- (1) first select the most highly qualified provider on the basis of demonstrated competence and qualifications; and
- (2) then attempt to negotiate with that provider a contract at a fair and reasonable price.⁶⁶

If you cannot reach an agreement, with the most professional, then begin negotiations with the next most qualified candidate. If you cannot reach an agreement with that Architect or Engineer, then begin negotiations with the next most qualified, and so on.⁶⁷

Scope of work for Your A/E.

Here is a list of things that you may want to contract with Your A/E to complete:

- Prepare a description of the Project for RFQ/RFP
- Prepare the RFQ/RFP with your attorney
- Prepare the General Outline of the Scope of Work for the Project and Design Criteria Package for the Project
- Draft the Evaluation Criteria for evaluating qualifications.
- Create the Master Evaluation Work Sheet for Qualifications
- Evaluate Qualifications with you and other professionals.
- Assist in selecting up to Five Finalists from the Qualifications Submitted.
- Draft the Evaluation Criteria for evaluating proposals.
- Create the Master Evaluation Work Sheet and Scoring Criteria for the Final Proposals
- Evaluate the Final Proposals with you and other professionals
- Assist in selecting the Final Proposal that provides the "Best Value" to you.
- Determine compliance of final design with scope of Project
- Review and approve final construction plans
- Monitor all parts of the construction on your behalf
- Conduct Monthly/Bi-monthly/Weekly Project meetings during construction
- Prepare and submit full reports on the construction and the Project meetings
- Document the construction process with full reports and photos
- Review and approve the percentage of completion draw requests as appropriate

- Participate in resolution of disputes regarding construction
- Review Inspection and construction materials testing reports
- Prepare Final Punch List with Contractor and Design/Build Architect;
- Regularly update Punch List until all items are completed
- Provide guidance and recommendations for acceptance of Project
- Conduct Final Walk-Through inspection prior to the end of the Contractors Warranty Period

An architect or engineer, with experience in the Design/Build process, will know, understand and appreciate each of these areas of responsibility. If you hire an outside professional (rather than utilize an “in-house” professional) the outside Architect or Engineer that you select to be “Your A/E” will have a contract that they use regularly in Design/Build projects that will address these and other issues or you can obtain an Owner’s Representative contract form from the Design Build Institute of America⁶⁸. Regardless of how the contact originates, you should have the contract reviewed and approved by your counsel before signing it.

Attorney.

The Design/Build process for your Project may be subject to many statutes. For example, if a County wants to include a contract with a private company to maintain a jail, then Section 351 of the Local Government Code will apply to that proposal and contracting process.⁶⁹ If a City wants to do the same thing, then Section 361 of the Local Government Code will apply.⁷⁰ If the project being considered is a hospital, then Title 25 of the Texas Administrative Code will be applicable. Additionally, any purchases made in the Design/Build process must be compliant with Section 361.426 of the Health and Safety Code.⁷¹ Moreover, if there is a conflict with any of these laws, then Section 2269 of the Texas Government Code will control.

The list above is a just a small example of the many laws that must be considered when planning a Design/Build project. A qualified attorney, with experience in your type of Project, can explain those laws and help you make decisions for your particular Project. Additionally, an experienced attorney can help you document your decisions and your compliance with all the applicable laws, to reduce future problems. Making and documenting good decisions early on will help avoid problems, delays and unnecessary costs in your Project.

If the requirements of the Design/Build law are not followed, then the Design/Build contract is voidable.⁷² This means that a lawsuit may be brought to enjoin the performance of a Design/Build contract, or declare that it is void. Insuring compliance with the Design/Build laws, and all other applicable rules, regulations, laws, and court orders, is critical, and an experienced attorney can help you do just that.

Delegation.

The law allows the Owner to delegate authority for any action or decision in the Design/Build Process.⁷³ Such authority can be delegated to a person or a committee.⁷⁴ This means that you can give **Your A/E**, your attorney, or a committee, the right to make decisions relating to the Design/Build process. You may want to delegate the decision about ranking the Qualifications or Proposals that you receive. You may want to delegate the initial negotiation sessions to your attorney. However, in

general, even though you could delegate the full responsibility to decide which Design/Build team to hire, those "big ticket" decisions are usually best left to the governing body as a whole, after considering the suggestions and recommendations of the professionals you selected to represent your interests.

If you do choose to delegate any of your choices or authority in the Design/Build process, you must give notice of the delegation, describe the limits of the delegation, and disclose the name or title of each person to whom you have delegated any responsibility.⁷⁵ You can disclose all of this in the RFQ/RFP or in an addendum to the RFQ/RFP.⁷⁶

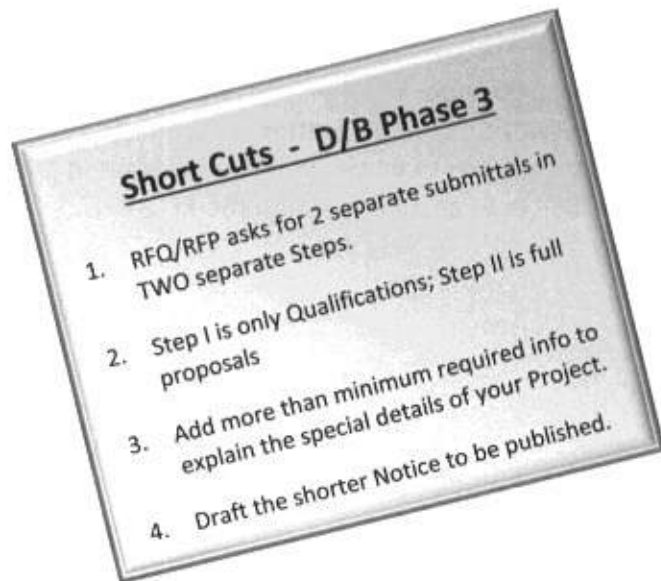
D/B PHASE 3

Write the RFQ/RFP and Notice.

The Design/Build process can only be used if the County publishes an RFQ/RFP (Request for Qualifications and Proposals) – not just an RFP (Request for Proposals).⁷⁷

Writing an RFQ/RFP can seem overwhelming because of all the complex laws that apply to it. However, in a Design/Build process, there are two steps to follow, and each step has clear requirements. You can add more detail to your RFQ/RFP than is actually required by the statutes, but that is your choice. Just keep in mind that there are minimum requirements.

Make sure that you fulfill those minimum requirements, and the rest is just choosing what information to add to the RFQ/RFP so that you get the best possible value.



Civil Works Compliance: For a Civil Works Project, a special resolution finding “appropriateness” for the Design/Build process must be adopted BEFORE the RFP/RFQ is drafted.⁷⁸ See the Civil Works Compliance note in D/B Phase 5.

TWO Step Process

One RFQ/RFP - Establishes TWO Deadlines⁷⁹.

Choosing a Design/Build team must be done in a two-step process. But only ONE RFQ/RFP is required, even though that RFQ/RFP will set TWO deadlines. The RFQ/RFP must be drafted to provide for TWO SEPARATE SUBMISSIONS. The **first** submission is ONLY the qualifications of the Design/Build teams; the **second** separate submission is the full Proposal for the full Project.

Civil Works Compliance: For a Civil Works Project, there are actually THREE separate submissions. First is the qualifications proposal. Then the Finalists selected must submit **two more proposals: (i) The Technical Proposal, and (ii) the Cost Proposal.** The Technical Proposal and Cost Proposal are submitted simultaneously, but in separate sealed envelopes. The Technical Proposal must be opened, evaluated and scored before the Cost Proposal is opened.⁸⁰

RFQ/RFP Step 1: Draft ONE RFQ/RFP that describes both steps and sets two deadlines⁸¹. Then Select Up to Five Finalists with the Best Qualifications.

In **Step 1** you approve the RFQ/RFP, publish the appropriate notice, and then you pick up to 5 finalists from the Qualifications submitted.

The **RFQ/RFP sets the QUALIFICATION Deadline**, which is the date that any interested party may submit their Qualifications for consideration.

The **RFQ/RFP also sets the PROPOSAL Deadline**, which is the date by which Finalists may submit their full Proposals.

What is REALLY happening is that you are issuing an RFQ for qualifications, AND you are adding to that, an RFP, asking that the Finalists submit Proposals for the full Project.

Civil Works Compliance: If your Project is a Civil Works Project, you are NOT limited to selecting only Five Finalists. You may select any number of Finalists to submit full Proposals.⁸²

RFQ Step 2: – The finalists you selected submit final Proposals for the full Project, and you pick the best proposal.

ALERT: This Two Step Process is the heart of the Design/Build Process in Texas. The RFQ/RFP that you write must follow this two-step process.

How far apart must the TWO Deadlines be?

There is no fixed rule for the time that must elapse between the Qualifications Deadline and the Proposal Deadline. The length of time needed is really a practical decision.

How much time will you, and your professionals, need to review and evaluate all the submissions of Qualifications that you receive by the Qualifications Deadline and then notify the Finalists? There is no fixed time limit, and thus the time needed will change from project to project. If the project requires many professional disciplines, there are many submissions, and a large number of team members in each submission, then you may need several days to evaluate all the qualifications of principal team members on each team that submits qualifications. However, if fewer submissions are expected, or the project does not require large groups of team members, then as little as one-half day can provide plenty of time for evaluating qualifications, ranking them. If there has been interest expressed from many parties about their desire to submit qualifications before the RFQ/RFP is published, or if there has been a lot of press coverage regarding your Project, or if you, or the professionals you have selected are not immediately available after the Qualifications Deadline to review the submissions, you may need to build in window of several days between the Qualifications Deadline and the Proposal Deadline. If your Project is especially complex, then you may need to allow even more time to permit the finalists to complete the full Project proposals by the Proposal Deadline, AFTER they have been notified that they have been selected as a finalist. However, you are not required to provide any specific time limit between the deadline for submitting qualifications and the deadline for submitting full proposals. Seven to ten days is usually sufficient in most circumstances. The parties submitting their qualifications know that they may be a finalist (in

fact they all certainly expect to be selected as a finalist) and they are typically preparing their final proposals while they prepare qualification submission.

Civil Works Compliance: While there is no required time frame between the Qualifications Deadline and the Proposal Deadline for projects that are “Buildings”, if your Project is a Civil Works Project then there **IS** a deadline to consider. For Civil Works Projects, a Design/Build firm must submit their Proposal not later than 180 days after the public Request for Proposals is made to the Finalists. Therefore, the Proposal Deadline for Civil Works Projects should not exceed 180 days after the **FIRST** date of publication of the Notice of the RFQ/RFP.⁸³

Requirements for the Design/Build RFQ/RFP.

As you begin drafting the RFQ/RFP, keep in mind that your goal is to provide the Design/Build Teams interested in your Project, with enough information about your Project so that they can submit (i) Relevant Qualifications in Step 1 (Qualifications Stage); and (ii) Design and Construction proposals that meet your needs as fully as possible (Proposal Stage). So, in most instances, providing more detailed information in the RFQ/RFP will promote more qualified Design/Build Teams to submit their qualifications and proposals, and those Proposals will be closer to what you are trying to get.

And don't forget that you can always draft the RFQ/RFP to request options on various features of the Project, if you are not certain about every aspect of your Project. Getting proposals for various options is one of the real benefits of the Design/Build process.

The information that you are **REQUIRED** to publish in the RFQ/RFP is set out below⁸⁴.

ITEMS THAT ARE REQUIRED IN A Design/Build RFQ/RFP:

- Project Site
- Project Scope
- Budget for the Project
- Special Systems
- Deadline for Submission of Qualifications
- All the criteria that will be used to select up to five Finalists in Step 1
- Relative weights assigned to each criteria to be used in Step 1
- Deadline for Submission of Final Proposals by the selected Finalists
- All the criteria that will be used to select Proposers in Step 2
- Relative weights assigned to each criteria to be used in Step 2
- Other information that may assist Design/Build firms in submitting proposals
- Design Criteria Package

The information that is required to be included in the RFQ/RFP (listed above) is typically not enough to fully protect you, and to provide interested parties with enough information to get you the Project that you want.

Civil Works Compliance: In the Design/Build process for a Civil Works Project, the Finalists selected to submit Proposals, must submit **TWO** separate sealed proposals in Step 2. Finalists

must submit a sealed "Cost Proposal" and a sealed "Technical Proposal". This requirement for the submission of Two Proposals must be described in the RFQ/RFP.⁸⁵

In order to get the types of proposals that you want, you should also include specific Information on the following subjects.

Supplemental Items you should consider including in the RFQ/RFP:

- Precise date, time and place of the QUALIFICATIONS Deadline for Step 1
- Precise date, time and place of the PROPOSAL Deadline for Step 2
- Format of the Responses – hard copy, electronic or both, number of signed originals, number of copies, etc.
- Name and contact information of person to contract for questions
- How to request and get a copy of the full RFP/RFQ and the Design Criteria Package
- Special terms that you want included in your Project.
- Requirement to include copies of all proposed key documents (Design/Build Contract, etc.) in the Proposal.
- Guaranteed Maximum Price of the Design/Build contract
- Details on delivery of Bid Bond, and Performance and Payment Bonds
- Details on the types and amounts of insurance the Team must provide
- Descriptions of options for different versions of the Project
- Request a Proposal on each of the Options described
- References from Owners of other similar projects built by the proposed Team
- You reserve the right to reject any and all submissions
- You reserve the right to waive any errors or defects in submissions
- You will not pay for anyone's expenses in preparing submissions

Civil Works Compliance: In the Design/Build process for a Civil Works Project, a stipend can be paid to the unsuccessful bidders, in order for the Owner to secure the right to use the designs, inventions and solutions on unsuccessful proposals. The stipend (1/2 of 1% of the Design/Build contract) must be offered and paid before those rights are reserved to the Owner. Without the payment of the stipend, the unsuccessful proposals are deemed confidential and may not be disclosed to any person.⁸⁶

Freezing of Team Members.

As of 2013, a new section of the Design/Build statute (Section 2269.3615) allows you to require Finalists to identify companies that will:

1. Fill key project roles (including project management, lead design firm, quality control management and quality assurance management;
2. Serve as key task leader for geotechnical, hydraulics and hydrology, structural, utility and right-of-way issues.

If these requirements are implemented, and a Finalist that identified the companies listed above is selected for a design/build agreement, then selected firm cannot make changes to those companies, unless certain exceptions are met⁸⁷. If the select firm makes unauthorized changes in those companies, any cost savings resulting from such a change accrue to the governmental entity, and not to the design-build firm.

A sample TWO-STEP RFQ/RFP for a County "Building" is attached as Exhibit A.

ALERT. Exhibit A is a form that will provide you with a starting point in drafting an RFQ/RFP for a Design/Build project for a "Building" (not a "Civil Works Project"). This form must be modified to fit the requirements of YOUR Project.

EXCLUSIONS from the RFQ/RFP.

The RFQ/RFP cannot include any term or condition that might deny or diminish the right of a person to work because of that person's membership or relationship status with respect to an organization.⁸⁸ While this limitation prohibits you from asking for a person's affiliation with any organization, there is nothing that precludes you from including in your RFQ/RFP a request that each member of each Design/Build Team include their resume (detailing professional, education and work experience) in their response, showing their qualifications to be considered.

Civil Works Compliance: The requirements for an RFQ/RFP for a Civil Works Project⁸⁹ are similar but not identical to the requirements for and RFQ/RFP for a project that is a Building, but there are differences. The required elements are listed below:

- Project Scope
- Budget for the Project
- Project Schedule
- Deadline for Submission of Qualifications
- All the criteria that will be used to select up to five Finalists in Step 1
- Relative weights assigned to each criteria to be used in Step 1
- Deadline for Submission of Final Proposals by the selected Finalists
- All the criteria that will be used to select Proposers in Step 2
- Relative weights assigned to each criteria to be used in Step 2
- Other information that may assist Design/Build firms in submitting proposals
- Design Criteria Package⁹⁰

In the Design/Build process for a Civil Works Project, the Finalists must submit a Cost Proposal and a Technical Proposal. In addition to the items listed about the RFP portion of the RFQ/RFP must address the requirements for both of these Proposals, and must include:⁹¹

- If the Project Site is identified, then a geotechnical baseline report or other information that provides the Design/Build firm minimum geotechnical design parameters to submit a proposal;
- Detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and

- The relative weighting of the technical and cost proposals, and the formula by which the proposals will be evaluated and ranked.⁹²
- Directive to submit a sealed technical proposal and a separate sealed cost proposal.⁹³
- Requirement that each technical proposal address: project approach, anticipated problems, proposed solutions to anticipated problems, ability to meet schedules, conceptual engineering design, and other information requested by the governmental entity.⁹⁴

Draft the Notice to be published.

The RFQ/RFP can be very long. While the cost to publish the entire RFQ/RFP can be significant, there is no need to publish the entire RFQ/RFP. You can publish a "NOTICE OF REQUEST FOR QUALIFICATIONS AND PROPOSALS" that is substantially shorter than the full RFQ/RFP. Basically, the Notice will give general information about the Project, the deadlines and the place to get a copy of the full RFQ/RFP including the Design Criteria Package.

The Notice that is published must include at least the "...notice of the time and place the bids or proposal, or request for qualifications, will be received and opened."⁹⁵ However, to provide effective and clear notice to all prospective Design/Build Teams, additional information should be included. For example, consider including the following items in your Notice:

- General description of the Project
- Detailed description of the format for Qualifications Submission and Proposal
- The specific date and time of the Qualifications Submission Deadline
- The specific date and time of the Proposal Deadline (for the Finalists selected)
- The place for delivery of the Qualification Submissions and Proposals
- Clarify your right to reject any and all submissions
- Clarify your right to waive any irregularities in submissions
- Reserve your right to request additional information and an interview
- The name, mailing address, e-mail address, and telephone number of Owner's (Your) representative to contact for:
 - Questions about the Project and Design/Build process.
 - Copies of the full RFQ
 - Copies of the Design Criteria Package

A sample Notice of Request for Qualifications and Proposals is attached as Exhibit B.

ALERT. Exhibit B is a form that will provide you with a starting point in drafting Notice to be published. This form must be modified to fit the requirements of YOUR Project.

Evaluation Criteria and weightings should fit your Project.

Both Step I (Qualifications) and Step II (Project Proposals) of the RFQ/RFP must contain the evaluation criteria, and their relative weightings, that you will use in evaluating the Qualifications

Submissions and Full Proposals that are delivered to you. Typically the Respondents sculpt their submissions and proposals to relate to these criteria and their weightings, so the clarity of the criteria and weightings can help prompt responses that fit your particular needs.

Specific evaluation criteria are required when evaluating Qualification Submissions.⁹⁶ However, any relevant criteria can be added in evaluating Proposals.⁹⁷ You will find some suggested evaluation criteria and weightings in Exhibits A, B & C. The evaluation criteria in those Exhibits are merely set out as examples of criteria and weighting factors that can be used.

Evaluation Criteria for Qualification Submissions.

The following evaluation criteria are required by the Design/Build statute, for use in evaluating the Qualification Submissions for Buildings and Civil Works Projects.⁹⁸ You are to consider and evaluate:

1. Each Proposer's (or the Team's) experience,
2. Each Proposer's (or the Team's) Technical Competence
3. Each Proposer's (or the Team's) Capability to Perform
4. Each Proposer's (or the Team's) Past Performance
5. **Other Appropriate Factors submitted in their Response to the Qualifications Request.**
6. Certification by each Respondent that each architect or engineer on the team was selected based on demonstrated competence and qualifications in compliance with Section 2254.004 of the Texas Govt. Code.

Note in Item 5 that you are permitted to consider *any appropriate factors* that a Design/Build Team submits in the Qualification Submission. However, even if cost information is submitted by a Design/Build team in the Qualification Submission, you are not permitted to consider that information during the evaluation of Qualifications.

Evaluation Criteria for Proposals.

Because the evaluation of the Proposals (to determine which Proposal provides the "Best Value") is so critical, care should be taken in drafting the evaluation criteria. You can only evaluate the Proposals with the Evaluation Criteria (and their relative weightings) that are set out in the RFQ/RFP and included in the Notice.⁹⁹ However, it is not possible to anticipate every imaginable term or offer that will be contained in every Proposal. So, your Evaluation Criteria should be specific enough to advise Design/Build Teams what to expect, but general enough to allow you to apply them to the widest possible array of terms that may be proposed to you.

As part of the process in determining the "Best Value" for the County/City, District, etc., the Design/Build statute allows you to consider the factors listed below in awarding a Design/Build contract.¹⁰⁰ You are NOT required to consider each of these factors. But, you *may* consider any of these factors in evaluating the Proposals from Finalists:¹⁰¹

- (1) The purchase price;
- (2) The experience and reputation of the Proposer;
- (3) The quality of the Proposer's goods or services;
- (4) The impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) The safety record of the Proposer;
- (6) The personnel proposed for the Project
- (7) Whether the Proposer's financial capability is appropriate to the size and scope of the Project; and
- (8) ***Any other relevant factor specifically listed in the RFQ/RFP.***
(Emphasis added)

Item 8 listed above authorizes you to add any item to the list of factors that you believe are important to YOUR Project. All that is required is to clearly state the item in the RFQ/RFP.

You are only required to list in the RFQ/RFP (whether in the Qualifications section or the Proposal Section) the factors and their relative weightings, that you ***will*** consider and apply.

The Evaluation Criteria (and their relative weightings) for Proposals, that are included in Exhibit A (Sample RFQ/RFP), are an example of how the Evaluation Criteria can be customized to fit your Project. They are reprinted here to provide you with suggested criteria and weightings to consider.

Step 2 Evaluation Criteria and Weighting Factors

Group A – The following factors will be given a total weight of 20%

1. Respondent's (and Team's) experience
2. Respondent's (and Team's) technical competence
3. Respondent's (and Team's) past performance
4. The reputation of the respondent and its team members
5. The quality of the services provided by the respondent

Group B – The following factors will be given a total weight of 30%

6. The degree to which Respondents Guaranteed Maximum Price is less than the Amount of the Project Budget.
7. Respondent's (and team's) capability to perform
8. Feasibility of implementing Project as proposed
9. Ability of respondent to meet schedules and estimated time for completion
10. The extent to which the respondent's proposal complies with the requirements of the RFQ/RFP
11. The Costing Methodology of the Respondent (policies on subcontractor markup, definition of general conditions, range of costs for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties)

Group C – The following factors will be given a total weight of 35%

12. The price/cost for the goods and services requested in the RFQ/RFP
13. The method and cost of financing *(if applicable)*
14. The long-term cost to County
15. Ability of Respondent to deliver: legal title to qualifying site *(if applicable)*, availability of adequate and timely utilities; zoning or special use permitting; and environmental site assessments
16. Economic benefit to County

Group D – The following factors will be given a total weight of 15%

17. Safety and long-term durability
18. The extent to which the Proposal meets the County's needs.

Other Evaluation Criteria.

Other evaluation criteria that you may want to consider could include the following:¹⁰²

A. QUALIFICATIONS AND EXPERIENCE. Factors to be considered in either stage of evaluation to determine whether the Respondent and its team members, possess the requisite qualifications and experience will include the following, along with the responses to the questions contained in the RFQ/RFP:

1. Experience working with the public sector on public-private real estate development projects.
2. Experience, training and preparation with projects of similar size, scope and complexity;
3. The extent of available personnel, logistical resources, bonding capacity, and the ability to complete the Project in a timely and professional manner;
4. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
5. Demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;
6. Leadership structure;
7. Project Manager's and Superintendent's experience;
8. Management and operational plans;
9. Team's experience working together
10. Financial condition and capacity; and
11. Project ownership.

B. PROJECT CHARACTERISTICS. Factors to be considered in evaluating characteristics of the proposed Project may include, but are not limited to:

1. Project scope and scale, land use and product mix;
2. The extent that the timing of the proposed Project is consistent with the Owner's timing of its comprehensive asset management and development strategy;
3. Data and reports resulting from project analyses;
4. Operation of the Project;
5. Technical feasibility;
6. Conformity to laws, regulations, and standards;
7. Environmental impacts;
8. Condemnation impacts;
9. Federal, state and local permits; and
10. Maintenance of the Project.

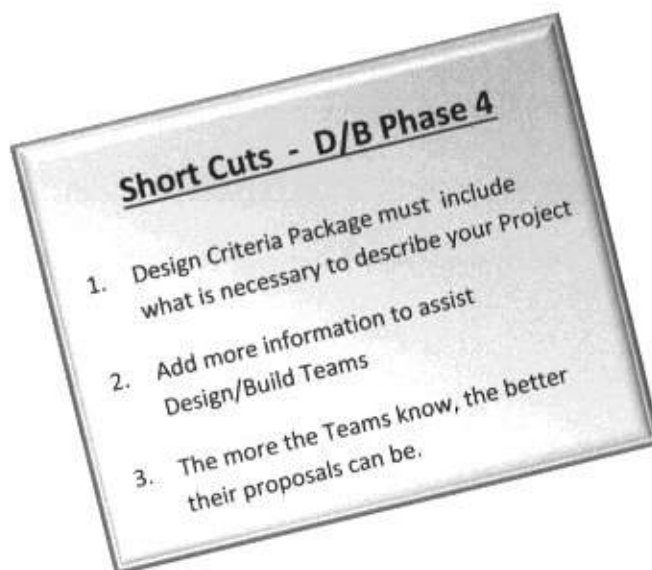
D. PROJECT COST AND FINANCING. Factors to be considered in evaluating whether the proposed financing allows adequate access to the necessary capital to finance the proposed Project include:

1. Cost and cost benefit to the County/City/District, etc.
2. Financing and the impact on the debt or debt burden of the County/City/District, etc.
3. Financial plan, including overall feasibility and reliability of plan; Respondent's past performance with similar plans and similar projects; the degree to which the Respondent has conducted due diligence investigation and analysis of proposed financial plan and the results of any such inquiries or studies;
4. Estimated Project cost and life-cycle cost analysis; and
5. The identity, credit history, past performance of any third party that will provide financing for the Project and the nature, amount, and timing of their commitment, as applicable.

D/B PHASE 4

Write Design Criteria Package.

- Create the Design Criteria Package and make it available upon request.
- The Design Package is intended to provide more details about your anticipated end use, design and construction requirements than is included in the general information that must be part of the Published RFQ/RFP.
- This Design Criteria Package should be created with the assistance of the Professionals that you have selected early on.
- If the Design Criteria Package will include any architectural or engineering items, then those items must be prepared by the Architect or Engineer that you have selected.
- The Design Criteria Package can include any design or construction related information that will help the Design/Build teams provide you with designs, construction and proposals that are closer to what you want and need.



Design Package Requirements

The Design Criteria Package is a set of documents that provides sufficient information to permit a Design/Build firm to prepare a response to your Request for Qualifications and any additional information requested, including criteria for selection of the final Design/Build team.¹⁰³ The Design Package **MUST** specify all the criteria the County/City/District, etc. considers necessary to describe the Project.¹⁰⁴ As you decide what information you will include in the Design Criteria Package that you think is “necessary to describe the project”, you may consider and include, as appropriate, some or all of the items listed below.¹⁰⁵ These are **NOT** mandatory items. This is a list of the items you **MAY** want to include. You are not limited to the items in this list.

- The legal description of the site
- Survey information concerning the site
- Interior space requirements,
- Special material requirements
- Material quality standards
- Conceptual criteria for the Project
- Special equipment requirements
- Cost or budget estimates

- Time schedules
- Quality assurance and quality control requirements
- Site development requirements
- Applicable codes and ordinances
- Provisions for utilities
- Parking requirements
- Or any other requirement, as applicable

Customize the Design Criteria Package for YOUR Project.

The Design Criteria Package is only REQUIRED to include those things that:

- (i) Permit a Design/Build firm to prepare a response to the RFQ and any additional information you have requested;
- AND
- (ii) You consider NECESSARY to describe your Project.¹⁰⁶

But adding additional items to the Design Criteria Package, beyond what is only required, can give each Design/Build Team a more detailed understanding of what you want, which can result in Proposals that are more focused on what will work for you.

ALERT. You CANNOT require that architectural or engineering designs be submitted as part of Proposals or with Qualifications Submissions.¹⁰⁷ However, you can require the submission of “conceptual” drawings that explain the Proposal.

For example, you might want to address the following in the Design Criteria Package, if these subjects apply to your Project:

Site – more details about the site you have selected, or the requirements of any site that a Design/Build team may be required to propose for your Project. You might describe the number of acres, location of existing utilities, any investigations or environmental assessments that have been completed, or that you want to see in the proposal about a site proposed for the Project, etc.

Utilities – details about the specific quantities, qualities, back-up, and distribution systems for all utilities, including internet, power, sewer, water, gas, etc.

Security – more details about the specific security requirements, such as access controls and visitor security investigation and verification, for the Project.

Systems – you can provide details about the computer and other systems that you use, and how any new systems must be compatible, such as software, security, utilities, monitoring, access, etc.

Regulations – your Project may be subject to special regulatory issues that must be fulfilled. While the Published RFQ/RFP will say that the Project must be “...designed and built in full compliance with all applicable laws, rules, regulations and Court orders...”, you may want to include specific information about regulatory or court ordered requirements that need to be fulfilled in the your Project. When building a County Jail, a specific reference to the applicable requirements of the Texas Commission on Jail Standards is advisable. When building a hospital, you should include a reference to compliance with Title 25 of the Texas Administrative Code. If there are specific orders or other rulings affecting the County, City, District, etc. a description of those court orders will insure that they have been brought to the attention of all the Design/Build teams who submit their qualifications and a proposal.

The Design Criteria Package is unique for each site, project and community. Draft a Design Criteria Package that provides potential Design/Build Teams with the technical information they need, to understand your requirements for your Project. The more customized you make the Design Criteria Package; the better the chances will be that the proposals you receive will meet or exceed those requirements.

A sample Design Criteria Package is attached at Appendix C.

ALERT. Appendix C is a form that will provide you with a starting point in drafting a Design Criteria Package. This form must be modified to fit the requirements of YOUR Project.

Have copies of the RFQ/RFP and Design Criteria Package available.

Once you have completed the Design Criteria Package, you should have copies of it made, and give the copies to the “designated representative” of the County. That is the person identified in the RFQ/RFP as the contact person for the County. Any interested Design/Build team should be able to request and receive a copy of the full RFQ/RFP and the Design Criteria Package from the designated representative.

Civil Works Compliance: If your Project is a Civil Works Project, then the Design/Criteria Package is defined as a set of documents that:¹⁰⁸

- (A) Provides sufficient information to convey the intent, goals, criteria, and objectives of the Civil Works Project; and
- (B) Permits a Design/Build firm to:
 - (i) Assess the scope of work and the risk involved; and
 - (ii) Submit a proposal on the subject.

This general definition establishes the purpose of the Design Criteria Package for a Civil Works Project. More specifically, the Design Criteria Package for a Civil Works Project may include the following items, as appropriate:¹⁰⁹

- Budget or Cost Estimates;
- Information on Site;
- Performance criteria;
- Special material requirements;
- Initial design calculations;
- Known utilities;
- Capacity requirements;
- Quality assurance and quality control requirements;
- The type, size, and location of structures; and
- Notice of any ordinance, rules, or goals adopted by the governmental entity relating to awarding contracts to historically underutilized businesses.

D/B PHASE 5

Publish the Notice of RFQ

- FIRST, make a “Best Value” determination.

The law requires that you make a formal determination and declaration that the Design/Build process will provide the “best value” for the Owner.¹¹⁰ Obviously, this should be done at a public meeting that has been properly posted. This declaration can be made at the same meeting that authorizes the issuance of the RFQ/RFP, BUT the declaration of “Best Value” must be made BEFORE the authorization of the advertisement of the RFQ.



A sample “Best Value” resolution has been included as Exhibit D. This resolution is provided as a template for the consideration of whether the Design/Build method of project delivery will provide the Owner/You with the “Best Value” when compared to the other methods of project delivery made available by Section 2269 of the Texas Government Code.

From a practical standpoint, you should make this determination about the value of the Design/Build process, early on. The professionals that you have selected can help you evaluate each method of project delivery, and provide you with the background information you need to make an informed choice about whether or not the Design/Build process will provide you with the Best Value, compare to the other methods.

There are no required items to consider in making the “Best Value” determination for a “Building” except all the other methods of project delivery. However, the mandatory criteria to be used when evaluating the Design/Build process for a Civil Works Project can be helpful.¹¹¹ See Exhibit D – Sample “Best Value” resolution – as an example.

Civil Works Compliance: If the Project is a Civil Works Project, a “Best Value” determination is not required, but a finding of “Appropriateness” is required. The governmental entity must make a finding that the Design/Build process is appropriate for the Civil Works Project, BEFORE preparing an RFQ/RFP¹¹². The Owner/You must make a formal finding on at least the following criteria:¹¹³

1. The extent to which the entity can adequately define the Project requirements;
2. The time constraints for the delivery of the Project;
3. The ability to ensure that a competitive procurement can be held; and

4. The capability of the entity to manage and oversee the Project, including the availability of experienced personnel or outside consultants who are familiar with the Design/Build method of project delivery.

Other factors can be included in making the determination of “appropriateness” at the option of the governmental entity. Clearly documenting this process with resolutions and analysis will ensure the ability to prove this determination was made properly.

- o SECOND, approve the RFQ/RFP and Authorize publication of the Notice.

At a public meeting, that has been properly posted, you should approve the RFQ/RFP, and direct that the Notice of RFQ/RFP be published. This assumes that you have drafted the RFQ/RFP, Notice of RFQ/RFP and the Design Package, and that all of those items have been distributed to the appropriate officials for review in advance.

Here is a sample resolution approving an RFQ/RFP, Design Criteria Package, and Notice of RFQ/RFP, as well as authorizing publication of the Notice of RFQ/RFP all relating to a “Building”:

Consideration and Action Regarding the County Issuing a Request for Qualifications and Proposals, Utilizing the Design/Build Contract Method of Project Delivery, Seeking Qualifications and Proposals from Qualified Respondents for the Development, Design, Construction, and Equipping of a 500 Bed County Jail.

Motion was made by Commissioner _____, and seconded by Commissioner _____, to: (i) approve the proposed Request for Qualifications and Proposals for the Development, Design, Construction and Equipping of the proposed 500 Bed County Jail (“RFQ/RFP”); and (ii) direct the clerk of the County to publish the RFQ/RFP as required by law, in such places and at such times as shall be directed by the County Attorney. This motion was supported and passed by FIVE votes in approval and zero “nay” votes.

Exhibit D includes the form of minutes for public meeting, at which the following items were considered and appropriate action taken:

1. Report from Your A/E regarding evaluation of all methods of project delivery, and the recommendation that Design/Build will provide the “Best Value” to the County.
2. Determination by the County that Design/Build method of project delivery will provide the best value to the County for this project.
3. Report from Your A/E describing the proposed RFQ/RFP that has been drafted and distributed to the Commissioner’s Court.
4. Approval of the RFQ/RFP by the Commissioner’s Court.
5. Directing the appropriate person(s) to publish the RFQ/RFP as required by law.

- o THIRD, publish the Notice of the RFQ/RFP as required.¹¹⁴

County Publication Requirements: Generally, a County is required to publish the Notice of RFQ/RFP in a newspaper of general circulation in the County, once each week for at least two weeks before the deadline for receiving responses or proposals.¹¹⁵ This means that the notice period could be as short as fifteen days (For example, the Notice could be first published on a day in Week 1, the second publishing on a day in Week 2, and the Proposals are opened on the first day of Week 3).¹¹⁶ This is a minimum requirement. You have the option to publish more times giving longer notice before proposals are opened, but that is not required by law.

There may be other statutes that require a longer publication period. For example, if a County seeks to enter into a contract with a private entity to design or build a County jail, then the competitive process must be published for a 30 day period.¹¹⁷ If there is no newspaper of general circulation in the county, the notice must be posted at the courthouse door of the county, and published in the newspaper of general circulation in the nearest county.¹¹⁸

City and Other Publication Requirements: A city, river authority, conservation and reclamation district¹¹⁹ (located in a county with population of more than 250,000) and a defense base development authority must publish their Notices of RFQ/RFP at least once each week, for at least two weeks before the deadline for receiving responses or proposals¹²⁰. The Notices are to be published in a newspaper of general circulation of a county, selected as follows:¹²¹

| Public Entity | County for Publication |
|---------------------------------------|--|
| Defense Base Development Authority | County where central administrative office is located |
| City/Municipality | County where central administrative office is located |
| River Authority | County where the greatest amount of the Authority's territory is located |
| Conservation and Reclamation District | County where the greatest amount of the District's territory is located |

If there is no newspaper of general circulation in the County listed in the table above, then the Notice is to be published in a newspaper of general circulation in the County nearest the County seat of the applicable County listed in the table above.¹²²

General Publication Requirements: Section 2269 (the Design/Build process) is applicable to many governmental entities that are not given a specific publication requirement as described in the table above. For those entities, the only obligation imposed by Section 2269 is that the Notice be published "... in a manner prescribed by law."¹²³ These entities include:

- State Agencies¹²⁴
- Texas Facilities Commission¹²⁵
- School Districts
- Hospital Districts
- Water Districts
- Water Authorities

- Any other Special District or Authority¹²⁶
- Any other political subdivision of the State
- A public Junior College¹²⁷
- A board of Trustees governed by Ch. 54 of the Tex. Trans. Code¹²⁸

With nothing more than the guidance in the statutes that they publish the Notice “in a manner prescribed by law”, these remaining entities to which the Design/Build statute is applicable, should consider using the standard procurement requirement for local governmental entities.¹²⁹ This requires publication of the Notice in one or more newspapers of general circulation in the County or Counties where the work will be performed. Thus, if the Project (especially a Civil Works Project will cross County lines, the publication must appear in a newspaper of general circulation in BOTH Counties.

Then Notice must appear in the applicable newspaper(s) at least twice in a two-week period before the applicable deadline, with the last publication being at least 10 days prior to the deadline for submission of qualifications or proposals.¹³⁰

Also, on or before the first date that the Notice is published, the Notice must be mailed to any organization that:

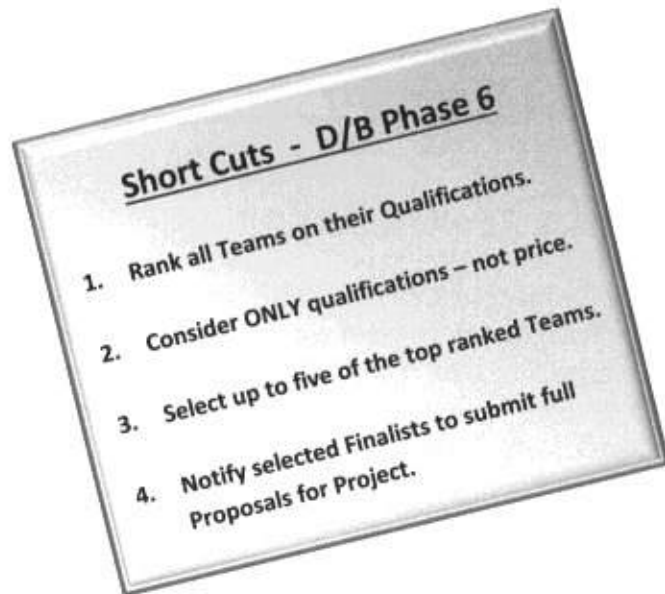
- (1) Requests in advance that notices for bids be sent to it;
- (2) Agrees in writing to pay the actual cost of mailing the notice; and
- (3) Certifies that it circulates notices for bids to the construction trade in general.¹³¹

ALERT. Be certain that you have complied with the location, method, and time requirements for publication of the Notice of RFQ/RFP for your Project. More than one statute may apply to the publication requirement.

D/B PHASE 6

Rank the Qualifications and Pick Finalists.

- You have written and published the RFQ/RFP.
- You have answered any questions that have been submitted.
- You have delivered or mailed out copies of the RFQ/RFP and the Design Criteria Package.
- The Qualifications have been submitted.
- The deadline for submitting Qualifications has passed.



What do you do now?

The Design/Build Process must now follow TWO steps.

The process to follow in **RFQ/RFP Step 1** is:

- Design/Build Teams submit **ONLY** their Qualifications by the Qualification deadline.
- You open the Qualification Submissions in public at the time stated in the RFQ/RFP.
- You read aloud the name of each entity or Team that has delivered a Qualifications Submission by the deadline.¹³²
- You and your Professionals review these qualifications and rank them using the criteria and weighting stated in the RFQ/RFP for evaluating the Qualifications.
- You select up to **FIVE** Design/Build teams who submitted the best qualifications. This selection of up to five finalists is based only on qualifications; **Price and design are not considered in selecting up to five finalists.**
- You then notify up to five "finalist" Design/Build Teams, that they may submit their **PROPOSAL** by the **PROPOSAL** deadline.¹³³

Civil Works Compliance: In the Design/Build process for a Civil Works Project, there is no limitation on the number of Finalists that can be selected to submit full proposals.¹³⁴ You can select more than Five Finalists.

ALERT. Once you receive Qualification Submissions, you are starting the 'selection process'. You **MUST** document the basis of your selection of the final winning Design/Build Team.¹³⁵ Start that documentation early.

Do not accept Responses after Deadline.

Do not accept any responses after the deadline for submission has passed. It is unfair to the Design/Build teams that met your requirements, to allow others to miss the deadline for submission. This is especially true, if you have already opened the responses that were delivered on time. There might be other requirements that you can waive, and still provide a fair competitive system for all parties, but late filing of qualifications or a proposal is not a requirement that you should change.

Civil Works Compliance: In the Design/Build process for a Civil Works Project, you may, at your discretion, reject as nonresponsive, any Respondent (Design/Build firm or team) that makes a significant change to the composition of its firm (or team) as initially submitted.¹³⁶ Though not specifically stated, this special right of rejection appears to be available until a Design/Build contract is executed.

Rank the Design/Build Teams Based On the Qualifications Criteria and Weightings in the RFQ/RFP

The easiest way to rank the qualifications of the Design/Build teams is to review each Qualifications Submission and score it on a 'Score Sheet'. A sample score sheet is attached as Exhibit E. (This score sheet must be customized to reflect the criteria and weightings you set out in your RFQ/RFP for evaluating and ranking the Qualifications Submissions). The Master Score Sheet lists each of the criteria for evaluating Qualifications (which were published in the RFQ/RFP) and the relative weighting of each criterion (which were also included in the RFQ/RFP).

From the completed Master Score Sheet you will determine which Design/Build teams have the highest and lowest overall scores/rankings.

All of this review and ranking can be done by the Professionals that you selected early on to help you in the Design/Build process. Qualified professionals will have done this sort of "evaluation and ranking" before, so they will be familiar with the process. You can always assign one or more of your employees to work with the professionals in the "evaluation and ranking process".

Evaluating qualifications is not an exact science. It is subjective. So having more than one person evaluate the qualifications of each Design/Build Team will provide a group of scores for each Design/Build team that can be averaged. Once again, the Professionals that you selected (Architect, Engineer, Consultants, Attorney, etc.) can be part of this Evaluation and Ranking process.

In evaluating the Qualifications submitted, you are to consider and evaluate the following factors for each Design/Build Team or Firm:¹³⁷

- Their Experience
- Their Technical Competence
- Their Capability to Perform
- Their Past Performance (including past performance of members of the term/firm)
- Other appropriate factor submitted by the Team/Firm in response to the RFQ/RFP.

Exclusion from Consideration.

Neither you, nor your consultants, nor the professionals representing you (who participate in the evaluation of Qualifications) may consider the following in the evaluation of Qualifications:

- Whether any person is a member of, or has another relationship with any organization.¹³⁸
- Cost-related or Price-related evaluation factors.¹³⁹

ALERT: At this stage you rank the Design/Build teams based upon their **QUALIFICATIONS ONLY!** During **STEP ONE** of the Design/Build process, you do not consider price at all in your ranking of the most qualified Design/Build teams.

Pick Up to FIVE of the top - Ranked Design/Build Teams and Notify Them.

The completed Master Score Sheet will provide you with a properly weighted score for each of the Design/Build teams, based solely upon their qualifications. You have ranked their scores from Highest to Lowest. You now pick up to five of the highest ranked Design/Build Teams. You do not have to pick five. You can choose to consider FEWER than five teams. But you cannot consider more than five teams.¹⁴⁰

Next you notify up to five of the top five Ranked Teams that they are authorized to submit their PROPOSALS by the deadline set forth in the RFQ/RFP. You can interview the Finalists if you choose to do so.¹⁴¹

While you are not required to notify the remaining Respondents, that they were not selected as a Finalist, it would be wise to do so. It is a professional courtesy to the non-Finalist Respondents (who typically spent a lot of their time and money preparing a response) to advise them that they were not selected as a Finalist. Moreover, these non-Finalists may be interested in submitting bids, responses and/or proposals for your next project. Maintaining a business-like relationship with them, can be a benefit to you in the future.

Civil Works Compliance: In Civil Works Projects, you are not limited to only five Finalists. You may select as many Finalists as you deem qualified to submit final proposals.¹⁴²

Documenting the Selection of the winning Design/Build team.

You must make all your evaluations public within seven days of the date that you “award” the Design/Build contract, not the date it is signed. In order to make those evaluations public, you are REQUIRED to document your selection of the winning Design/Build Team.¹⁴³ The earlier you begin the process of documenting your evaluations, the easier it will be to make those evaluations public.

The simplest form in which the disclosure of the evaluations can be made public, is to make public the Score Sheets that you use in the evaluation procedure. This should be done in a properly noticed meeting of the governing body of the governmental entity making the selection. The fact that the Score Sheets are available to the public, and how to get copies, should be reflected in the minutes of the meeting.

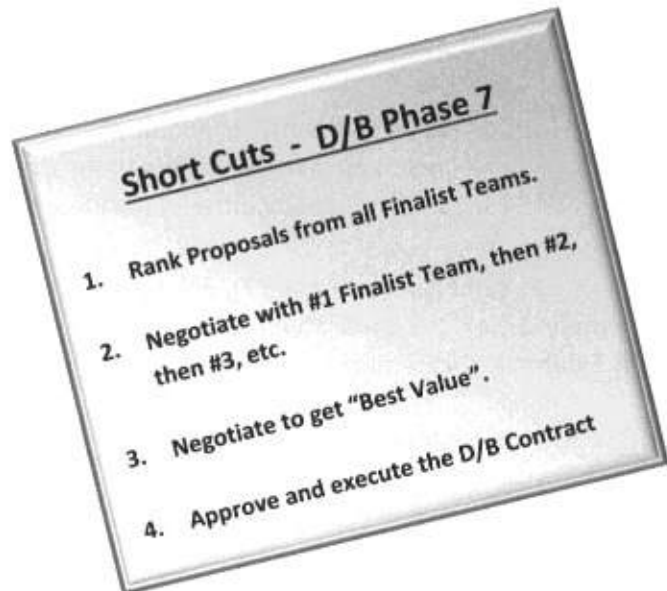
ALERT: You are NOT required to disclose ANY of your evaluation and selection processes until seven days AFTER the Design/Build contract is awarded.¹⁴⁴ You are not required to disclose the process used to select the Finalists until AFTER the Design/Build contract is awarded.

D/B PHASE 7

Rank the Proposals and Start Negotiations.

The process to follow in RFQ/RFP Step 2 is:

- Each Finalist Team submits their full Project PROPOSAL by the PROPOSAL Deadline.
- The PROPOSALS include conceptual designs, pricing, completion schedules and detailed data about the Project.
- You and your Professionals review the submitted Proposals and rank them, using the criteria and weightings stated in the RFQ/RFP for evaluating the Proposals.
- You now begin your negotiations with only ONE Team at a time.



ALERT – In the Design/Build process, you cannot engage in “shuttle negotiations” between two or more Design/Build teams that were selected as Finalists. You CANNOT negotiate with more than one Design/Build team at a time. To do so, will risk compliance with the Design/Build statute and subject the Design/Build contract being voided.¹⁴⁵

Proposals are received, reviewed and ranked by the criteria listed in the RFQ/RFP.

The ranked Design/Build Teams, who have been notified that they are Finalists, now submit their Proposals for the full Project by the Proposal Deadline established in the RFQ/RFP. At the appointed time (as described in the RFQ/RFP) you officially receive each of the Proposals that was submitted by the deadline, and you read aloud the name of each Respondent or Team.

You review the contracts and other documents that are included in the Proposals of these Finalists. You have not considered price until now. The review of the full Proposals is the first time that you have actually reviewed their proposed plan for the Project, looked at their suggested design (by reviewing ‘conceptual’ drawings – not full plans which you cannot require to be submitted in Proposal¹⁴⁶), evaluated their construction schedule and considered the price of the Project that they propose.

Directive to consider specific statutes.

As you decide on the award of a Design/Build contract, you MUST consider the following criteria, IN ADDITION to the Evaluation Criteria that you published in the RFQ/RFP.

- You must consider and apply any existing law, including any criteria, related to historically underutilized businesses; and
- You must consider and apply any existing laws, rules or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small or disadvantaged businesses.¹⁴⁷

In Exhibit A (proposed FORM for an RFQ/RFP) one of the requirements is that the Proposal comply with "...all applicable rules, laws, regulations and court orders". Additionally, in Section 5.8 of Exhibit A, this requirement places the burden on the Respondent to comply with these laws.

Consider an Interview of the Design/Build Finalist Teams.

After you have received the Proposals, and reviewed them generally, but before final rankings are determined, consider asking each of the finalist Teams to participate in an interview.¹⁴⁸ This will give you an opportunity to ask each Team about the issues that have arisen about their specific design, qualifications, pricing, schedule, etc. It is also an opportunity for you to meet the key Team members and learn about them as individuals.

The results of the interview could be critical in determining the final rankings of the Finalists.

Civil Works Compliance: In a Design/Build process for a Civil Works Project, you must FIRST open, evaluate and score each responsive Technical Proposal. You will evaluate each Technical Proposal by applying the evaluation criteria and weighting factors published in the RFQ/RFP. THEN, only AFTER you have scored the Technical Proposals, do you open, evaluate and score the Cost Proposals. You apply the evaluation criteria and weighting factors contained in the RFQ/RFP. Then you apply the formula that you published in the RFQ/RFP to the two scores (Technical and Cost Proposal score) and you select the Winning Design/Build team based upon that published formula. You must select the highest ranked Design/Build team as the winner and begin negotiations with that team.¹⁴⁹

Evaluate the Proposals Using the Evaluation Criteria in RFP/RFQ to find the "Best Value".

You are required to evaluate the Proposals from the Finalists to determine which Proposal provides you with the "Best Value". You are to do this using the evaluation criteria and their relative weightings, which you published in the RFQ/RFP.¹⁵⁰ Obviously, there are many factors in deciding what is "best" for each governmental entity. And what is best for one County, City, District, etc. may not be what is best for another.

For example sometimes a City may forego upfront cash payments, at the beginning of the project, in order to reduce the overall cost of the project, and reduce the long term debt service.

Other times, a County may want to get as much cash up front as possible, in order to pay for the unreimbursed costs of development.

Alternatively, a School District may decide that having the Design/Build team provide funds for a college scholarship for local high school seniors (to be awarded by the District) may benefit them the most, while a River Authority may decide that a contribution to a maintenance fund for the project may be best for them.

Applying the evaluation criteria and weightings to each Proposal is subjective, and should be used as a way to rank each and every facet of each Proposal. Because the evaluation of the Proposals is so critical, care should be taken in drafting the evaluation criteria to be specific enough to advise Design/Build Teams what to expect, but general enough to allow you to apply them to the widest possible array of terms that may be proposed to you.

ALERT: The Professionals you selected can make a significant difference at this stage. Use the Professionals to review the Proposals and rank the Proposals according to the criteria that were published in the RFQ for evaluating the Proposals.

Finalize the Ranking of Each Proposal.

You now rank each Proposal in the same way that you ranked the Qualifications Submissions. As suggested previously, an efficient method is to use a Master Score sheet that reflects each of the evaluation criteria and their relative weightings published in the RFQ/RFP. Those criteria and their weightings are applied to each of the Proposals.¹⁵¹

From the completed Master Score sheet, each of the five Proposals is given a ranking from #1 (highest) to #5 (lowest)

Begin Negotiating with the #1 Ranked Team, then #2, #3, and so on.¹⁵²

You, and the Professionals you have selected, can now begin negotiations with the #1 Ranked team. Your goal is to get the "Best Value" that you can get for the County.¹⁵³

If you cannot reach an agreement with the #1 Ranked Team, then you END negotiations with the #1 Ranked Team. You must now NOTIFY the #1 Ranked Team in writing that you have ENDED all negotiations with them.¹⁵⁴ Only AFTER you have ended negotiations with the #1 Ranked Team, and given them the required written notice of that fact, can you start negotiations with the #2 Ranked Team.¹⁵⁵

You now begin negotiations with the #2 Ranked Team. If you cannot reach an agreement with the #2 Ranked Team, then you END negotiations with the #2 Ranked Team. You must now go through the same notification process that you used with the #1 Ranked Team¹⁵⁶ You must notify Team #2

in writing that you have ENDED all negotiations with them. After you have given the required written notice to Team #2, only then can you start negotiations with the #3 Ranked Team.

You continue this process until you have reached an agreement with one of the Ranked Design Teams, or you have depleted your list of Ranked Teams. If you have negotiated with all the Ranked Design Teams, and been unable reach an agreement with any of them, then you must start again, from the beginning, with the Design/Build process.

No shuttle Negotiations. Negotiate with only ONE Finalist at a time.

You are not permitted to negotiate with more than one Respondent or Finalist simultaneously. Because you can only negotiate with ONE Finalist at a time, you cannot use a pending offer from one Finalist, as leverage to secure a better offer from another Finalist. You must negotiate with ONE Finalist at a time. When you cannot reach an agreement with that Finalist, you must, FORMALLY and IN WRITING, notify that Finalist that all negotiations have ended. You can only begin negotiations with the next lowest ranked Finalist AFTER you have, FORMALLY and IN WRITING, notified all the higher ranked Finalists that negotiations with them have ended.¹⁵⁷

ALERT: Once you have ENDED negotiations with a Ranked Design Team, you cannot go back to negotiations with them later. You cannot “shop” bids or “shop” prices between the Finalists. You can only negotiate with ONE Ranked Design Team at a time. If you try to negotiate with more than one Ranked Design Team at a time, you will violate the statutory Design/Build requirements, and the contract you enter into will be voidable.

Award and Execute the Design/Build Contract

After you reach agreement with one of the Finalists, that agreement must be reduced to writing as a Design/Build Contract. There are many forms available for this specialized type of agreement.¹⁵⁸ The RFQ/RFP that you prepare should require that each Design/Build team submit the form of the Design/Build contract that they are proposing that you execute.

Once the Design/Build Contract is completed, the contract must be approved by the Commissioners Court, City Council, or applicable governing body, and an official must be authorized to execute the contract.

ALERT: There may be ADDITIONAL execution requirements. For example, if a County is signing a contract with a private entity for the design or construction of jail or related facility, then the approval of the County Sheriff may be required, before that contract is effective.¹⁵⁹

D/B PHASE 8

Performance and Payment Bond (And other Insurance)

Insurance and bonding for any public construction project can be a difficult subject. Below is a list of just a few of the issues you may face in a Design/Build project:

- Performance and Payment bonds are required.
- What amount should the bonds be?
- When should the bonds be delivered?
- Do you need a bid bond and when do you get it?
- What types of insurance coverage should you require?
- How much insurance should you require?
- What about professional liability coverage?
- What sort of property insurance is appropriate?
- Should you be declared an 'Additional Insured'?
- What proof of insurance should be required?



Get professional insurance advice.

As in other areas of a Design/Build project, having a professional, with experience in construction insurance, assist you in answering these questions, can reduce your risk, and promote a more successful project. You may have someone on your staff with experience in these subjects. For example, your Auditor or Procurement Officer may have the experience to advise you on these issues. If not, there are probably several vendors that provide insurance to you, who will fill this role for you. Perhaps at no additional cost! And don't forget, that most Design/Build Team members, with real Design/Build experience, have provided a wide array of insurance to their customers in the past, so they are expecting to provide insurance to protect YOU and the Project. The Sample RFQ/RFP attached as Exhibit A, contains some suggested coverages and limits. However, the plan of insurance you include in your RFQ/RFP should be customized to fit your Project and your specific needs.

Performance and Payment Bonds.

Of all of the insurance related questions that you will face, Performance and Payment Bonds are probably the most important.

What are "P&P Bonds"?

A Performance Bond requires the bonding company issuing the bond, to arrange for (and pay for) the completion of the project, if the construction contractor does not complete the project. The bonding company will be entitled to be paid any money still due to be paid under the construction contract, but usually the costs to complete the project (after the construction contractor has defaulted) are substantially more than the original construction contract amount.

A Payment Bond requires the bonding company issuing the bond to pay for the goods and services (including labor) that were provided on the job by others, but were not paid for by the construction contractor.

There are filing deadlines, notifications, and a host of other requirements that must be met for a subcontractor or supplier to make a claim under a Payment Bond, and for an Owner to make a claim under a Performance Bond. Once again, experienced professionals can help insure that you meet these deadlines and other requirements to get all the benefit you are entitled to receive under these very important protections.

Performance and payment bonds ("P&P Bonds") are required for a Design/Build project.¹⁶⁰ BUT, P&P Bonds are only required to be provided for the construction portion of the contract.¹⁶¹ A P&P Bond cannot be required for, and cannot provide coverage for, the design portion of a Design/Build contract.¹⁶² However, requiring professional liability coverage to be provided by the Team member(s) responsible the design portion of the Design/Build contract is a practical necessity.

What is a Bid Bond?

A Bid Bond is typically issued in the amount of 10% of the expected final contract amount. The Bid Bond is a promise by the issuing bonding company to pay up to the amount of the Bid Bond to the Owner (You), to cover the damages you incur **IF** your construction contractor fails to sign a Design/Build contract with you, or does not deliver Performance and Payment Bonds in the full amount of the construction component of the Design/Build contract. Basically, a Bid Bond protects the County from damages in having to engage the second best proposal (or the next best proposal with whom an agreement can be reached) if the #1 ranked Design/Build Team refuses to sign the Design/Build contract.

Separate bonding requirements when Awarding a contract vs. Signing a contract.

"Awarding" a Design/Build contract is not the same thing as "signing" a Design/Build contract. After you have reached general agreement with the winning Design/Build Team you will openly "award" the Design/Build contract to that team, and then finish all the other pre-construction requirements for your Project. After all the documents are completed, and details completed, will you actually sign or execute a contract.

The statutes require that certain "bonding" actions take place at the time the Design/Build contract is 'awarded', and that an additional 'bonding' requirement be completed at least 10 days

after the time the Design/Build contract is 'signed'.¹⁶³ You will need to comply with both sets of requirements.

Agree on Guaranteed Maximum Price BEFORE AWARDING the Design/Build Contract.

In order to get the bonding protection you need, you should first establish the amount of the Design/Build contract. Therefore, as you negotiate with the Finalist Design/Build Team, work toward an agreement on the Guaranteed Maximum Price. One way to do this is to require EACH Finalist Design/Build Team (selected in Step 1) to submit their Guaranteed Maximum Price as part of their Step 2 Full Proposal.

By submitting a Guaranteed Maximum Price with their Full Proposal in Step 2, you will have established the amount of the Performance and Payment bonds (or Bid Bond) required (if you are ready to sign the proposed contract).

Get a "Bid Bond" at the time the contract is "awarded".

The law requires you to get one of two things at the time a Design/Build contract is "Awarded" (not signed):

OPTION 1 - Get P&P Bonds delivered to you by the construction contractor¹⁶⁴.
(NOT recommended)

Or

OPTION 2 -Get a bid bond or other security from the construction contractor that will ensure you get P&P Bonds later.¹⁶⁵ (RECOMMENDED)

From a practical perspective, no bonding company is going to issue P&P Bonds until the actual Design/Build contract is executed. Until the Design/Build contract is executed, there is nothing that establishes how much the P&P Bonds will be. The amount of the Project Budget (listed in the RFQ/RFP) does not sufficiently establish the amount of the construction contractor's obligation to permit a bonding company to issue P&P Bonds in a very specific amount. A bonding company will require that you have a signed Design/Build contract in place before they will issue P&P Bonds on a project. Therefore Option 1 above is ordinarily not available to you.

You should take advantage of Option 2 above and have the construction contractor deliver a bid bond to you with its Proposal in Step 2 of the Design/Build Process. That means that when the Owner (You) formally "award" the contract to the highest ranked Design/Build Team, they will have fulfilled the requirement that they deliver a bid bond at the time the contract is "awarded".

After you have the Bid Bond in hand, you can finalize the Design/Build contract, complete any and all paperwork needed for your financing or other project requirements, and at the closing of the transaction, approve and execute the Design/Build Contract. The approval of the contract should include the authorization of an official to execute the Design/Build Contract on your behalf.

Originally executed P&P Bonds delivered within 10 days after D/B contract is "signed".

Once the Design/Build contract is executed, the construction contractor (part of the winning Design/Build Team) must deliver to you the originally executed P&P Bonds, in the amount of the construction component of the Design/Build contract. The P&P Bonds must be delivered to you within 10 days following the date that Design/Build contract is executed.¹⁶⁶

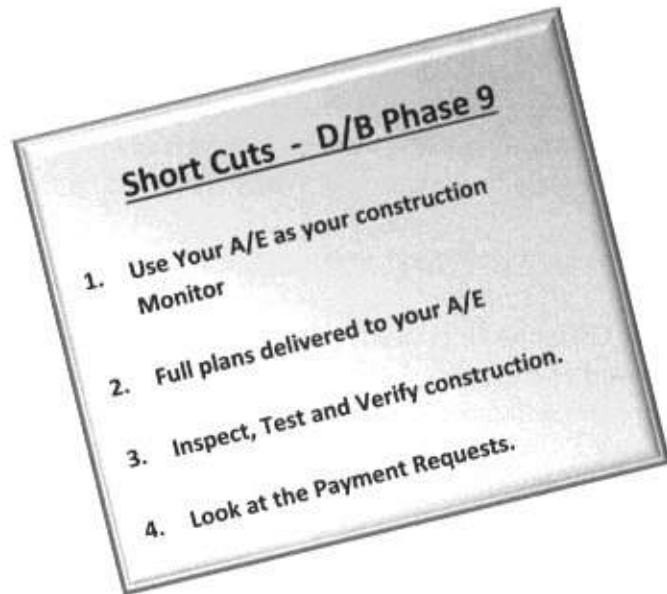
P&P Bond based ONLY on cost of construction (not design)

The P&P Bonds are to be issued only in the amount of the construction component of the Design/Build contract. The compensation paid to the non-construction members of the winning Design/Build team cannot be included in determining the amount of the P&P.¹⁶⁷ The proper amount for the P&P Bonds is typically determined by deducting the compensation for the Design component (usually a percentage of the construction component) from the full Design/Build contract amount.

D/B PHASE 9

Monitor construction.

- You have signed the Design/Build contract.
- The P&P Bonds have been delivered.
- You held the ground-breaking ceremony.
- Everyone is excited about the new Project.
- Construction Begins.



Now it's time to make sure that get what you bargained for.

Use a Construction Monitor

In order to protect YOUR interests, you need to have YOUR representative (not the Design/Build Team) monitoring the construction and report to you on progress, problems and payments. To do this YOU are required to have a professional monitor construction for you.¹⁶⁸ The engineer or architect that you selected to help you write the Design Criteria Package (earlier in the Design/Build process) can ALSO be your representative during the construction of the Project. This professional who will monitor construction for you, can be your in-house employee (architect or engineer) and does not have to be an outside hire.

Use Your A/E as your Construction Monitor

Actually, the Architect or Engineer that you select to monitor construction is not required to be retained to help you write the RFQ/RFP. You are only required to have that Your A/E available to help you "for the duration of the work on the facility."¹⁶⁹ However, as noted in D/B Phase 2, having Your A/E available to you at an early stage can be a real benefit.

You can get even more benefit from selecting Your A/E early, and use them as your Construction Monitor, because then they can:

- (i) Assist in creating the Design Criteria Package;
- (ii) Participate in evaluating qualifications and proposals submitted by the Design/Build teams;
- (iii) Learn the details about all the proposed designs; and

- (iv) Consult with you in picking the winning Design/Build team whose proposal provides you the "best value".

This means that Your A/E, representing only your interests, knows a lot about YOUR Project, and what you expect YOUR Project to be when completed. When Your A/E is selected early in the Design/Build process, they will be well-versed in the details of your Project, and they will know more about precisely how YOU want YOUR Project to be built.

Full plans are submitted to Your A/E.

Once the Final Design/Build team has been selected, and the Design/Build contract has been approved and executed, the winning Design/Build team will complete their design documents and begin completing their construction documents.

The architects/engineers for the winning Design/Build team are required to submit to YOU or Your A/E, all design elements of the Project for your review, and your determination as to whether these designs comply with the scope of the Project laid out in the Design/Build Contract, the RFQ/RFP (Step I and Step II) and their winning Proposal.¹⁷⁰ This task is typically best handled by Your A/E.

Civil Works Compliance: Curiously, the Design/Build statute requires that the construction documents for a Civil Works Project, utilizing the Design/Build process, be "*signed and sealed*" before they are released for construction. Such a requirement is not imposed on the construction documents for a Building.

Inspect, Test and Verify the Quality of the Project.

You are required to arrange for any services you need to inspect, test and verify the quality of the construction being done, so that you can make an informed decision as to whether or not you will accept the building when the contractor says the construction is completed.¹⁷¹

For these to be truly independent inspections and tests, the entity doing them cannot be the Design/Build Team that is constructing the Project.¹⁷² You can hire anyone you want to complete these tests and inspections.¹⁷³ However, Your A/E might be able to do most, if not all of the inspections you will need. There may be some inspections that you will have conducted by your own permitting and inspection division (HVAC, Electrical, Plumbing, etc.). But specialty inspections and testing may be needed to be completed by independent third parties.¹⁷⁴ A third-party should be hired to do the testing that cannot be done by your in-house personnel or Your A/E. Your A/E can assist you in identifying which inspections and tests should be conducted by independent third-parties. Any third party that is engaged to perform any of these tasks must be selected in compliance with the requirements of Section 2254.004 of the Texas Government Code.¹⁷⁵

Get written reports (including photographs) at least monthly about all the work that is completed, the schedule of upcoming work, issues requiring action, any material injuries or other accidents at the jobsite, and other facts and circumstances, that be the basis for a claim against you in the future. Many times, when construction is moving quickly, a project meeting held by Your A/E with the Design/Build Team and relevant subcontractors may be needed to monitor the progress

being made, any scheduling issues, and the quality of the work being done. These meetings can be held monthly, bi-monthly or weekly depending upon the scope and speed of the construction.

ALERT: In some circumstances, especially in large complex projects, you may need an On-Site Representative to monitor construction on a daily basis. Consult with Your A/E, your attorney and any specialty consultants you have selected, about whether the precise level of monitoring that is needed to protect you're your Project and your interests.

D/B PHASE 10

Complete the Project

Most public entities have been through the day-to-day process of monitoring, evaluating, paying for, and accepting a public facility. A complete description of that process is certainly beyond the scope of this book that focuses on the unique attributes of a "design/build" project. Once the winning Design/Build team has been selected, the Design/Build contracts are signed, and construction begins, the typical construction and "percentage-of-completion-payment" process will continue until substantial completion of the Project.



Your A/E will direct the completion/acceptance process.

You are required to use the construction monitor that you selected (or use Your A/E for that purpose) or your in-house Architect or Engineer, to assist you in evaluating the completion of the Project, its compliance with the plans, the RFQ/RFP and the Proposal of the winning Design/Build Team.¹⁷⁶ Obviously, any material discrepancy between what was promised/contracted for, and what was delivered, needs to be resolved or remedied. Your A/E, your attorney and your specialty consultants can be a significant help at this stage, in ensuring that you get what you bargained for. They can apply their experience, on your behalf to identifying and resolving disagreements about the quality or quantity of the work completed, problems arising from delay, or other issues that may arise regarding your Project.

Put it ALL on the Punch List.

The Punch List (list of defects to be corrected before the Project is "accepted") should be as full and complete as you can make it. Your A/E, and your specialty consultants can play a big part in verifying that all relevant shortages, and items needing correcting, are set forth clearly on the Punch List. In fairness to the construction contractor, a clear and definite Punch List makes the final completion process easier. Knowing precisely what needs to be done to complete the Project, will make it easier to document what has, and has not, been completed.

Once the Punch List is created, Your A/E, and specialty consultants can verify which of the Punch List items have been completed and which remain "open". The Punch List is regularly updated, throughout the final stages of construction, and during the inspection processes as construction ends. After the Punch List items are completed, the time for "acceptance" of the Project will arise.

Acceptance of the Project.

The Design/Build Contract will typically establish the process and timetable for completion of the Project and payment to the winning Design/Build Team. Typically there is a monthly request for payment, based upon the percentage of the Project that has been completed. Your A/E, or another outside professional you have hired, will inspect the Project and certify whether or not the percentage of work claimed by the construction contractor has been completed. The retainage will be deducted and payment will be issued, less any amounts in dispute.

Entire books and sets of books are devoted to the construction contract, payment request, verification, retainage, payment and dispute process related to construction generally, and public projects specifically. Full treatment of that process is beyond the scope of this work, which is focused on the unique components of just the Design/Build process. However, Your A/E and the other professionals you have selected will assist you in completing this process. They can be especially helpful in resolving any disputes that arise during construction.

You will be asked to “Accept” the Project as construction is completed. Acceptance is an important event in many respects. Some of the issues related to “Acceptance” may include the following:

- o Your Contractor will no longer be obligated to complete construction (unless such an obligation is separately documented);
- o If there are unfinished items on the Punch List (or otherwise), you will be relying upon your warranty to get things corrected or finished;
- o The time period for your warranty may begin on the day that you “accept” the Project;
- o Your interim financing (if applicable) may no longer be available to you after you “accept” the Project;
- o Funds designated for construction, may not be available to you.
- o The Performance Bond is moot, in that performance has been accepted.

In short, be aware of the impact that “acceptance” of the Project may have on your financing, completion of “punch list” items, commencement of your warranty period, and other components of your Project.

Delivery of Final “As Built” Plans

Once the Project has been “Accepted” (subject to any agreed upon items yet to be completed) the construction of the Project will be deemed to be concluded. At that time (the conclusion of construction) the Design/Build Team is required to deliver to you “...a set of

construction documents for the Project..."¹⁷⁷ This set of construction documents is intended to be "as built" drawings, in that these drawings must note any changes made during construction.¹⁷⁸

ALERT: Be certain to schedule a full inspection and Project walk-through with Your A/E **BEFORE** the expiration of the warranty period provided by your Design/Build Team. This could be your last chance to insure that all warranty claims are timely presented.

Chapter 6 – Selected Civil Works Projects Provisions

The Design/Build process for Civil Works Projects is controlled by Section 2269.351 et seq. of the Texas Govt. Code.¹⁷⁹ Some of the provisions found in that part of the Design/Build statute are unique.

Though some of this information appears elsewhere in this Handbook, the purpose of this Chapter is to gather some of the key differences between the requirements for the Design/Build process for Civil Works Project compared to the Design/Build process for a “Building”.

Short Cuts - Chapter 6

1. Public Works Projects are different.
2. Owner is liable for some costs unless RFQ/RFP and Contract state otherwise.
3. Focus on ownership of plans submitted.
4. Using elements from unsuccessful Proposals can be risky.

ALERT: The requirements of this Chapter DO NOT APPLY to a “Building”; they only apply to “Civil Works Projects”.

What is a “Building” and what is a “Civil Works Project”?

BUILDING: Generally, if the Project is an improvement to real estate¹⁸⁰ that is a building or structure (and is NOT associated with civil engineering construction), then the project will be considered a “Building”.¹⁸¹ Generally, the following types of projects are subject to the Design/Build process for Buildings:

- Jails
- Courthouses
- Justice Centers
- Civic Centers
- Office Buildings
- Hospitals and Clinics
- Storage facilities
- Animal Control facilities
- Data Centers
- Energy plants that serve those facilities
- Other “Buildings” (rather than “systems”) that are associated structures to the main facility.

CIVIL WORKS PROJECT: If the project is generally associated with civil engineering construction, or one of the specific projects described in the applicable statute¹⁸², then the project is a Civil Works Project. The specific projects that are included in the definition of “Civil Works Projects” are:

- Highways
- Roads
- Streets
- Bridges
- Underground utilities
- Water Supply Projects
- Water Plants
- Wastewater Plants
- Water and Wastewater distribution or conveyance facilities
- Wharves
- Docks
- Airport runways and taxiways
- Drainage Projects
- Related Projects associated with civil engineering Projects
- Buildings or structures that are incidental to those Projects.
- Transit, Desalination, Storm Drainage and Flood Control Projects

Must have population of 100,000 to use Design/Build process for a Civil Works Project.

If your Project is a “Civil Works Project”¹⁸³ then the same definition of “Governmental Entity” that applies to “Buildings” project will be applicable, with TWO EXCEPTIONS. Therefore, the same entities listed about can use the Design/Build process for Civil Works Projects, EXCEPT for TWO situations.

First, if the governmental entity is included in the definition of Governmental Entity that is applicable to “Building” projects, then the governmental entity must also have a population of more than 100,000 within its geographic boundary or service area to be permitted to use Design/Build for a Public Works project.¹⁸⁴

Second, if the entity is a board of Trustees governed by Chapter 54 of the Texas Transportation Code, then the Design/Build process is available to that entity for a Civil Works Project, regardless of the population within its geographic boundaries or service area.¹⁸⁵

How often can the Design/Build Process be used for Civil Works Projects?

If the Project in question is a Civil Works Project, then a system of limitations (generally based upon the population of the Governmental Entity) is imposed upon how often the Design/Build Process can be used for Civil Works projects.¹⁸⁶ The following table (based upon the limitations set out in section 2269.354 of the Texas Government Code) provides a summary of these limitations.

| | |
|---|---|
| LARGE ENTITIES: Govt. Entity with population of 500,000 or more | Max of 6 DB Civil Works Projects in any fiscal year |
| MEDIUM ENTITIES: Govt. Entity with population of more than 100,000 but less than 500,000 | Max of 4 DB Civil Works Projects in any fiscal year |
| SMALL ENTITIES: Govt. Entities with population of less than 100,000 | Not authorized to use design/build process for civil works projects |
| <u>MUNICIPALLY OWNED WATER UTILITY OF A LARGE ENTITY</u> | Special limitations. See Section 2269.354(2) Govt code |

ALERT: The limitations described in this Chart DO NOT APPLY to a "Building"; they only apply to "Civil Works Projects".

The definition of "Project" in this circumstance is critical. If a Governmental Entity enters into contracts for more Civil Works Projects than are permitted by the statute, then the Design/Build contracts are subject to being found voidable. Each Design/Build contract must cover only a "single integrated project".¹⁸⁷ You cannot enter into a Design/Build contract that assembles or aggregates together a group of separate Projects.¹⁸⁸ There are special provisions for determining what is a single "Project" for a metropolitan transit authority created under Chapter 451 of the Transportation Code, and for a water treatment plant that includes a desalination plant and other facilities.¹⁸⁹ There are also special provisions relating to Design/Build contracts entered into by municipally owned water utilities with a separate board appointed by the governing body of a municipality with a population of 500,000 or more.¹⁹⁰

Special "Appropriateness" finding required BEFORE RFQ/RFP is drafted.

If the Project is a Civil Works Project, a "Best Value" determination is not required, but a finding of "Appropriateness" is required. The governmental entity must make a finding that the Design/Build process is appropriate for the Civil Works Project, BEFORE preparing an RFQ/RFP.¹⁹¹ The Owner/You must make a formal finding on at least the following criteria:¹⁹²

1. The extent to which the entity can adequately define the Project requirements;
2. The time constraints for the delivery of the Project;
3. The ability to ensure that a competitive procurement can be held; and
4. The capability of the entity to manage and oversee the Project, including the availability of experienced personnel or outside consultants who are familiar with the Design/Build method of project delivery.

Other factors can be included in making the determination of “appropriateness” at the option of the governmental entity. Clearly documenting this process with resolutions and analysis will ensure the ability to prove this determination was made properly.

How many Finalists can be selected?

If your Project is a Civil Works Project, you are NOT limited to selecting only Five Finalists. You may select any number of Finalists to submit full Proposals.¹⁹³

Separate Sealed Technical Proposal and Sealed Cost Proposal to be submitted.

In the Design/Build process for a Civil Works Project, the Finalists selected to submit Proposals, must submit TWO separate sealed proposals in Step 2. Finalists must submit a sealed “Cost Proposal” and a sealed “Technical Proposal”. This requirement for the submission of Two Proposals must be described in the RFQ/RFP.¹⁹⁴

Site considerations in a Civil Works Project.

Because most Civil Works Projects are utilities (water, wastewater, roads, bridges, etc.) it is rare that you will ask the Respondents to propose a site for these projects. Typically, the Owner has selected the site for a wastewater plant, and wants to use the Design/Build process only for the design and construction of the plant - not the selection of the site. In those instances, the Owner is liable for costs and expenditures relating to any unknown or differing site conditions, unless otherwise provided in the RFQ/RFP and in the Design/Build contract.¹⁹⁵ Additionally, the Owner/You are responsible for all site acquisition costs for a Civil Works Projects, regardless of who proposes the site.¹⁹⁶ However, the Design/Build team is responsible for costs associated with any easement or work area needed for staging or construction of the Project.¹⁹⁷

Proposal Opening and Evaluation Process.

In a Design/Build process for a Civil Works Project, you must FIRST open, evaluate and score each responsive Technical Proposal. You will evaluate each Technical Proposal by applying the evaluation criteria and weighting factors published in the RFQ/RFP. THEN, only AFTER you have scored the Technical Proposals, do you open, evaluate and score the Cost Proposals. You once again apply the evaluation criteria and weighting factors contained in the RFQ/RFP. Then you apply the formula that you published in the RFQ/RFP to the two scores (Technical and Cost Proposal score) and you select the Winning Design/Build team based upon that published formula. You must select the highest ranked Design/Build team as the winner and being negotiations with that team.¹⁹⁸

Special Risk Provisions for the Owner.

Risks required to be assumed by Owner. In a Civil Works Project, the Owner (Governmental Entity) must assume all risks and costs associated with the following items:¹⁹⁹

- Any scope changes and modifications that are requested by the Owner; and
- All cost and expenditures associated with the acquisition of the site of the Civil Works Project.²⁰⁰

None of the costs and expenses associated with these two items can be shifted to the Design/Build team.²⁰¹ While costs associated changes requested by the Owner are typically the responsibility of the Owner, it is assumed that the changes referenced here occur AFTER the Design/Build contract has been executed. As discussed previously, one of the main benefits of the Design/Build process is to allow the design professionals and the construction professionals to work with the Owner to find the right balance of costs, schedules, quality and features. In order to take advantage of that benefit, the changes by the Owner referenced above, are generally those that occur after the collaboration of parties has been completed and the Design/Build contract has been signed by all parties.

Risks presumed to be assumed By Owner. All costs and expenditures associated with the following risks are deemed to be the sole responsibility of the Owner/Governmental Entity. However, these risks CAN be shifted to the Design/Build team IF that intent is stated in the RFQ/RFP and in the final Design/Build contract.²⁰²

- Unknown or differing site conditions; and
- Natural disasters and other events of force majeure.

While it is not common for the Respondent to propose a site for a Civil Works Project, if that is the case, then the risks associated with the site, selected and proposed by the Respondent are easily transferred to the Respondent by negotiation. Of course, there will be a cost associated with that transfer of risk.

Shifting the responsibility to the Respondent for natural disasters and events of force majeure can create complex negotiations that mainly center around the subject of delay and failure to complete the Project by the agreed upon or expected date. In many cases this sort of negotiation on the transfer of risk is resolved with agreement upon delay damages, and clear definitions of when the Project is due for substantial completion and total completion. This also requires clear contract provisions on the standard that will applied as to when the Owner/Governmental entity must "accept" the Project.

Other Risk Provisions. The Owner/Governmental entity is responsible for all costs and expenditures associated with "Regulatory Permitting" of the Project, but only to the extent that those costs are imposed by law upon the Owner/Governmental entity.²⁰³ Alternatively, the

responsibility to pay for Regulatory Permitting can also be imposed upon the Governmental Entity by agreement of the parties in the Design/Build contract, or other agreements.²⁰⁴

Ownership of Designs, etc. and Stipends.

Section 2269.364 sets out the restrictions on the post-submission use of information and designs submitted to the Owner/Governmental entity, by UNSUCCESSFUL Respondents. In summary, unless a stipend is paid to, and accepted by, an unsuccessful Respondent, the unsuccessful Respondent retains all rights to the work product submitted in a Proposal.²⁰⁵ Unless a stipend is paid (in the amount of one-half of one percent of the contract amount) and accepted, or unless a license for these matters is acquired from the unsuccessful Respondent,²⁰⁶ the Owner must:

1. Not disclose nor release the work product contained in the Proposal to any Person, including the successful Respondent;
2. Return all copies of the Proposal and other information submitted by the unsuccessful Respondent;
3. Not make use of any unique or non-ordinary design element, technique, method or process contained in the unsuccessful Proposal.²⁰⁷

However, if the unique or non-ordinary matters in item 3 above were also contained in the Proposal of the successful Respondent, then the Governmental entity is not bound to comply with item 3 above.²⁰⁸

If the stipend will be offered to unsuccessful Respondents, that fact, and the amount of the stipend (1/2 of 1 percent of contract price), must be stated in the RFQ/RFP.²⁰⁹ It is important to note that there is no obligation on the part of the unsuccessful Respondent to accept the offer of the stipend. Likewise, the protection provided by paying the Stipend is not secured by merely making the offer. The stipend must be offered by the Governmental entity (as stated in the RFQ/RFP) and must also be accepted by the unsuccessful Respondent, and finally paid to the unsuccessful Respondent, before the Governmental entity may make use of any of the work product contained in the proposal.²¹⁰ However, even with this statutory right to use the design elements in any unsuccessful proposal upon payment of the stipend, the Governmental entity that uses those design elements does so at *its sole risk*. Moreover, the use of those design elements by a Governmental Entity (even if the stipend is paid) does not impose any liability upon the unsuccessful Respondent who submitted those design elements in their Proposal.²¹¹

The contents of an unsuccessful proposal are deemed to be confidential and may not be released unless the stipend has been offered and paid. More importantly, the contents of an unsuccessful proposal are specifically exempted from the Public Information Act (Chapter 552 of the Texas Government Code).²¹²

Chapter 7 – Financing

Can financing be included in Design/Build?

Answer: “No and Yes”.

Financing is not part of the Design/Build process, but it CAN be included.

The statutes that describe the Design/Build process for Texas public projects define “Design/Build” as the “...construction, rehabilitation, alteration, or repair of a facility.”²¹³ There is nothing in that definition that specifically authorizes financing to be included in the Design/Build process.

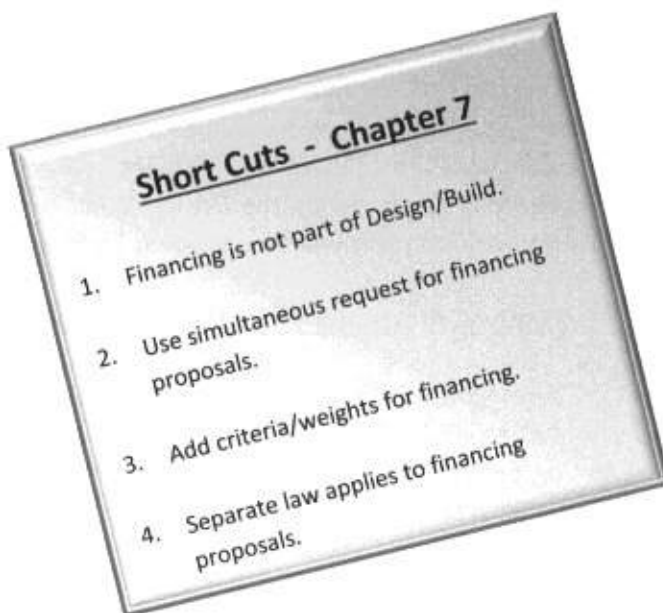
Seek Proposals for financing SIMULTANEOUSLY with Proposals for Design/Build.

Therefore, while the ‘financing’ component is not part of the Design/Build process, the separate and distinct procedure of asking for and receiving proposals for financing of a Project, can be handled simultaneously with the Design/Build process for construction, rehabilitation, alteration or repair of the same facility. Those processes in seeking proposals for financing are governed by separate statutes.

Comply with statutes that govern “Non-Design/Build” components.

For example, the process of seeking proposals for financing (and other components) of a county a jail or related facility is governed by Section 351 of the Texas Local Government Code.²¹⁴ Therefore the 30 day publication requirements for seeking proposals for financing must be fulfilled. This means that if an RFQ/RFP for Design/Build of a facility, is coupled with an RFP for financing of that facility, the RFQ/RFP must also follow the 30 day publication requirement imposed by Section 351 of the Local Government Code, which governs efforts to seek financing proposals.

In essence the requirements of both of the applicable statutes must be fulfilled. If the Design/Build statute requires 21 days of publication, but the financing statute requires 30 days of publication, then complying with the more expansive requirement will insure compliance with both statutes.



Two RFQs and RFPs are combined together.

The result is that you will be issuing an RFQ/RFP for a Design/Build Team, where that team includes a member who will submit a their qualifications in Step 1, and then a proposal in Step 2 for the financing of the Project. The portion of your RFQ/RFP that relates to **Design/Build** is governed by the Design/Build statutes²¹⁵, while the portion of your RFQ/RFP that relates to **financing** will be governed by financing and related statutes.²¹⁶

Add Evaluative Criteria and Weighting for Financing

If you couple your Design/Build RFQ/RFP with a process for seeking financing proposals, you will then add to your RFQ/RFP the Qualification evaluation criteria (and their relative weighting factors) that will allow you to consider the relative qualifications of the financiers who are members of the various Design/Build Teams. You must also add to the RFQ/RFP (Step II portion regarding submission of Proposals) those evaluation criteria and their relative weightings, that you will use to assess the terms of financing that are included in each Proposal that is submitted in Step II.

Methods of Financing

This Handbook assumes that you have arranged financing for your Project. While this short chapter on "how to incorporate financing in the Design/Build process" has been included, this chapter is limited to just a summary of that subject. Describing all the alternative financing methods available to public entities for their projects, and the many different laws that apply to those financing methods, would require that 100 pages or more be added to this Handbook. No one wants another 100 pages in this Handbook.

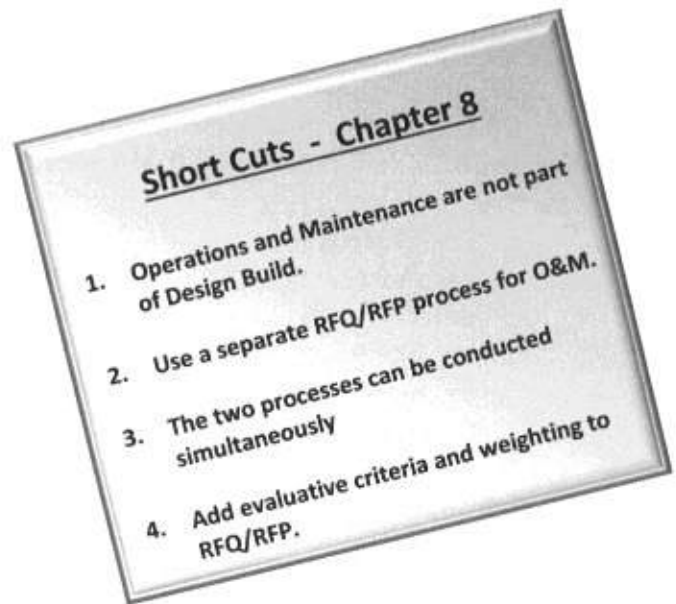
Chapter 8 - Operations & Maintenance

Can operations or maintenance be included in Design/Build?

Answer: "No and Yes"... Just like Chapter Seven.

Operations/Maintenance is not part of the Design/Build process, but it CAN be included.

Just as financing is not part of the Design/Build process, operations and maintenance are not part of the Design/Build process either.²¹⁷ However, just as proposals for financing can be sought (in a separate process) in conjunction with the Design/Build process, operations and maintenance can, at your option, be sought simultaneously with a separate RFQ/RFP process that is combined with the Design/Build process.



Seek Proposals for O&M SIMULTANEOUSLY with Proposals for Design/Build.

The process of seeking proposals for operations and maintenance ("O&M") can be completed simultaneously with the Design/Build process. There are separate laws that apply to seeking O&M proposals, and those requirements must be followed. But both the O&M proposal process and the Design/Build process can progress concurrently.

Add evaluative criteria for O&M to RFQ/RFP.

Operations and Maintenance can be extremely complex services, depending upon the type of project that is being built with the Design/Build process. Many times the description of the services you require for O&M, and the evaluative criteria that you will use when selecting winning qualifications and proposals, will be longer and more complex than the description of the building that you seek to have built. Spend the time and effort needed to provide prospective O&M contractors with a clear description of the services you seek, and the basis upon which they will be evaluated. The clarity of description will usually result in more proposals, and more responsive proposals.

CHAPTER 9

Suggestions and Acknowledgements

Consider Design/Build for every Project.

Design/Build is a process that you should take into account for every public project. Design/Build has shown that it can provide more benefits than traditional Design/Bid/Build, such as:

- Cost Savings
- Faster Delivery
- Better Quality
- Singular Responsibility
- Decreased Administrative Burden
- Reduced Risk

Design/Build might not be right for every project, but considering the time savings and financial savings (and the shifting of risk to the private sector) Design/Build deserves more consideration than it gets.

Use DBIA as a resource.

For more information, and a thorough set of forms for the Design/Build process, contact the Design Build Institute of America ("DBIA"). DBIA is a national association that defines, teaches and promotes best practices in the Design/Build process. Contact the DBIA at www.dbia.org or write them at:

Design Build Institute of America
1100 H Street, NW, Suite 500
Washington, DC 20005
Tel: 202-682-0110
www.dbia.org

Acknowledgments

Special thanks to the following for their respective contributions and editorial efforts in bringing this Handbook to completion.

- Bill Bryan (Long-time correctional consultant) of Belton, Texas;
- Chris Cuny (President, FC Cuny Engineers) of Heath, Texas; and
- Eric Cohen (Exec VP of Butler-Cohen, LLC) of Houston, Texas.

Separate and profound thanks to my patient wife Gwen for her continuous support of my many projects.

CHAPTER 10

FORMS

ALERT:

These forms are drafted for a County, using the Design/Build process for a correctional facility.

These forms can be altered for use by any public entity that is using the Design/Build process.

Forms are only a “starting point” in the process of drafting a document for your project.

No form fits every circumstance every time.

Use these forms as suggestions and checklists as you draft documents that fit your project precisely.

CHAPTER 10

FORMS

Start with these, but customize them for your Project.

List of Forms:

- Exhibit A** Two Step RFQ/RFP for County Jail Using Design/Build Process
- Exhibit B** Sample Notice to be published for Design/Build RFQ/RFP
- Exhibit C** Design Criteria Package for County Jail Using Design/Build
- Exhibit D** Posting Items & Minutes for Best Value Finding, Approval and Publication of RFQ/RFP
- Exhibit E** Qualifications Master Evaluation Worksheet
- Exhibit F** Proposal Master Evaluation Worksheet

Exhibit A

Two Step RFQ/RFP for County Jail Using Design/Build Process – NOT a Civil Works Project

Two Step Request for Qualifications/Request for Proposals

for

500 bed County Jail

Using Design/Build Process

----- **County, Texas**

Deliver Qualification Submissions and Proposals to:

_____ County

C/O County Judge

123 Main Street

_____ City, Texas 12345

MARK ENVELOPE:

"Submission/Proposal RFQ/RFP #xx 500 Bed County Jail"

This Request for Qualifications/Request for Proposals ("RFQ/RFP") requires that qualifications be submitted first, without any cost information ("Qualifications Submission"). Then Finalists will be selected who will be permitted to deliver full Proposals for the Project ("Proposal"). Please note that all Qualifications Submissions and Proposals must be received at the designated location by the deadline shown. Qualifications Submissions or Proposals received after the required deadline will be returned unopened and shall be considered void and unacceptable.

If you have any questions, please contact the County Judge of ___ County at (555) 555-5555.

All correspondence must include the following reference to be considered:

"Submission/Proposal RFQ #xx 500 Bed County Jail"

DEADLINES: Qualification Submissions or Proposals received in the County Judge's office after the stated deadline will be returned unopened and will be considered void and unacceptable. _____ County is not responsible for lateness of mail, carrier, or any method of delivery. Delivery by FAX is NOT acceptable. The time/date stamp clock in the City County Judge's Office shall be the official time of receipt.

The County requests Qualifications and Proposals (upon the terms and conditions set out in this RFQ/RFP) for the development, design, construction, and equipping of a new 500 bed County jail (hereinafter "Project"). Qualification Submissions and Proposals must be sealed.

Section I – General Requirements

- 1.1 Sealed **Qualification Submissions** will be received on or before 12:00 noon C.S.T. on **Monday, September 1, 2012** at the office of the County Judge, _____ County, Texas, 123 Main Street, _____ City, Texas 12345.
- 1.2 Sealed **Proposals**, to be submitted only by Respondents selected to submit Proposals, will be received by _____ County until 12:00 noon C.S.T. on **Thursday, September 10, 2012**, at the office of the County Judge, 123 Main Street, _____ City, Texas 12345.

- 1.3 _____, County Judge of _____ County, Texas, is designated as the contact person for inquiries, and his contact information is set forth below. Qualification Submissions and Proposals shall be submitted to:

_____, County Judge
_____, County, Texas
123 Main Street
_____, City, Texas 12345

Telephone inquiries are permitted, and the County Judge can be reached at: (555) 123-4567. Faxed Qualification Submissions and Faxed Proposals will be rejected.

- 1.4 Qualification Submissions or Proposals (collectively referred to as "Responses") will NOT be accepted after the deadlines set for receipt thereof.
- 1.5 Responses must address each applicable requirement set out in this RFQ/RFP. Only Respondents who can provide, either directly or as part of a team under its control, both design and construction [**add: financing, operation, maintenance as applicable**] should tender their Qualifications Submission or Proposal.
- 1.6 Unless expressly allowed by a written authorization from the County, no Qualification Submissions or Proposals may be changed, amended, or modified in any manner after it is delivered to County; however, a Qualification Submission or Proposal may be withdrawn and resubmitted any time prior to the deadline set for receipt thereof.
- 1.7 Interested persons, entities or teams, submitting Qualification Submissions or Proposals, must submit one unbound original (suitable for photocopying) and eight bound copies of their Qualification Submission or Proposal. Two of the bound copies must be executed originals bearing the signature of an authorized representative of the Respondent or Team.
- 1.8 Responses must be typed on standard (8½" by 11") paper, with each page numbered sequentially. Responses must contain a table of contents with page numbers and be arranged to correspond the terms/requirements of this RFQ/RFP in the order that those terms/requirements appear in this RFQ/RFP.
- 1.09 Qualification Submissions will be opened by the County Judge at 1:00 p.m. C.S.T. on **Monday, September 1, 2012**, in the Office of the County Judge, County Courthouse, County Judges Chambers, 123 Main, Street, _____ Texas, 77777.
- 1.10 Persons, entities or teams delivering qualifying Qualification Submissions will be notified by **Tuesday, September 9, 2012**, as to whether they have been selected as a Finalist to submit a sealed Proposal for the Project ("Finalist").
- 1.11 Proposals from Finalists selected to submit a sealed **Proposal** will be opened at 1:00 p.m. C.S.T. on **Thursday, October 15, 2012**, in the Offices of the County Judge, County Courthouse, County Judges Chambers, 123 Main, Street, _____ Texas, 77777.

Section II SELECTION

Qualification Submission (STEP I)

- 2.1 Prior to any receipt of, request for, or consideration of, any Proposal, County requests, and will consider, the relative qualifications of any person, entity or Team ("Respondent") seeking to provide all the goods and services necessary for development, design, construction, and equipping of a new 500 bed County jail. After such consideration, County may choose to interview any Respondent, or request additional information.

- 2.2 Each Respondent must submit a **Qualifications Submission** containing a full and complete response to each of the **Questions and Requests** set forth below, and fully complying with the General Requirements set out in Section 1 above, and all other applicable requirements of this RFQ/RFP. No price or cost information is to be included with a Qualifications Submission. The inclusion of pricing or cost information in a Qualifications submission may be an automatic disqualification of the Respondent, at the sole discretion of the County.

GENERAL PROJECT DESCRIPTION

- 500 bed adult detention facility
- There must be at least the number of maximum security and segregation beds required by the rules and regulations on the Texas Commission on Jail Standards for a facility of the size and nature proposed, and in accordance with federal standards which would affect the ability of the Facility to house federal prisoners or detainees.
- The Project must be designed and built in strict compliance with:
 - The standards and regulations of the Texas Commission on Jail Standards.
 - All applicable laws, rules, regulations and court orders.
 - Applicable federal standards which would affect the ability of the Facility to house federal prisoners or detainees.
 - All applicable standards promulgated by the American Correctional Association.
- Proposed Location: Each Proposal submitted by a Finalist selected by the County, must include a proposed site, that fulfills the following minimum requirements:
 - Located within the jurisdictional limits of the County of _____, Texas;
 - Be of adequate size, but not less than _____ acres;
 - Have access to adequate electric utilities, sewer, water, and fire suppression as required by the Design Criteria Package for the Facility.
 - Provide the legal description of the site;
 - Provide evidence of:
 - proper zoning and Special Use Permit (if required for the site),
 - a contract for purchase of the site or other reasonable and enforceable control of the site
 - the availability of acceptable title insurance,
 - the availability and acceptability of public utilities (or to be available as needed),
 - Completed environmental audit and site assessment.

QUESTIONS and REQUESTS for Qualification Submission

In preparing your Qualifications Submission, answer each of the following questions and requests thoroughly. The completeness of your answers to these questions and requests will be considered in evaluating your response.

- a. Are you able and willing to provide all of the services requested in this RFQ/RFP, including design, construction and compliance with all applicable laws, rules, regulations and court orders?
- b. Describe the experience of your firm, and of any team members, in designing detention facilities for Texas Counties: (add additional pages as necessary)
- c. Describe the experience of your firm, and of your team members, in constructing detention facilities for Texas Counties: (add additional pages as necessary)
- d. For each Project identified in answer to the questions above, provide a contact name at that facility or governmental unit/agency, and the name of the chief executive officer of the entity for which the work was done if different than the contact provided. For each person identified provide a current address and telephone number at which they can be reached.
- e. Describe the experience of your firm, and of your team members, in complying with the applicable standards of the Texas Commission on Jail Standards.
- f. Provide proof of your team's financial ability to perform and execute the work if selected.
- g. If your firm will provide directly all of the required goods and services for the Project, please answer the following for your firm. If your firm is proposing to provide the goods and services for the Project as part of a team under your firm's control, please answer the following questions both for your firm and for each team member.
 - (i) Form of business;
 - (ii) If a corporation, limited partnership or limited liability company – state of creation;
 - (iii) Identification of contact person;
 - (iv) A brief biography of the key officers and their experience;
- g. Identify all material legal claims, threatened litigation, or demands against the Respondent (or any of Respondent's Team members) and/or any of their respective principals/officers received within the last 5 years.
- h. Identify all lawsuits filed against the Respondent (or any of Respondent's Team members) and/or any of their respective principals/officers within the last 5 years.
- i. Identify all investigations, administrative actions or warnings taken, pursued or issued by any federal, state or local governmental agency (within the last 5 years) involving the Respondent (or any of Respondent's Team members) and/or any of their respective principals/officers within the last 5 years that relates to a correctional facility of any type, or a Design/Build project.

- j. Identify the design professionals (architects and engineers) who will be working on the Project, their qualifications, and provide a copy of their license to practice in the State of Texas.
- k. Certify that each design professional you intend to use for this Project was selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Texas Government Code
- l. Identify any special certifications, degrees, or professional designations held by each design professional you propose to use for the Project.
- m. Provide a full resume (educational, professional, work related history) of:
 - o Respondent's highest ranking officer;
 - o The highest ranking officer of each of Respondent's team members (if any);
 - o Proposed Project Manager
 - o Proposed Project Superintendent
- n. Provide a very brief summary of any appropriate factors about the qualifications of you or your team members, that you believe are relevant to the consideration of your (and your team member's) qualifications for this Project, that has not been disclosed in answer to the questions and requests listed above.

2.3 The Selection Criteria to be applied to **Qualifications Submissions** (Step I) are as follows:

**Step I
Evaluation Factors and Weighting of those Factors
For Evaluation of Qualification Submissions.**

The Qualification Submissions received from the Respondents, will be reviewed, evaluated and ranked by the County, and/or its designees, based upon the application of the following evaluation criteria and weighting factors. If a Respondent is unable to provide qualifications responsive to each of the criteria listed below, it is disqualified. No other criteria or factors will be considered in Step I (Evaluation and Ranking of Qualification Submissions).

| | | |
|----|---|-----|
| 1. | Respondent's (and team's) experience | 20% |
| 2. | Respondent's (and team's) technical competence | 20% |
| 3. | Respondent's (and team's) capability to perform | 35% |
| 4. | Respondent's (and team's) past performance | 25% |

[Only the information included in the Responses to the Request for Qualifications will be used to rank and select the Finalists who will be offered the opportunity to submit a Proposal for the Project.]

2.4 County will select no more than five qualified Respondents to submit Proposals in Step II (the "Finalists").

REQUEST FOR PROPOSALS (STEP II)

2.5 After Finalists selected by the County are notified that they have been selected to submit a Proposal for the Project, the Finalists (not to exceed five in number) may submit a Proposal for the Project that will be reviewed and evaluated by the County and/or its designees (Step II). The County may, at its option, request an interview with Finalists. A Proposal submitted by any person, entity, or team, other than a Finalist selected by the County, will be deemed to be void, ineffective, and disqualified from further consideration.

- 2.6 The Proposals received from the Finalists, will be reviewed, evaluated and ranked by the County and/or its designees, based upon the application of the following evaluation criteria and weighting factors.

Step II
Evaluation Factors and Weighting of those Factors
For evaluation of Proposals for the Project.

Group A – The following factors will be given a total weight of 20%

1. Respondent's (and team's) experience
2. Respondent's (and team's) technical competence
3. Respondent's (and team's) past performance
4. The reputation of the respondent and its team members
5. The quality of the services provided by the respondent

Group B – The following factors will be given a total weight of 30%

6. The degree to which Respondents Guaranteed Maximum Price is less than the Amount of the Project Budget.
7. Respondent's (and team's) capability to perform
8. Feasibility of implementing Project as proposed
9. Ability of respondent to meet schedules and estimated time for completion
10. The extent to which the respondent's Proposal complies with the requirements of this RFQ/RFP.
11. The Costing Methodology of the Respondent (policies on subcontractor markup, definition of general conditions, range of costs for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties)

Group C – The following factors will be given a total weight of 35%

12. The price/cost for the goods and services requested under the Request for Proposals
13. The method and cost of financing *(if applicable)*
14. The long-term cost to County
15. Ability of Respondent to deliver: legal title to qualifying site *(if applicable)*, availability of adequate and timely utilities; zoning or special use permitting; and environmental site assessments
16. Economic benefit to County

Group D – The following factors will be given a total weight of 15%

17. Safety and long-term durability
18. The extent to which the Proposal meets the County's needs

- 2.7 County reserves the right to reject any or all Proposals, and reserves the right to waive any irregularity in the Proposals received.
- 2.8 Each Proposal submitted by a Finalist selected by the County, must fully and thoroughly respond to, and comply with, each of the applicable criteria, requests and requirements of this RFQ/RFP, including but not limited to the following:
1. Proposals for the Project will not be accepted from any entity other than the Finalists selected by the County as a result of the evaluation of Qualifications Submissions (Step I).
 2. County will evaluate the Proposals that are submitted by the Finalists, based on the selection criteria and weighting set forth in the Request for Proposals stated herein.

3. Respondents must not include detailed engineering or architectural designs as part of the proposal. Respondents are encouraged to include conceptual drawings and illustrations in their proposals, to assist the County, and its designees, in evaluating the Proposal.
 4. Proposals must comply with the applicable deadlines and all other applicable requirements described in **Section 1 – General Requirements** set out above.
 5. Proposals must comply with all of the applicable requests and requirements of **Section III Design and Construction**, **Section IV Additional Requirements**, and **Section V Miscellaneous** of this RFQ/RFP set out below.
 6. Proposals must comply with the criteria, requirements and elements of the **Design Criteria Package**.
 7. Proposals must be signed by a person authorized to bind the person or entity making the Proposal, and proof of this authority must be included in the Proposal. Proposals must contain a letter or other clear evidence of such authority, and all other information requested or required by this RFQ/RFP, or as determined by the County. All Proposals must be delivered in sealed wrappings.
 8. The thoroughness by which the Proposal responds to each of the requirements of this Section 2.8 and this RFQ/RFP is one of the criteria upon which each Proposal will be evaluated.
- 2.9 The County shall select the Finalist Design/Build Team, based upon the determination of the Proposal offering the best value for the County on the basis of the evaluation criteria and weighting factors and set out in this RFQ/RFP.
- 2.10 The County shall first attempt to negotiate a contract with the selected Finalist Design/Build Team. If the County is unable to negotiate a satisfactory contract with the selected Finalist Design/Build Team, the County shall, formally and in writing, end negotiations with that selected Finalist Design/Build Team, and proceed to negotiate with the next Finalist Design/Build Team in the order of the evaluation ranking, until a contract is reached or negotiations with all ranked Finalist Design/Build Team end.
- 2.11 Following selection of Finalist Design/Build Team, and agreement upon an acceptable contract, engineers or architects associated with that Finalist Design/Build Team shall complete the design of the Project, submitting all design elements to County or the County's designee, before or concurrently with construction. The design elements so submitted shall be reviewed to determine their compliance with the Design Criteria Package, this RFQ/RFP, the Proposal submitted by the Finalist Design/Build team and the terms of Design/Build contract agreed upon by the County.
- 2.12 The Finalist Design/Build Team shall supply a signed and sealed set of "as built" construction documents for the Project to the County at the conclusion of construction of the Project.
- 2.13 Proposals, are deemed include the Qualifications Submission of each Finalist. The Qualifications Submission of each Finalist will be included in the review, evaluation and ranking of the Proposals submitted.

Section III - DESIGN AND CONSTRUCTION

- 3.1 Only respondents who propose to provide either directly or through a team under its control all goods and services requested in the Request for Proposals should respond. This includes design and construction. The maximum construction period of twelve (12) calendar months is desired, not to exceed fourteen (14) calendar months.
- 3.2 An independent consulting engineer (hereinafter "Independent Engineer"), selected by County on the basis of demonstrated competence and qualifications, shall act as County's independent representative for purposes of independent, professional assistance and evaluation of technical and qualitative issues for the duration of the design/build work.
- 3.3 Following selection, the successful respondent's design team shall complete the design submitting all design elements for review and approval by County and its Independent Engineer. At each design stage, the respondent's design solutions must be submitted to and approved by the Texas Commission on Jail Standards as applicable under the regulations of the Texas Commission on Jail Standards. And to the extent applicable, such design solutions must be in compliance with any applicable federal regulations that would affect the ability of the Facility to house federal prisoners or detainees, including, but not limited to, USMS detainees, ICE detainees and/or FBOP detainees. All designs and construction must comply with the applicable standards of the American Correctional Association.
- 3.4 Each Proposal submitted in this Step II must contain the Guaranteed Maximum Price for which the Proposer (or Design/Build Team) will agree to design and build the Project in full compliance with the requirements of Step II of this RFQ/RFP, in full compliance with all applicable laws, rules, regulations and court orders, and in full compliance with all the offers, proposals, terms and conditions set forth in their Proposal. Failure to include a Guaranteed Maximum Price in the Proposal submitted in Step II will be grounds for immediate rejection of the Proposal at the discretion of the County
- 3.5 Payment and performance bonds as required by Texas law will be required from the successful respondent in the amount of the Guaranteed Maximum Price, less the portion of the Guaranteed Maximum Price attributable to design services only. A Bid Bond in the amount of at least 10% of the Guaranteed Maximum Price must be delivered to County at the time that the Design/Build contract is awarded to the successful respondent. The successful respondent must deliver the performance and payment bonds to County not later than the 10th day after the contract is signed.
- 3.6 The successful respondent must provide liability insurance covering its activities in the coverage amount of not less than \$2,000,000.00 per occurrence and \$10,000,000.00 aggregate, with the aggregate applying to this Project only. County must be named as an additional insured. The successful respondent must provide builder's risk/property insurance for the Project in the amount of the full contract sum. County must be named as an additional loss payee on the insurance. The successful respondent must provide workers compensation insurance for its employees. Automobile liability insurance must be provided for all motor vehicles involved in the Project in the amount of \$1,000,000.00 per single limit for bodily injury and property damage with umbrella coverage in an amount not less than \$3,000,000.00.
- 3.7 Design professionals on the Project must be covered by professional liability insurance in a coverage amount of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Design professionals on the Project must be licensed/registered to practice their profession in the State of Texas.
- 3.8 Construction shall be carried out in accordance with the contract documents (including the approved drawings, plans, specifications, and Project manual), and in accordance with the regulations of the Texas Commission on Jail Standards and all applicable federal rules, laws, regulations, court orders and standards which would affect the eligibility of the Facility to house federal prisoners or detainees. Construction draws and retainage shall be in accordance with the negotiated contract. Construction shall include provision of all necessary furnishings and equipment to make the Facility operational for its intended purpose. As part of its proposal, the Respondent should include the basic terms and general

conditions it proposes for the design/build of the Facility. The agreement to be negotiated will not become effective until County and its counsel have approved the agreement, and it has been approved, and its execution authorized by the Commissioners Court of County.

- 3.9 Respondent shall be solely responsible for any cost, loss, injury, harm, expense, fee, charge or other expenditure or damage of any nature, whether now known or unknown, arising directly or indirectly, from:
- a. Any unknown or differing site conditions at the site proposed by Respondent;
 - b. Any regulatory permitting required for the Project;
 - c. Acquisition of the site or any staging area required by Respondent;
 - d. Certification of the Project as complying with the applicable standards of the ACA; and
 - e. Any natural disasters or other force majeure events.

IV ADDITIONAL REQUIREMENTS

- 4.1 County does not assume, and hereby specifically disclaims, any responsibility or obligation of any nature, to any of the persons or entities responding to this RFQ/RFP (or to any other entity) and will make no payment or reimbursement of any cost, fee or other expenditure whatsoever associated with the preparation or submission of a Qualification Submission or Proposal.
- 4.2 The contract(s) awarded will be governed by the laws of the State of Texas, and is (are) deemed payable and performable in _____ County, Texas. The venue for all disputes thereunder shall lie in _____ County, Texas.
- 4.3 As required by Section 2269 of the Texas Government Code, County has established a budget for this Project of \$_____ ("Project Budget"). If the Guaranteed Maximum Price contained in a Proposal received during Step 2 of this RFQ/RFP exceeds the Project Budget, the County may, in its sole discretion, reject such Proposal. The County expects the proposed Guaranteed Maximum Price to be less than the Project Budget.

V. MISCELLANEOUS

- 5.1 To the extent not covered heretofore in these specifications, responses will be evaluated for compliance with the contract requirements of Texas law including but not limited to those set out in Section 351 of the Texas Local Government Code, and the applicable standards and regulations of the Texas Commission on Jail Standards.
- 5.3 Each Proposal must provide for the reimbursement of all costs, fees and expenditures incurred by the County arising from the Project or this RFQ/RFP, including but not limited to attorney's fees and the professional fees and expenses of any Bond Counsel, Issuer's Counsel, Special Counsel to County, General Counsel and/or Independent Consulting Engineer or Architect, and each additional consultant or professional incurred by County in connection with the Project or this RFQ/RFP, and any agreements negotiated or entered into by County arising from the RFQ/RFP.
- 5.4 The respondent shall provide details for any anticipated or proposed expansion of the facility up to a maximum of 1,000 beds, with a proposed timeline and criteria for any such expansion.
- 5.5 In addition to all rights provided by law, County:

- a. Reserves the right to reject any or all Proposals;
 - b. May, at its sole discretion, waive technical mistakes, informalities or irregularities in any Proposal received;
 - a. Reserves the right to select the Proposal or negotiated Proposal which in its discretion is determined to provide the best value to County and which it believes to serve its best interests and in accordance with all applicable laws, including but not limited to Texas Government Code Section 2269.
- 5.6 Neither this document, nor the advertisement of the Notice of the RFQ/RFP is an offer. The Exhibits attached hereto are incorporated herein for all purposes.
- 5.7 Respondents shall, as a part of their Proposal, address and identify how they intend to comply with all existing laws, rules or applicable municipal charters related to the use of women, minority, small or disadvantaged businesses. Respondents shall, as a part of their Proposal, address and identify how they intend to comply with all existing laws related to historically underutilized businesses.
- 5.8 It is the express intent of the County, that each Proposal as submitted be: comprehensive, prepared in good faith, present a reasonable likelihood to be developed, built and become fully operational in a reasonable length of time, and its development, design, and construction to be in full compliance with all applicable laws, rules, regulations, court orders, standards and ordinances. Acceptance of any Proposal is expressly conditioned upon actual closing and funding of the Project after approval of all documents by counsel for County, or County's designee. **Acceptance of any Proposal is not acquiescence or agreement with any term or condition set forth in the Proposal or any proposed documents included in, or referenced by, the Proposal.**

VI. DESIGN CRITERIA PACKAGE

In order to assist Respondents in formulating their Responses, and if selected, their Proposals; additional design criteria are provided in the Design Criteria Package. Each Proposal must comply with each of the requests, requirements and elements set forth in the Design Criteria Package.

Exhibit B

**Sample Notice to be published for Design/Build RFQ/RFP for County Jail
– Not Civil Works Project**

NOTICE

**REQUEST FOR QUALIFICATIONS and REQUEST FOR PROPOSALS
FOR
DESIGN/BUILD OF 500 BED COUNTY JAIL.**

(_____ County, Texas)

This is notice of a Request for Qualifications AND a Request for Proposals ("RFQ/RFP"). This will be a two-step process. In STEP I, _____ County ("County") seeks Responses to its Request for Qualifications ("Qualification Submissions") for the design and construction of the 500 bed County jail ("Project"). No cost information is to be included in any Qualifications Submission. The County will select up to five finalists from the Qualification Submissions that are properly received. In Step II, the County will request Proposals for the full Project ("Proposals") from the Finalists selected by the County. The County will select the Proposal that provides the Best Value to the County.

The full RFQ/RFP and the Design Criteria Package are available from the County at the following address: _____ County, C/o County Judge, _____ County Courthouse, 123 Main Street, Anywhere, Texas 77777

The County Judge, of _____ County, Texas is designated as the contact person for all inquiries. Telephone inquiries are permitted. The telephone number of the County Judge of _____ County is (555) 555- 5555.

General Description of Project: 500 bed County Jail. There must be at least the number of maximum security and segregation beds required by the rules and regulations on the Texas Commission on Jail Standards for a facility of the size and nature proposed, and in accordance with federal standards which would affect the ability of the Facility to house federal prisoners or detainees. The Project must be designed and built in strict compliance with regulations of the Texas Commission on Jail Standards, and in accordance with applicable federal standards which would affect the ability of the Facility to house federal prisoners or detainees. Proposed Location: The site for the proposed facility shall be within the jurisdictional limits of the County of _____, Texas and be of adequate size and shall have access to adequate electric utilities, sewer, water and fire suppression as required by the Design Criteria Package for the Facility. The site for the Project shall be clearly identified by its legal description, evidence of proper zoning and Special Use Permit (if required for the site), evidence of enforceable control of the site, evidence of available title insurance acceptable to County, completion of an environmental audit and site assessment.

The RFQ/RFP is for Qualification Submittals and Proposals from Respondents that are able to provide all the components of a 'design/build' project, either on their own or as part of a respondent team. The separate elements (design and construction) of the Project are not to be submitted separately. Only respondents (or respondent teams) having the ability to comply with all the requirements of the RFQ/RFP, and the Design Criteria Package, and also provide all the component parts of the Project (design and build) should respond.

STEP I – Request for Qualifications

Sealed **Qualifications Submission**, addressed to _____ County, Texas ("County") will be received **on or before NOON on Monday, September _____**, at the office of the County Judge of _____, County, Texas, located at 123 Main, Street, Anytown, Texas. The County's RFQ/RFP is available from the County at the following address: _____ County, C/o County Judge, _____ County Courthouse, 123 Main Street, Anywhere, Texas 77777

Qualification Submission must fully comply with all applicable requirements of the RFQ/RFP relating to Qualifications Submissions in Step 1 of the RFQ/RFP. No price or cost related information is to be included in a Qualifications Submission.

Qualification Submissions will be reviewed, evaluated and ranked by the County, and/or its designees, using the following evaluation criteria and weighting:

1. Experience of Responder (and its Team) (Includes completeness of Response) –Weight 20%
2. Technical Competence of Responder (and its Team) – Weight 25%
3. Capability of Responder (and its Team) to Perform – Weight 35%
4. Past Performance of Responder (and its Team) – Weight 20%

The information submitted in Qualifications Submissions, will only be used in the evaluation of qualifications and not otherwise in Step 1. The County will rank the **Qualifications Submissions** according to the evaluation criteria and weightings set forth in the RFQ/RFP. The County will select up to five of the highest ranked Responses and notify the Respondents that they have been selected as finalists (“Finalists”), and that they are invited to submit Proposals in response to the Request for Proposals in Step II of this selection process.

STEP II – Request for Proposals.

Sealed **Proposals RFQ/RFP and the Design Criteria Package**, submitted by the Finalists, that are addressed to _____ County, Texas (“County”) will be received **on or before NOON on Monday, September _____**, at the office of the County Judge of _____, County, Texas, located at 123 Main, Street, Anytown, Texas.

Responses must fully comply with all requirements of the RFQ/RFP and the Design Criteria Package.

Price and cost information is required to be included in each Proposal submitted. Significant indemnification and insurance requirements are included in the RFQ/RFP, including the provision of performance and payment bonds. The design and construction of the Project must comply with all applicable rules, laws, regulations and court orders.

Proposals must include a Guaranteed Maximum Price for the design and construction of the Project. Proposals must include substantial information relating to the proposed site for the Project.

The successful Respondent will be required to provide all the development and Project management services necessary to assure timely development, design, equipping and construction of the Project in full compliance with all the requirements of the RFQ/RFP, Design Criteria Package, applicable contracts and the Project Budget.

Proposals responding to the RFQ/RFP will be reviewed and evaluated by the County, and/or its designees, using the following evaluation criteria and weighting:

Group A Evaluation Criteria – Weighting factor of 20%

1. Respondent’s (and its team) experience
2. Respondent’s (and its team) technical competence
3. Respondent’s (and its team) past performance
4. The reputation of the Respondent and its team members
5. The quality of the services provided by the Respondent

Group B Evaluation Criteria – Weighting factor of 35%

6. The degree to which Respondent’s Guaranteed Maximum Price is less than the amount of the Project Budget.
7. Respondent’s (and its team) capability to perform
8. Feasibility of implementing the Project as proposed
9. Ability of Respondent to meet schedules and estimated time for completion
10. The extent that the Respondent’s Proposal complies with the requirements of the RFQ/RFP
11. The Costing Methodology of the Respondent (policies on subcontractor markup, definition of general conditions, range of costs for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties)

Group C Evaluation Criteria – Weighting factor of 30%

12. The price/cost for the goods and services requested under the Request for Proposals
13. The method and cost of financing ***(if applicable)***
14. The long-term cost to County.

15. Ability of Respondent to deliver: legal title to qualifying site *(if applicable)*, availability of adequate and timely utilities; zoning or special use permitting; and environmental site assessments
 16. Economic benefit to County
- Group D Evaluation Criteria – Weighting of 15%
17. Safety and long-term durability
 18. The extent to which the Proposal meets the County's needs

County Rights Reserved. County reserves the right to reject any and all Proposals, or to select the Proposal that provides the best value to the County. The County reserves the right to waive any irregularity or defect in any of the Proposals received.

Exhibit C
Design Criteria Package for County Jail Using Design/Build Process

Design Criteria Package

A. Introduction

- 1) The Project is to be a "turnkey" Project, with Design/Builder to provide all work, services, materials and labor for the Project to be fully operational as a 500-bed detention center upon substantial completion. Design/Builder shall provide or cause to be provided all design, work, services, materials, labor, equipment, surveys, environmental studies, geotechnical studies, design, engineering, plumbing systems, ventilation systems, HVAC, mechanical systems, detention systems, safety systems, security electronics, other matters necessary for the design, construction and construction administration and is inclusive of all costs necessary for the installation and completion of the Project, in working order, unless specifically set forth otherwise herein.
- 2) There must be at least the number of maximum security and segregation beds required by the rules and regulations on the Texas Commission on Jail Standards for a 500-bed facility proposed with adequate medical and medical observation cells.
- 3) The Project must be designed and constructed in compliance with the regulations of the Texas Commission on Jail Standards (TCJS) and shall be eligible to be certified by the American Correctional Association. The Project shall be designed and constructed in compliance with all applicable federal, state and local laws and regulations.

The Project must also comply with the following criteria:

B. General

All aspects of the building will comply with:

- 1) Requirements of the Texas Commission on Jail Standards for long-term incarceration standards; New Construction Rules, Chapter 259, New Maximum Security Design and Chapter 263, Life Safety Rules.
- 2) International Building Code in the version as currently applied by the County of _____.
- 3) Building wind load design shall be based on wind speed schedule of IBC using the importance factor for "Essential Facilities".
- 4) Americans with Disabilities Act (ADA)
- 5) Texas Accessibility Standards/Texas Department of Licensing (TDLR)
- 6) All applicable Federal standards which would affect the ability of the Facility to house federal prisoners or detainees under contract.

C. Site

- 1) Proposed site must be located within the boundaries of the County of _____.
- 2) Proposed site must be located in area with the appropriate zoning to allow for the development of this the proposed facility.
- 3) Proposed site must have an environmental Phase I report indicating that the proposed site does not have any environmental issues which could potentially negatively limit development of the site for the facility.

- 4) Proposed site must have a current property boundary survey prepared by a State of Texas Registered Professional Land Surveyor.
- 5) The entire identified Project site shall be contained within a secure perimeter fence.
- 6) Design shall include all utilities and infrastructure: water; sanitary sewer; drainage; telecommunications; electrical; gas, etc. that are necessary for the operation and safety of the facility. Any offsite infrastructure (water, sanitary sewer, storm drainage, gas, electrical) required for development of this site and operation of the facility shall have been investigated and discussed with appropriate authorities to ensure that service to the proposed site can be achieved.
- 7) Water service to the building shall be provided for both fire and domestic with the appropriate backflow preventers as required by the local water provider.
- 8) Any lift stations that need to be designed for sewer service to the proposed site shall be included with the Project.
- 9) Sanitary sewer design shall incorporate a combination grinder/auger removal system for the waste stream following the exit from the building and prior to connection with public waste water system.
- 10) Design shall include management of storm water runoff as required by authorities having jurisdiction during construction. Special attention shall be given to security requirements concerning detention pond areas within secure areas, if any.
- 11) Design must include paved parking adequate to provide spaces for staff and visitors, van accessible and handicapped parking.
- 12) Design should provide for the removal and stockpiling of topsoil to be used for finish grading. Design shall specify that all existing asphalt concrete or excess spoils that are generated will be removed and properly disposed of offsite.
- 13) General Landscape design for the entry shall be included and shall contain at a minimum two flagpoles and lighting for said flag poles.
- 14) Design shall indicate concrete walks at parking and at other various site locations where required.

D. Foundation

- 1) Foundation will be designed by a State of Texas registered Structural Engineer based on a site specific geotechnical survey. All concrete slabs, paving wall panels, perimeter beams, interior beams and column footings will be sized in accordance with engineered design based on sub-surface geotechnical investigations. **A Copy of the Geotechnical report for proposed site must be included with submission.**

E. Building Design/ Program

- 1) Building Design and Architecture shall be prepared by a State of Texas registered Architect. Design shall incorporate the required floor space and infrastructure (mechanical equipment, plumbing, electrical, etc.) for kitchen, laundry and inmate processing to provide for future expansion of the facility to an additional 500-beds.
- 2) Design must provide for kitchen facilities capable of serving the 500-bed detention population. The Kitchen shall be equipped with all appropriate equipment and food storage areas (dry, cold and frozen) for food preparation for 500 inmates. The kitchen floor shall have a seamless poured epoxy coating with an integral cove base. Kitchen walls shall be designed with a non-porous washable surface. Kitchen will include stainless steel work surfaces and tables, preparation areas, fully equipped cooking lines, vent

hoods, mixers, baking area, tray make up area, food warming, staging areas, dish machines, prep sinks, pot wash sinks, hand sinks, ice machines, bins and dispensers. Dry storage wire shelving, dunnage racks and cooler/freezer storage shall be capable of providing 30 days' supply.

- 3) Design must provide for laundry facilities capable of serving the detention population equipped with commercial grade laundry equipment. Design shall include commercial grade extractors and dryers in laundry area to serve inmate population and sufficient storage areas for dirty and washed laundry.
- 4) Design must provide for secure outdoor and covered outdoor recreation areas capable of serving the detention population.
- 5) Design must provide for an adequate visitation area.
- 6) Design must provide for adequate office space for operational administrative staff, and a staff break area.
- 7) Administration areas shall be designed to be completely outside of an identifiable secure perimeter.
- 8) The Administrative area shall contain functional space necessary to support the facility. This shall include a public lobby with public restrooms, non-contact visitation booths, attorney/inmate non-contact, contact consultation rooms, warden and deputy offices, staff offices, conference room, evidence storage, supply storage, break area and staff restrooms.
- 9) Inmate "point of arrival" shall be designed to be through the vehicular sallyport. The vehicular sallyport shall be fully secure and shall be designed to accommodate a full size inter-city bus with a minimum of two drive-through bays.
- 10) Inmate intake area shall be designed to contain a booking area with counter, individual holding rooms, multi-occupancy holding rooms and records storage. The ceiling in inmate intake and booking areas shall be secure.
- 11) Design must provide for control room areas.
- 12) Design must provide for non-proprietary security system and jail door/locking systems, intercom systems and camera systems. Such systems shall be designed and specified to be of a type that repair service and replacement parts can be easily obtained.
- 13) Design must provide for a medical/health services area, including nurse offices, examination/treatment room(s), and secure storage area.
- 14) Design must provide for all required life safety systems, including alarm systems, sprinkler systems and smoke removal systems.
- 15) Design must provide for adequate climate control systems and ductwork to maintain detention area climate in accordance with TCJS.
- 16) Design must provide for inmate day rooms.
- 17) Design must provide raceways for telephone jack placement and wiring.
- 18) Design must provide for sanitary facilities accessible in detention areas.
- 19) Design must provide for guard stations.
- 20) Design must provide for facility monitoring through closed circuit television at the central control room. All electric locks shall be designed to be operable remotely from central control.

- 21) Design must provide for adequate storage areas within the facility.
- 22) Design must provide for detention furnishings and equipment necessary for operation of the facility.
- 23) Design must include areas for inmate programs, classes and counseling.
- 24) Design must include an inmate library area.
- 25) Design must include provision for fire retardant materials where required by TCJS rules.
- 26) Design must include all security, fire and safety, smoke evacuation, security, detention, control, electrical, plumbing, HVAC, mechanical, and communication infrastructure systems to provide a complete and functional Facility which complies with applicable federal, state and local laws.
- 27) Design must make adequate provision for the separation from sight and sound of male and female inmates.
- 28) Regardless of whether or not specified above, the design must provide for all components and areas required by TCJS rules and must be prepared to comply with such rules.

F. Building Components

- 1) All painted surfaces in inmate areas shall be durable enamel. Inmate housing areas, holding areas, dayroom areas, and laundry shall have sealed concrete floors. Shower areas in inmate housing shall be provided with non-slip seamless epoxy surface. Multi-purpose rooms, dining areas, corridors and medical rooms, intake/processing shall have vinyl composition tile.
- 2) Detention doors are to be specified at a minimum of 14 gauge hollow metal. Detention door frames shall be specified as 12 gauge hollow metal.
- 3) Detention hardware design shall include provisions that all detention area doors shall receive detention-type hardware and locks (para-centric or maxi-mogul cylinder). Remote operated locks will be provided where required by TCJS. All remote operated detention locks will be electro-mechanical locks and will have mechanical means of release at the door. All detention door hardware will comply with TCJS requirements. All doors for inmate movement will be equipped with electro-mechanical locks.
- 4) Non-detention doors and doors outside security perimeter will be equipped with commercial grade hardware.

G. Detention Equipment

- 1) All detention furnishings such as bunks, tables, stools will be specified to be durable abuse resistant grade material capable of being securely attached to the floor. Observation panels, speaking devices, shutters and lockable food passes will be provided in cell doors where required to meet TCJS.
- 2) Detention View Windows shall be designed in inmate housing areas, multi-purpose rooms, guard stations and exercise areas.

H. Security Electronics

- 1) The closed circuit video system shall be designed to consist of color cameras and monitors where required for inmate movement, security and control of corridors; multi-purpose rooms, laundry, kitchen, dining, exercise area and building exterior. Cameras will be recorded on a digital recording system. Video system

will be designed to complement touch screen control system. Spot monitors will be provided for door control and related intercom/camera call up.

- 2) A complete intercom system shall be designed and provided in the detention areas to allow continuous voice communication between control personnel and inmates. System shall consist of a master control at staff locations with a two way intercom. Speakers with push to call buttons at remote stations shall be designed. Remote stations will be designed of stainless steel and shall be vandal resistive. Audio system will be integrated into touch screen control system. Audio communications need to be designed to be redundant at guard stations and Central Control.
- 3) Design shall include a touch screen door control panel for operation and monitoring of remote-operated doors. Touch screen consoles shall be provided at Central Control.
- 4) All control and power wiring to the door lock system, closed circuit video system, audio monitoring system and fire alarm system will be provided with both normal and emergency power and uninterrupted power source (UPS).

I. Furniture and Fixtures and Equipment (FFE)

- 1) Designer shall select appropriate FFE that will be provided for as a separate line item in the Project financing.

J. Plumbing

- 1) All plumbing fixtures in the detention areas will be stainless steel detention type fixtures. Units will be supplied with cold and tempered water not to exceed 110 degrees. Mixing valves will be provided as required by plumbing codes. Flush valves shall be vandal resistive non-hold-open push button type. Shut off valves for all detention fixtures will be provided in plumbing chases.
- 2) Showers will be provided with a vandal resistive showerhead and drain. Shower push button type valve will be supplied with tempered water.
- 3) Accessible fixtures will be provided in designated inmate housing areas and comply with Texas Accessibility Standards.
- 4) All fixtures exposed to inmates will utilize vandal-resistive fasteners.

K. Fire Protection

- 1) All areas except inmate housing areas will be provided with an automatic fire sprinkler and standpipe system in accordance with NFPA 13. Building shall be served by a fire line connected to the public water system. Fire system to be designed by a state of Texas licensed Fire Sprinkler Contactor. A Siamese fire department connection will be provided on the exterior of the buildings. Kitchen vent hood shall be provided with an automatic extinguishing system.

L. Mechanical System

- 2) HVAC System: All areas will be conditioned to maintain temperatures between 65 degrees F and 85 degrees F.
- 3) Ventilation and Smoke Exhaust System shall be designed to be in compliance with the TCJS. Normal ventilation will be provided through the air conditioning system fan operation. The smoke exhaust system will be activated through the fire alarm system.
- 4) All smoke exhaust and supply fans shall be provided with emergency backup power.

M. Electrical

- 1) Conduit System: All above grade conduits will be intermediate metallic conduit with threaded fittings and EMT with watertight couplings.
- 2) Grounding: The entire electrical system will be grounded in accordance with applicable codes.
- 3) Lighting: Lighting fixtures in building where accessible to inmates will be fluorescent vandal resistive security fixtures with tamper resistant mounting. Exit lights will be provided in accordance with applicable codes. Building perimeter lighting will be provided by appropriately sized wall mounted exterior building fixtures. Site perimeter lighting will be provided at parking areas and all applicable areas. All exterior lighting will be designed and constructed with emergency backup generation capability.
- 4) Emergency Power System: A generator powered by diesel fuel, natural gas or propane, will be provided to supply emergency power to life safety systems, audio monitoring system, ventilation equipment required for smoke detection, smoke evacuation system, remote locking systems and required lighting fixtures and power receptacles (training room and some convenience outlets in offices). Generator will be self-starting with automatic transfer switch. Kitchen cooler/freezer units will be supplied with emergency power.
- 5) Fire Detection and Alarm Systems: An alarm system consisting of automatic smoke/heat detectors and manual initiating devices served by central control panel will be provided. The activation of a detection device shall initiate the operation of the smoke exhaust system. Alarms will sound automatically at the control panel, guard stations and in the administrative area.
- 6) Inmate Receptacles: Power receptacles will be provided in inmate housing areas as required by the TCJS
- 7) Data/Telephone System: The County shall contract separately for the telephone system. The construction contract shall include data/telephone outlets and conduit, with pull wire, telephone panel boards and telephone power boards.

(Additional items to consider depending upon the type of project be built)

L. PROJECT SPECIFIC INFORMATION:

Description of Process

- 1) A general description of the proposed process for _____ including a Schematic Flow chart of the System of _____ shall be provided to provide an overall description of the proposed system. This description should include a general description and flow chart of at least the following items: _____, _____, _____, _____ etc.
- 2) Proposer should also provide a general description of the _____.

Financing

- 1) Proposal shall contain a description of the proposed method of financing and describe both proposed benefits and potential liabilities to any special purpose entity proposed to be created and/or the County of _____.
- 2) Any financing that is proposed that involves public financing shall meet all the requirements of all applicable law, including but not limited to the applicable requirements of the Texas _____ Code and may require review by the Attorney General's office of the State of Texas.

Economic Feasibility:

- 1) Proposal shall contain a discussion regarding the economic feasibility of the proposed Project and include principle agreements/contracts (in either draft or final form) that relate to the analysis of the economic feasibility (key contracts related to revenue, operational costs, etc.)
- 2) All feasibility reports that are to be completed prior to closing of the proposed financing are to be included in the proposal.

Environmental:

- 1) Proposal shall contain evidence that the proposed facility and all operations will meet all air quality, land use, raw material storage, final product storage permits and registrations as required by the EPA, TCEQ, and any other applicable governmental agency having authority or jurisdiction over the Project.

Exhibit D

Suggested Posting Items, and Minutes of Public Meeting Determining that Design/Build Will Provide "BEST VALUE", Approving RFQ/RFP and Directing Publication

SUGGESTED ITEMS FOR POSTING FOR A PUBLIC MEETING

Presentation by County Project Representative, (Mr./Ms. _____) regarding the evaluation of the Design/Build process, when compared to other methods of project delivery available to the County, and other matters related to the development, design, building, financing, equipment, operation and management of the Proposed _____ ("Project").

Consideration and Action regarding approval, ratification, confirmation, determination, and selection of the Design/Build Method, as Providing the Best Value to the County for the Project and utilizing the procurement procedures of Section 2269 of the Texas Government Code.

Presentation by County Project Representative, (Mr./Ms. _____) regarding the proposed Request for Qualifications/Request for Proposals ("RFQ/RFP"), the form of the Notice of the RFQ/RFP and a discussion of the terms and conditions of the proposed RFQ/RFP, and its publications requirements.

Consideration and Action regarding approval, ratification, confirmation, and determination that the form of the RFQ/RFP, proposed by the County Representative, implementing the Design/Build process for the Project is accepted and approved, and directing that the form of the Notice of the RFQ/RFP presented by the County Representative be published as required by law.

Presentation by Mr./Ms. _____ (counsel to the County) regarding the procurement processes and other matters related to the Project.

Consideration and Action Regarding scheduling of the next meeting of the County Commissioners

PROPOSED MINUTES OF PUBLIC MEETING SELECTING DESIGN/BUILD PROCESS, APPROVING RFQ/RFP AND DIRECTING PUBLICATION OF THE RF1/RFP.

1. REPORT OF MR./Ms. _____ (County Representative for the Project) ON EVALUTION AND RECOMMENDATION OF PROJECT DELIVERY METHOD

Mr./Ms. _____, the County Representative engaged as required by Section 2269 of the Texas Government Code for the duration of the _____ ("Project"), reported that the County had requested that he/she analyze the utilization of the Design/Build Contract method of project delivery for the proposed Project, instead of competitive bidding, and other available methods of project delivery. Mr./Ms. _____ reported that the Project was capable of clear definition, that the time constraints for completion of the Project were not adverse to the completion of a successful Project, that the County had the capacity and access to sufficient resources to ensure that the Design/Build process would provide a competitive procurement, and that the County has the capacity and access to the resources to manage and oversee the Project in light of the experience of County personnel that are available to the County and the experience of the outside consultants, representatives and counsel that have been retained to represent the County throughout the Design/Build process. Mr./Ms. _____ further reported that he/she had studied and considered the applicability and advisability of utilizing other methods of project delivery available to the County for the Project, including

competitive bidding, competitive sealed proposals, construction manager-agent method, construction manager at risk, and job order contracts. Mr./Ms. _____ reported that in his/her opinion the other methods of project delivery available to the County did not provide the County with the combination of risk elimination and reduction, speed of delivery, reduction in cost, efficiency of design process, and single source of responsibility as is provided by the Design/Build process. Mr./Ms. _____ recommended that the Commissioner's County find that the Design/Build process (when compared to other methods of project delivery available to the County) would provide the County with the best value in delivering the Project.

After discussion, evaluation and consideration of the issues raised and analyzed in the report of Mr./Ms. _____, and before any advertising of procurement processes for the Project, the Commissioner's Court determined that the Design/Build contract method of project delivery will provide the best value to the County for the Project, when compared to the other methods of project delivery available to the County.

2. MOTION TO SELECT DESIGN BUILD METHOD

Motion was made by Commissioner _____, and seconded by Commissioner _____, to:

- (i) Find, approve, ratify, and confirm, the determination that the Design/Build Contract method of project delivery for the proposed Project, provides the best value to the County (when compared to the other methods of project delivery available to the County), and
- (ii) Direct Mr./Ms. _____ (the County Representative) and Mr./Ms. _____ (Counsel to the County) to pursue the development of the Project utilizing the Design/Build Contract method and the related procurement processes of the applicable provisions of Section 2269 of the Texas Government Code.

The Commissioner's Court then completed its discussion of the motion.

There being no further discussion of the motion, the motion was approved upon a vote of _____ "Yea" and _____ "Nay". The motion passed.

3. REPORT BY MR./MS. _____ ON RFQ/RFP AND ITS PUBLICATION.

Having determined that the Design/Build Contract method of project delivery for the proposed Project, provides the best value to the County (when compared to the other methods of project delivery available to the County), Mr./Ms. _____ reported that he/she had prepared a proposed Request for Qualifications/Request for Proposals for the Project that, if approved by the County would allow for a competitive procurement process utilizing the Design/Build method of project delivery, and allowing for qualified parties to submit qualifications, and proposals to develop, design, build, finance, equip, operate and maintain the Project.

Mr./Ms. _____ explained that the RFQ/RFP that has been drafted and submitted to the Commissioner's County for consideration, requires a two-step process, as required by Section 2269 of the Texas Government Code. The RFQ/RFP is to be published as required by law for any procurement by the County.

In STEP 1 – interested parties or teams of parties would submit their qualifications to the County in response to the RFQ/RFP. No drawings, costs or expenses are permitted to be included with the qualifications submitted. Mr./Ms. _____, as the County Representative, the attorney representing the County regarding the Project, and representatives of the County selected by Commissioner's Court, would review the qualifications submitted, and recommend to the County no more than five respondents with the best overall qualifications

("Finalists"). The Commissioner's Court will then select up to five Finalists. The Finalists will then be notified of their selection.

In Step 2 – the Finalists submit their full proposals, with drawings, costs, proposed agreements, etc. Then the same evaluators will review the proposals submitted, and recommend to the County the ranking of the proposals submitted. The Commissioner's Court will then formally declare the ranking of the submitted proposals from highest to lowest. The County will then commence negotiations with the Finalist with the highest ranked proposal. If no agreement can be reached, those negotiations are terminated with that Finalist, and negotiations begin with the Finalist with the next highest ranked proposal. This process continues until the County has negotiated acceptable agreements with a Finalist, or the negotiation process ends without an agreement for the Project.

There followed a discussion of the Design/Build Process and the terms of the Proposed RFQ/RFP presented to the Commissioner's Court by Mr./Ms. _____.

4. MOTION TO APPROVE RFQ/RFP AND ITS PUBLICATION

Motion was made by Commissioner _____, and seconded by Commissioner _____, to:

- (i) Find, Determine, Approve, Ratify, and Confirm, that the RFQ/RFP attached to these minutes is approved and accepted by the County; and
- (ii) Direct Mr./Ms. _____ (the County Representative), and the County Clerk to publish the Notice of RFQ/RFP, as finally approved by Mr./Ms. _____, attorney for the County, at least twice within a two week period, as required by law, as promptly as possible and implementing the time table and activities described in the RFQ/RFP.
- (iii) Directing Mr./Ms. _____ (the County Representative), Mr./Ms. _____ (County attorney) and Commissioner _____ to review all qualifications timely submitted in response to the RFQ/RFP, and to report to the Commissioner's Court, when requested, their suggested rankings of each of the qualification submittals received by the deadline for such submittals.

The Commissioner's Court then completed its discussion of the motion.

There being no further discussion of the motion, the motion was approved upon a vote of _____ "Yea" and _____ "Nay". The motion passed.

5. MOTION TO SCHEDULE NEXT MEETING OF COMMISSIONER'S COURT.

Motion was made by Commissioner _____, and seconded by Commissioner _____, to:

- (i) Schedule a meeting of the Commissioners for the ____ day of _____, 20____, where one of the purposes of such meeting is to consider the selection of up to five Finalists who have submitted qualifications in response to the RFQ/RFP, to authorize notification to the Finalists of their selection as a Finalist, and for such other purposes as may be determined.

The Commissioner's Court then completed its discussion of the motion.

There being no further discussion of the motion, the motion was approved upon a vote of _____ votes in approval and _____ "Nay" votes. The motion passed.

Exhibit E

Suggested Posting Items For Public Meeting to Receive Analysis of Proposal, Rank the Proposals and Give Direction to Begin Negotiations with Highest Ranked Proposal

SUGGESTED ITEMS FOR POSTING FOR A PUBLIC MEETING

1. Presentation by County Representative _____, _____, and _____ regarding:

(a) A summary of their review of the Proposals submitted in response the RFQ/RFP published by the County relating to the Project ("RFQ/RFP"); and

(b) Their recommendations as to the ranking of the Proposals submitted considering their relative "Best Value" being offered to the County, on the basis of the published selection criteria (in compliance with Section 2269 of the Texas Government Code) with #1 being the highest ranked and #5 being the lowest ranked; and

(c) Their recommendations as to whether the County, in compliance with Section 2269.308(b) of the Texas Government Code should commence negotiations with the Finalist that submitted the highest (#1) ranked Proposal in response to the RFQ/RFP;

(d) Such other conclusions, findings, suggestions, proposals and recommendations resulting from their review of the Proposals submitted in response to the RFQ/RFP.

2. Consideration and action upon the recommendations of _____, _____ and _____, if any, including, but not limited to, the following:

(a) Accepting the report of _____, _____, and _____;

(b) Finding that, in compliance with Section 2269 of the Texas Government Code, the Proposal submitted to the County in response to the RFQ/RFP, identified by _____, _____ and _____ as the highest ranked (#1) Proposal, provides the PFC with the "Best Value" based upon the published selection criteria and all applicable law;

(c) Directing _____, _____ and _____, on behalf of the County, to commence negotiations with the Finalist that submitted the highest (#1) ranked Proposal in response to the RFQ/RFP;

(d) Such other items suggested by Mr. Davis, Mr. Vela or Mr. Cuny as a result of their review and evaluation of the Proposals submitted in response to the RFQ/RFP.

3. Consideration and Action upon a resolution scheduling the next meeting of the Board of Directors of the Corporation.

Exhibit F**Master Evaluation Work Sheet for Qualifications – For “Building”****Master Evaluation Work Sheet for Qualifications**

| | DB Team A | DB Team B | DB Team C | DB Team D | DB Team E | DB Team F | DB Team G |
|-------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Factor & Weighting | | | | | | | |
| Experience (0 to 100) | 82 | 75 | 60 | 92 | 55 | 96 | 88 |
| Weight: 20% | 16.4 | 15 | 12 | 18.4 | 11 | 19.2 | 17.6 |
| Technical Competence (0 to 100) | 95 | 88 | 55 | 93 | 67 | 82 | 79 |
| Weight: 25% | 23.75 | 22 | 13.75 | 23.25 | 16.75 | 20.5 | 19.75 |
| Capability to Perform (0 to 100) | 77 | 89 | 79 | 91 | 90 | 69 | 82 |
| Weight: 35% | 26.95 | 31.15 | 27.65 | 31.85 | 31.5 | 24.15 | 28.7 |
| Past Performance (0 to 100) | 95 | 91 | 82 | 81 | 71 | 68 | 88 |
| Weight: 25% | 23.75 | 22.75 | 20.5 | 20.25 | 17.75 | 17 | 22 |
| TOTAL SCORE | 90.85 | 90.9 | 73.9 | 93.75 | 77 | 80.85 | 88.05 |
| Highest Possible Score : 100 | | | | | | | |
| Ranking by Total Score | 3rd | 2nd | 7th | 1st | 6th | 5th | 4th |

To use this worksheet:

1. Insert the name of each Team in one of the blue boxes across the top. Then list each evaluation criteria, and its relative weighing factor in the gray boxes on the left.
2. Determine each Team's score (from 0 to 100) for each of the criteria, and place each score in the appropriate gray box under each Team's name.
3. Multiply each score, in each gray box, by the applicable weighing factor.
4. Add the weighted scores for each Team to give you the TOTAL SCORE for each Team.
5. Then, in the boxes across the bottom, rank each TOTAL SCORE from HIGHEST (1st place) to LOWEST (last place).

You have now evaluated each set of Qualifications, using the published evaluation criteria and their relative weightings, and ranked them in order from HIGHEST score (1st) to LOWEST score (5th).

Using the Proposal Evaluation Master Work Sheet:

Step 1 – Insert the name of each Finalist Design/Build team in one of the Purple areas:

| |
|-----------|
| DB Team 1 |
|-----------|

Step 2 – Insert each evaluation criteria in one of the gray areas:

| |
|------------------------------|
| Group A Criteria |
| Experience |
| Technical Competence |
| Past Performance |
| Reputation |
| Quality of Services Provided |

NOTE: There is a separate gray area for each group of evaluation criteria (Group A, B, C, D). Insert all the evaluation criteria into the worksheet, in their appropriate grouping in the gray area.

Step 3 – Insert the relevant weighting factor in the gray box under each of the criteria Groups

| |
|-----------------------------------|
| TOTAL GROUP A SCORE (0 to 100) |
| Weight: 20% |

Step 4 – Determine EACH Team’s score for each group of criteria. Each score will be within a range of 0 to 100. Insert in each orange box, each Team’s score for the group of criteria:

| | |
|-----------------------------------|----|
| TOTAL GROUP A SCORE (0 to 100) | 77 |
|-----------------------------------|----|

Step 5 – Multiply each score by the weighting percentage. For example, if Team A’s score in the first evaluation criteria group is “77” and the weighting factor is 20%, then multiply “77” times “0.20”. This will result in a weighed score for Team A in the Group A criteria of “15.4”. Enter that “weighted” score in the YELLOW box for each Team, for each evaluation criteria group.

| | |
|-------------|------|
| Weight: 20% | 15.4 |
|-------------|------|

Step 6 – Add up all the YELLOW score boxes for each team, and insert that Total Score in the GREEN boxes.

| | |
|-------------|-------|
| TOTAL SCORE | 65.65 |
|-------------|-------|

Step 7 – Rank each of the Total scores into 1st, 2nd, 3rd, etc. place in the brown squares:

| | |
|------------------------|-----|
| Ranking by Total Score | 5th |
|------------------------|-----|

You have now evaluated all the Proposals, using the published evaluation criteria and their relative weighting factors, and ranked them in order from HIGHEST score (1st) to LOWEST score (5th).

Exhibit G
Proposal Master Evaluation Work Sheet – For “Building”

Proposal Master Evaluation Work Sheet

| | DB Team 1 | DB Team 2 | DB Team 3 | DB Team 4 | DB Team 5 |
|--|-----------|-----------|-----------|-----------|-----------|
| Criteria & Weight | | | | | |
| Group A Criteria | | | | | |
| Experience | | | | | |
| Technical Competence | | | | | |
| Past Performance | | | | | |
| Reputation | | | | | |
| Quality of Services Provided | | | | | |
| TOTAL GROUP A SCORE (0 to 100) | 77 | 69 | 82 | 96 | 88 |
| Weight: 20% | 15.4 | 13.8 | 16.4 | 19.2 | 17.6 |

| | | | | | |
|--|------|-------|-------|-------|------|
| Group B Criteria | | | | | |
| Capability to perform | | | | | |
| Feasibility of Implementation | | | | | |
| Ability of Timely completion | | | | | |
| Compliance with RFP and County Needs | | | | | |
| GMP Below Budget | | | | | |
| TOTAL GROUP B SCORE (0 to 100) | 82 | 77 | 91 | 81 | 74 |
| Weight: 25% | 20.5 | 19.25 | 22.75 | 20.25 | 18.5 |

| | | | | | |
|--|-------|-------|------|-------|-------|
| Group C Criteria | | | | | |
| Price | | | | | |
| Method & Cost of Financing (if applicable) | | | | | |
| Long Term Cost to County | | | | | |
| Ability to deliver site | | | | | |
| Economic Benefit to County | | | | | |
| TOTAL GROUP B SCORE (0 to 100) | 63 | 91 | 72 | 59 | 81 |
| Weight: 35% | 22.05 | 31.85 | 25.2 | 20.65 | 28.35 |

| | | | | | |
|--|-----|-----|-----|-----|-----|
| Group D Criteria | | | | | |
| Safety and Long Term Durability | | | | | |
| TOTAL GROUP B SCORE (0 to 100) | 77 | 91 | 85 | 79 | 69 |
| Weight: 10% | 7.7 | 9.1 | 8.5 | 7.9 | 6.9 |

| | | | | | |
|-------------------------------|-------|-----|-------|-----|-------|
| TOTAL SCORE | 65.65 | 74 | 72.85 | 68 | 71.35 |
| Ranking by Total Score | 5th | 1st | 2nd | 4th | 3rd |

Meet the Author

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Areas of Practice

Mr. Youngblood focuses his practice on government contracting, project finance and contracting, complex financial transactions, and the disputes arising from these matters. He represents clients in a wide array of local, state and federal contracting transactions and disputes.

As part of his expertise in Design/Build and government contracting, Hull has been involved in almost every aspect of the privatization of the corrections industry in the United States and abroad for more than 30 years. He also has extensive experience representing clients in both the public and private components of public projects, design/build processes and public/private partnerships. Hull has advised clients regarding dozens of Design/Build projects in 20 states, UK, Costa Rica, and Israel.

Hull has published dozens of articles and books on contracting issues, finance, and disputes over contracts and financing, and is a sought after speaker at continuing legal education seminars across the country. He is also an amateur magician, and has held numerous offices in local, state and international magic organizations.

Areas of Emphasis

- Project Finance
- Public/Private Partnerships
- Public Procurement and Contracting

Representative Experience

- Represented contractor in successful appeal setting aside disqualification of a \$1.2 billion proposal.
- Counseled clients in disqualification and debarment proceedings arising from financial disclosure controversy.
- Represented clients in county, state and federal competitive bidding and contract awards and disputes.
- Represented underwriters, operators, contractors and specialty vendors in the development, financing, construction, operations and refinancing of dozens of public projects in 12 states, UK, Israel, and Virgin Islands.
- Counseled contractor in negotiation of equipment and installation agreement for US Embassy.
- Represented private operator in negotiations with Costa Rica regarding the development, financing and contracting of public/private project.
- Represented healthcare provider in negotiation of the healthcare services agreement for the largest privatized Bureau of Prisons correctional facility in the United States.
- Defended private operator, Texas county, and Texas sheriff in prison conditions dispute with ACLU
- Represented healthcare services provider in Department of Justice investigation.
- Defended the State of Colorado, Commonwealth of Virginia, Governor of the State of Colorado, and directors of the Departments of Corrections of Virginia and Colorado in Texas litigation.

Professional/Civic Activities

- **State Bar of Texas**
 - Member, Continuing Legal Education Committee, 2007-2014
 - Member and Chair, Minimum Continuing Legal Education Committee, 2000-2005
 - Chair, Board of Directors, Director, and Executive Committee Member 1985-1989
 - Member, Committee on Compensation, Selection and Tenure of Judges
 - Member, District 10 Grievance Committee 1983 to 1989
 - Coordinator, State-wide MCLE Steering Committee, 1984
 - Committee to Coordinate Study of Civil Code (1983-1985)
 - Chair, Board of Directors, Texas Young Lawyers Association.

- **Texas Bar Foundation**
 - Sustaining Life Fellow 1990 to date
 - Chair of the Fellows, 2006-2007
 - Vice-Chair of the Fellows, 2005-2006
 - Secretary of the Fellows, 2004-2005

- **Texas Center for Legal Ethics and Professionalism**
 - Trustee, 2004-2005
 - Vice Chair – Programs, 2005 – 2006

- **San Antonio Bar Association**
 - Member 1977 to date
 - Director – 1985 to 1988

- **San Antonio Bar Foundation**
 - Co-Founder 1984
 - Trustee 1984 – 1988
 - Life Fellow 1988 to date

- **Court Admissions**
 - U.S. Court of Appeals, Fifth Circuit
 - U.S. Claims Court
 - All federal district courts in Texas

- **Society of American Magicians**
 - Member 2001 to date
 - Member, National Council 2005 to 2008
 - Member, Assembly 206, Austin, TX – President, 2007 – 2009

- **Texas Association of Magicians**
 - Member 1964 to date
 - Vice President, 2009
 - President, 2010

- **International Brotherhood of Magicians**
 - Member, 2001 to date
 - Member, Ring 18, San Antonio, TX – 2001 to date

Publications and Presentations

Hull is a prolific writer and speaker on legal topics including government contracting, financing, and ethics. He is one of the country's most sought after legal education speakers, having given more than 300 presentations in Texas, California, Florida, Hawaii, Washington, Arkansas, Tennessee, and the District of Columbia. Selected publications and presentations include:

| | |
|--|---|
| "Structuring Enforceable Non-Disclosure Agreements" 2014 - Stratford Publications, Author & Webinar Panelist | "7 Deadly Sins of Opinion Letters" 2014 Essentials of Business Law – State Bar of Texas – Author & Presenter |
| "Responsible Third Parties & Settling Parties" 2013 Fiduciary Litigation Course, State Bar of Texas – Author and Presenter | "7 Deadly Sins of Settlement Agreements" 2013 Advanced Litigation Strategies Seminar – State Bar of Texas – Author & Presenter |
| "7 Deadly Sins of Boilerplate" 11 th Annual Advanced Business Law Seminar – State Bar of Texas – Author & Presenter | "7 Deadly Sins of Contract Drafting" 2013 Advanced Civil Trial Course – State Bar of Texas – Author & Presenter |
| "7 Deadly Sins of Recovering Attorney's Fees" – State Bar of Texas – Author & Webcast Panelist | "7 Deadly Sins of Engagement Letters" 2012 – Webcast - State Bar of Texas, Author & Presenter |
| "Design Build Handbook with forms and checklists" – 2012 - Author | "7 Deadly Sins of Settlement Agreements" 2012 Advanced In-House Counsel Institute – State Bar of Texas – Author & Presenter |
| "7 Deadly Sins of Boilerplate" 2011 Entertainment Law Institute, State Bar of Texas – Author and Presenter | "Landmines in Deal Documents" 2011 Business Torts Institute, State Bar of Texas - Presenter |
| "Update on Heavy Duty Contract Drafting" 2011 Advanced In-House Counsel Institute, State Bar of Texas – Author and Presenter | "Top 5 Things to Consider Before Building a Jail" 2011 Texas Jail Association Convention – Co-Author and Panelist |
| "Risk Transfer Provisions in Commercial Contracts" Stafford Publications - 2011 Webcast Panelist | "Drafting and Enforcing Complex Indemnification Provisions" The Practical Lawyer - Co-Author - 2010 |
| "Drafting Indemnification Agreements for LLCs and Partnerships" , 2010 Advanced Partnership and LLC Seminar, Univ. of Houston – Co-Author and Presenter | "Privatization Checklist – A Handbook for Privatizing Governmental Functions" 2009 |
| "Texas Practice Guide" Vols. I & II – Editor-In-Chief; Published by State Bar of Texas. | "Drafting and Enforcing Complex Indemnification Provisions" , 2010 ALI- ABA Webcast, Author and Panelist |

ENDNOTES:

¹ Section 2269.302 and Section 2269.001(3) Texas Govt. Code - definition of "Facility".

² Section 2269.351 Texas Govt. Code – definition of "Civil works Project"

³ Section 2269.101, et Seq. of the Texas Government Code allows many governmental entities to use any of several different methods of Project delivery. These include: Competitive Bidding Method; Competitive Sealed Proposal Method; Construction Manager-Agent Method; Construction Manager-At-Risk Method; Design/Build Method – For Buildings; Design/Build Method – For Civil Works. This Handbook focuses on utilizing the Design/Build Method, outlined in Section 2269.301, et Seq. and Sections 2269.351 et Seq. of the Texas Govt. Code.

⁴ References in this handbook to Section 2269 of the Texas Govt. Code refer to Section 2269 as it appears in SB 628 which became effective on September 1, 2011. If the version of Section 2269 that appears in HB 1048 (which also became effective on September 1, 2011) is intended, then a reference to HB 1048 will be included in the reference.

⁵ Typically, there are other statutes that are also applicable to the Design/Build process, depending upon the type of Project being considered. These special statutes relating to schools, hospitals, jails, etc. must also be considered.

⁶ Section 2269.051 Texas Govt. Code

⁷ "Design/Bid/Build" is generally referred to as the traditional "Competitive Bidding Method" of Project procurement. This method is described in Section 2269.101 et Seq. of the Texas Govt. Code.

⁸ If the Owner provides the site, then unknown sub-surface problems will typically be the responsibility of the Owner.

However, if the Design/Build team provides the site, all such subsurface problems should be shifted to the Design/Build team.

⁹ "Comparison of U.S. Project Delivery Systems," Mark Konchar & Victor Sanvido, *Journal of Construction Engineering and Management*, Vol. 124, No. 6 (1998), pp. 435-444.

¹⁰ Id.

¹¹ Section 2269.101, et Seq. of the Texas Government Code allows many governmental entities to use any of several different methods of Project delivery. These include: Competitive Bidding Method; Competitive Sealed Proposal Method; Construction Manager-Agent Method; Construction Manager-At-Risk Method; Design/Build Method – For Buildings; Design/Build Method – For Civil Works. This Handbook focuses on utilizing the Design/Build Method, outlined in Section 2269.301, et Seq. of the Texas Govt. Code.

¹² Section 2269.002 of the Texas Govt. Code

¹³ Section 2269.002(1) of the Texas Govt. Code, as defined by Section 2151.002 of the Texas Govt. Code

¹⁴ Section 2269.002(1) of the Texas Govt. Code

¹⁵ Id. Section 2269.002(d) of the Texas Govt. Code

¹⁶ Established under Chapter 379B, Texas Local Government Code

¹⁷ As defined by Section 61.003 of the Texas Education Code

¹⁸ Relating to the management of port facilities and improvements.

¹⁹ Section 2269.004 Texas Govt. Code

²⁰ Section 2269.004(1) Texas Govt. Code

²¹ Section 2269.004(2) Texas Govt. Code

²² Section 2269.005(a) & (b); as defined by Section 61.003 of the Texas Education Code

²³ Id.

²⁴ Section 2269.005(b)(1) Texas Govt. Code

²⁵ See Ch. 366 Texas Transportation Code

²⁶ Section 2269.007 Texas Govt. Code; Local Government Corporations can be exempt from competitive bidding requirements pursuant to Section 431.110 of the Texas Transportation Code.

²⁷ Section 2269.008 Texas Govt. Code; See Ch. 370 of the Texas Transportation Code

²⁸ Section 2269.009 Texas Govt. Code; unless the requirements of Section 2269 of the Government Code are adopted as applicable to the Project by the County; These are generally highways, bridges, ferries, etc.; See Ch. 284 Texas Transportation Code

²⁹ Section 2269.010 Texas Govt. Code; See Section 460 Texas Transportation Code

³⁰ See D/B Phase 1 for a detailed explanation of the differences between a "Building" and a "Civil Works Project"; See also, Section 2269.351 et Seq. of the Texas Govt. Code

³¹ Section 2269.352(1) Texas Govt. Code

³² Section 2269.352(1) Texas Govt. Code

³³ Section 2269.301 et. seq. Texas Govt. Code

³⁴ Section 2269.003 Texas Govt. Code

³⁵ Section 2269.003(a) Texas Government Code

³⁶ Section 2269.003(b) Texas Government Code

³⁷ Section 2269.003(c) Texas Government Code; see Section 252.022(c) of the Texas Local Government Code.

³⁸ See Section 49.273 of the Texas Water Code

³⁹ Created under Section 59, Article XVI, Texas Constitution

- ⁴⁰ Section 2269.003(d) Texas Government Code; and Section 2269.003(e) which is applicable when the entity owns electrical generation capacity in excess of 2,500 megawatts.
- ⁴¹ See Sections 2269.003(d) & (e) Texas Govt. Code
- ⁴² Id.
- ⁴³ Section 2269.001(3) Texas Govt. Code - definition of "Facility".
- ⁴⁴ Section 2269.302 Texas Govt. Code
- ⁴⁵ Section 2269.302(1) & (2)
- ⁴⁶ Section 2269.351 et Seq. Texas Govt. Code
- ⁴⁷ While these types of Projects were not excluded from the Design/Build statute relating to Buildings (Section 2269.301 et Seq.), these Project were listed in the definition of "Civil Works Projects" at Section 2269.351(1). The procedures in Section 2269.351 must be used for Civil Works Projects.
- ⁴⁸ See Texas Attorney General Opinion GA-0070, May 12, 2003. While this Opinion interprets the prior Design/Build statutes (Ch. 271 Local Govt. Code) the rationale for the opinion remains applicable in principal.
- ⁴⁹ Id.
- ⁵⁰ Section 2269.354 Texas Govt. Code
- ⁵¹ Section 2269.353(b) Texas Govt. Code
- ⁵² Id.
- ⁵³ Id.
- ⁵⁴ Section 2269.354(a)(2), 2269.354(c)(2), and 2269.354(d) Texas Govt. Code
- ⁵⁵ Section 2269.363(1)(B) Texas Govt. Code
- ⁵⁶ Section 2269.363(2) Texas Govt. Code
- ⁵⁷ Id.
- ⁵⁸ The Owner/public entity must hire an Architect or Engineer to represent their interests and be their representative for the "duration of the Project". Section 2269.305 Texas Govt. Code; **Civil Works Compliance**: See Section 2269.355 for the same requirement as to Civil Works Projects.
- ⁵⁹ Id.
- ⁶⁰ Section 2269.057 Texas Govt. Code; **Civil Works Compliance**: See Section 2269.355 for the same requirement for a Civil Works Project.
- ⁶¹ See Section 2254.001 Texas Govt. Code
- ⁶² Section 2254.022 of the Texas Govt. Code that suggests publication of an RFP or RFQ for the selection of a consultant, does NOT apply to the selection of an Architect or Engineer, as provided in Section 2254.024 Texas Govt. Code.
- ⁶³ See Section 2254.003 Texas Govt. Code
- ⁶⁴ A state agency, including an institution of higher education as defined by Section 61.003, Education Code, shall provide written notice to the Legislative Budget Board of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency enters into the contract. See Section 2254.006 Texas Govt. Code.
- ⁶⁵ Id.
- ⁶⁶ See Section 2254.004 Texas Govt. Code
- ⁶⁷ Id. - This process applies to hiring an architect, engineer or land surveyor.
- ⁶⁸ www.dbia.org
- ⁶⁹ See Section 351.102 of the Texas Local Government Code for a 30 day requirement when publishing an RFQ for a jail or related complex; see Section 351.103 for specific terms required in a contract with a private entity related to a jail.
- ⁷⁰ Section 361.061 does not impose a 30 day requirement for publishing an RFQ.
- ⁷¹ Section 362.426 of the Health and Safety code requires giving preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.
- ⁷² Section 2269.451 Texas Govt. Code
- ⁷³ Section 2269.054.(a) Texas Govt. Code
- ⁷⁴ Id.
- ⁷⁵ Section 2269.054(b) Texas Govt. Code
- ⁷⁶ Id.
- ⁷⁷ Section 2269.306 Texas Govt. Code
- ⁷⁸ BEFORE the RFQ/RFP is drafted for a Civil Works Project, the governmental entity must make a determination that the Design/Build Process is appropriate for their particular Project. A resolution making findings as to specific criteria is required BEFORE drafting the RFQ/RFP. See Section 2269.353(d) Texas Govt. Code
- ⁷⁹ Both deadlines (deadline for submitting qualifications and the deadline for finalists to submit full proposals) can be published simultaneously. See Section 2269.052(c) Texas Govt. Code. The deadlines for Step II are not required to be published separately.
- ⁸⁰ Section 2269.361 Texas Govt. Code
- ⁸¹ Id.
- ⁸² Section 2269.359(c) Texas Govt. Code

- ⁸³ Section 2269.351(a) Texas Govt. Code
- ⁸⁴ Section 2269.357(a) Texas Govt. Code
- ⁸⁵ Section 2269.361 Texas Govt. Code
- ⁸⁶ Section 2269.364 Texas Govt. Code
- ⁸⁷ Section 2269.3615 (b) If a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified companies unless an identified company: (1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm; (2) voluntarily removes itself from the team; (3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or (4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.
- ⁸⁸ Section 2269.054 Texas Govt. Code
- ⁸⁹ Section 2269.357(a) Texas Govt. Code
- ⁹⁰ Section 2269.357(b) Texas Govt. Code
- ⁹¹ Section 2269.361(a) Texas Govt. Code
- ⁹² Id.
- ⁹³ Section 2269.361(c) Texas Govt. Code
- ⁹⁴ Section 2269.361(d) Texas Govt. Code
- ⁹⁵ Section 2269.052(b) Texas Govt. Code
- ⁹⁶ Section 2269.307 Texas Govt. Code
- ⁹⁷ Section 2269.055 Texas Govt. Code
- ⁹⁸ Sections 2269.307 & 2269.359 Texas Govt. Code
- ⁹⁹ Sections 2269.307(f) and 2269.308(a) Texas Govt. Code
- ¹⁰⁰ Section 2269.055 Texas Govt. Code
- ¹⁰¹ Section 2269.055(a) Texas Govt. Code
- ¹⁰² Most of these factors were taken from the Public Private Partnership Guidelines adopted by the Texas Facilities Commission pursuant to the Public and Private Facilities and Infrastructure Act (S.B. 1048), effective Sept. 1, 2100
- ¹⁰³ Section 2269.306(c) Texas Govt. Code
- ¹⁰⁴ Id.
- ¹⁰⁵ Id.
- ¹⁰⁶ Id.
- ¹⁰⁷ Section 2269.306(d) Texas Govt. Code
- ¹⁰⁸ Section 2269.351(3) Texas Govt. Code
- ¹⁰⁹ Section 2269.358 Texas Govt. Code
- ¹¹⁰ Section 2269.056(a) Texas Govt. Code
- ¹¹¹ Section 2269.353(c) Texas Govt. Code
- ¹¹² Section 2269.353(d) Texas Govt. Code
- ¹¹³ Section 2269.353(c)(1) through (4) Texas Govt. Code
- ¹¹⁴ Section 2269.052 Texas Govt. Code
- ¹¹⁵ Section 2269.052(d)
- ¹¹⁶ This is a shorter time period than the standard notice required to be given under Section 271.02 Tex. Local Govt. Code, where the notice must be published at least once for each of two consecutive weeks, at least 10 days before proposals are opened.
- ¹¹⁷ Texas Local Government Code Section 351.102
- ¹¹⁸ Section 2269.052(d) Texas Govt. Code
- ¹¹⁹ Created pursuant to Section 59, Article XVI of the Texas Constitution
- ¹²⁰ Section 2269.052(c) Texas Govt. Code
- ¹²¹ Id.
- ¹²² Id.
- ¹²³ Section 2269.052(a) & (b) Texas Govt. Code
- ¹²⁴ Section 2269.002(1) of the Texas Govt. Code, as defined by Section 2151.002 of the Texas Govt. Code
- ¹²⁵ Section 2269.002(1) of the Texas Govt. Code
- ¹²⁶ Id. Section 2269.002(d) of the Texas Govt. Code
- ¹²⁷ As defined by Section 61.003 of the Texas Education Code
- ¹²⁸ Relating to the management of port facilities and improvements.
- ¹²⁹ Section 271.025(b) Texas Local Govt. Code
- ¹³⁰ Id.
- ¹³¹ Section 271.025(c) & (d)
- ¹³² Section 2269.056(c) Texas Govt. Code
- ¹³³ Id.

- ¹³⁴ Section 2269.359(c) Texas Govt. Code
- ¹³⁵ Section 2269.056(c) Texas Govt. Code
- ¹³⁶ Section 2269.361(e) Texas Govt. Code
- ¹³⁷ Section 2269.307(a) Texas Govt. Code
- ¹³⁸ Section 2269.054 (b)(1) Right to Work – Texas Govt. Code
- ¹³⁹ Section 2269.307(a) Texas Govt. Code
- ¹⁴⁰ Section 2269.307(c) Texas Govt. Code
- ¹⁴¹ Id.
- ¹⁴² Section 2269.359(c) Texas Govt. Code
- ¹⁴³ Section 2269.056(c) Texas Govt. Code
- ¹⁴⁴ Id.
- ¹⁴⁵ Section 361.063 of the Texas Local Government Code authorizes shuttle negotiations for a construction contract for a jail or related Project. However, the Design/Build statute does not recognize such shuttle negotiations as an exception to its “one-at-a-time” negotiations. Shuttle negotiations or “bid shopping” between two or more Finalist is not permitted in the Design/Build process. See Section 2269.308(b) and Section 2269.308(c) Texas Govt. Code
- ¹⁴⁶ Section 2269.306(d) Texas Govt. Code
- ¹⁴⁷ Section 2269.055(b) Texas Govt. Code
- ¹⁴⁸ Section 2269.307(c) Texas Govt. Code
- ¹⁴⁹ Section 2269.361(e) Texas Govt. Code
- ¹⁵⁰ Section 2269.308(a) Texas Govt. Code
- ¹⁵¹ Section 2269.307(f) Texas Govt. Code
- ¹⁵² Section 361.063 of the Texas Local Government Code authorizes shuttle negotiations for a construction contract for a jail, but not in the design/build process for every Project. Generally, the Design/Build process requires that negotiations be ended with a design/build team, before commencing negotiations with the next lowest ranked design/build team. If the Design/Build process is used, then generally, the Design/Build statutes take precedence over other laws. See Section 271.112(c) Texas Local Government Code.
- ¹⁵³ Section 2269.308(a) Texas Govt. Code
- ¹⁵⁴ Section 2269.308(c) Texas Govt. Code
- ¹⁵⁵ Id.
- ¹⁵⁶ Id.
- ¹⁵⁷ Id.
- ¹⁵⁸ American Institute of Architecture (“AIA”), Design Build Institute of America, and others supply forms for Design/Build Contracts. Like all forms, these suggested forms must be read and understood in their entirety, and customized for your Project.
- ¹⁵⁹ Texas Local Government Code 351.101 et. Seq.
- ¹⁶⁰ Section 2269.311(c) Texas Govt. Code
- ¹⁶¹ Section 2269.311(a) Texas Govt. Code
- ¹⁶² Id.
- ¹⁶³ Section 2269.311(b) & (c) Texas Govt. Code
- ¹⁶⁴ Id.
- ¹⁶⁵ Id.
- ¹⁶⁶ Id.
- ¹⁶⁷ Id.
- ¹⁶⁸ Sections 2269.058(a) and 2269.305 Texas Govt. Code
- ¹⁶⁹ Section 2269.305 Texas Govt. Code
- ¹⁷⁰ Section 2269.309 Texas Govt. Code
- ¹⁷¹ Section 2269.058 Texas Govt. Code
- ¹⁷² Id.
- ¹⁷³ Id.
- ¹⁷⁴ Any third party that is hired to conduct tests or inspections must be hired in compliance with Section 2254.004, of the Texas Government Code.
- ¹⁷⁵ Section 2269.058(b) Texas Govt. Code
- ¹⁷⁶ Section 2269.058 Texas Govt. Code
- ¹⁷⁷ Section 2269.310 Texas Govt. Code; Section 2269.366 Texas Govt. Code
- ¹⁷⁸ Id.
- ¹⁷⁹ Civil Works Projects are also subject to the “General” provisions of the Design/Build statute found at 2269.001 et Seq. of the Texas Govt. Code.
- ¹⁸⁰ Section 2269.001(3) Texas Govt. Code
- ¹⁸¹ Section 2269.302 Texas Govt. Code
- ¹⁸² Section 2269.351(1) Texas Govt. Code

- ¹⁸³ See D/B Phase 1 for a detailed explanation of the differences between a "Building" and a "Civil Works Project"; See also, Section 2269.351 et Seq. of the Texas Govt. Code
- ¹⁸⁴ Section 2269.352(1) Texas Govt. Code
- ¹⁸⁵ Section 2269.352(1) Texas Govt. Code
- ¹⁸⁶ Section 2269.354 Texas Govt. Code
- ¹⁸⁷ Section 2269.353(b) Texas Govt. Code
- ¹⁸⁸ Id.
- ¹⁸⁹ Id.
- ¹⁹⁰ Section 2269.354(a)(2), 2269.354(c)(2), and 2269.354(d) Texas Govt. Code
- ¹⁹¹ Section 2269.353(d) Texas Govt. Code
- ¹⁹² Section 2269.353(c)(1) through (4) Texas Govt. Code
- ¹⁹³ Section 2269.359(c) Texas Govt. Code
- ¹⁹⁴ Section 2269.361 Texas Govt. Code
- ¹⁹⁵ Section 2269.363(1)(B) Texas Govt. Code
- ¹⁹⁶ Section 2269.363(2) Texas Govt. Code
- ¹⁹⁷ Id.
- ¹⁹⁸ Section 2269.361(e) Texas Govt. Code
- ¹⁹⁹ Section 2269.363(1)(A) and Section 267.363(2) Texas Govt. Code
- ²⁰⁰ However, the Design/Build team is solely responsible for any temporary easement or work area associated with staging or construction for the Project. Section 2269.363(2) Texas Govt. Code
- ²⁰¹ Section 2269.363(1) Texas Govt. Code
- ²⁰² Section 2269.363(1)(B) & (D) Texas Govt. Code
- ²⁰³ Section 2269.363(c) Texas Govt. Code
- ²⁰⁴ Id.
- ²⁰⁵ Section 2269.364(a) Texas Govt. Code
- ²⁰⁶ Id.
- ²⁰⁷ Id.
- ²⁰⁸ Id.
- ²⁰⁹ Section 2269.364(c) Texas Govt. Code
- ²¹⁰ Id.
- ²¹¹ Id.
- ²¹² Section 2269.365 Texas Govt. Code
- ²¹³ Sections 2269.301 & 2269.303 Texas Govt. Code
- ²¹⁴ This statute authorizes a county to contract with a private entity to design, construct, maintain, finance, or operate a county jail or related Project.
- ²¹⁵ Section 2269.301 et Seq. Texas Govt. Code (Civil Works Compliance: If your Project is a Civil Works Project, the Design/Build component will be governed by Section 2269.351 et Seq. of the Texas Govt. Code.
- ²¹⁶ Section 351 Texas Local Govt. Code
- ²¹⁷ The statutes that describe the Design/Build process for Texas public Projects define it as "...construction, rehabilitation, alteration, or repair of a facility." Operations and maintenance are not included in the scope of Design/Build process. See Section 2269.301 Texas Govt. Code.

