

9 – 11 am – Keynote Presentation
**Construction Procurement:
Building the Foundation**



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State of Illinois Chief Procurement Office

Building the Foundation

October 18, 2018

Agenda

- **Introduction**
- **What is Construction?**
- **Construction Procurement Methods**
 - **Traditional Methods**
 - **Alternative Methods**
- **Contract Administration**
 - **Contract Types**
 - **Change Orders**
 - **Punch List and Contract Close Out**
- **Construction Experiences**

3

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Introduction

- **Know the Laws and Regulations that apply to the Jurisdiction managing the project**
 - **In Hawaii it is the Hawaii Revised Statutes (HRS)**
 - **In Illinois it is the Illinois Compiled Statutes (ILCS)**
- **Identify your need**
- **Approach each project individually**
 - **Think strategically about the appropriate approach to the project**

4

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What is Construction?

Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property

HRS 103d - 104

5

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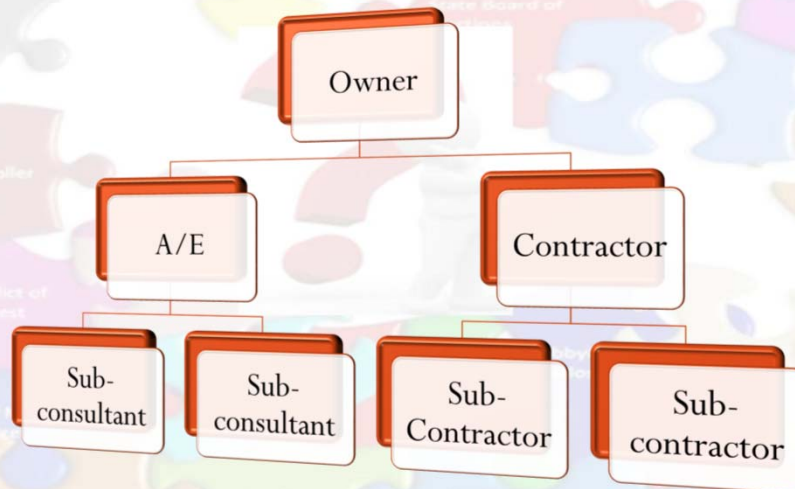
Traditional Construction Procurement Methods

- **Design-Bid-Build (Low Bid)**
 - **Separate Contracts for Design and Contractor**
 - **Owner contracts with the an architect/engineering company for the design under some form of the Federal Brooks Act**
 - **Contractor awarded based on the Lowest Responsive and Responsible Bid**
 - **Responsiveness vs Responsibility**

6

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Traditional Construction Procurement Methods – Design-Bid-Build



7

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Traditional Construction Procurement Methods – Design-Bid-Build

- **Advantages:**
 - **Owner can be reasonably assured of a quality design that is able to be built within budget**
 - **Owner can be reasonably assured that the work is contracted for the lowest price**
 - **Disputes over the selection of the contractor are minimized due to the selection being based on the lowest responsive bid**
 - **The designer assists with the administration of the contract**
 - **Generally to only accepted method across jurisdictions**

8

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Traditional Construction Procurement Methods – Design-Bid-Build

- **Disadvantages:**
 - **Usually slow and inefficient**
 - **Separate contracts for design and construction allow for a greater risk of disputes over errors, omissions, unforeseen site conditions and delays**
 - **Contractor's expertise is eliminated from the design**
 - **Changes are more common**
 - **Low price may equate to the contractor seeking to cut corners in order to submit the lowest cost**

9

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Traditional Construction Procurement Methods – Design-Bid-Build

- **Single Prime Contracting**
 - **Owner Selects a General Contractor who is responsible for selecting all subcontractors**
 - **Advantages:**
 - **Minimized scheduling delays and contractor relationship issues**
 - **Familiarity**
 - **Disadvantages:**
 - **Owner does not evaluate the sub-contractors expertise**
 - **Sub-contractors are not paid directly**

10

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Traditional Construction Procurement Methods – Design-Bid-Build

- **Multiple Prime Contracting**
 - **Owner acts as the construction manager**
 - **In Illinois all building construction contracts over \$250,00 must be bid as Multi-Prime Contracts**
 - **Plumbing;**
 - **Heating, piping, refrigeration, and automatic temperature control systems, including the testing and balancing of those systems;**
 - **Ventilating and distribution systems for conditioned air, including the testing and balancing of those systems;**
 - **Electric wiring; and**
 - **General contract**

11

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Traditional Construction Procurement Methods – Design-Bid-Build

- **Multiple Prime Contracting**
 - **Advantages:**
 - **Owner has control over the contractors**
 - **Owner controls contractor payments**
 - **Helps increase minority/women contracting opportunities**
 - **Disadvantages:**
 - **Possible scheduling delays**
 - **Increase risk for change orders**

12

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Alternative Construction Procurement Methods

- **Design – Build**
- **Construction Manager - at - Risk**
- **Job Order Contracting**
- **Public – Private Partnerships**

13

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Alternative Construction Procurement Methods

- **Design – Build**
 - **Design – Build means a project delivery method in which the procurement officer enters into a single contract for design and construction**
- **A project delivery method that combines architectural and engineering design services with construction performance under one contract.**

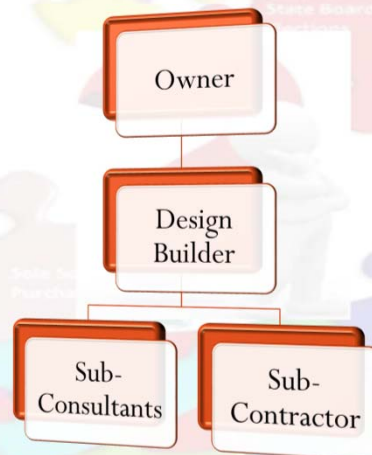
HRS 103D -104

NIGP Global Best Practices

14

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Alternative Construction Procurement Methods – Design – Build



15

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Alternative Construction Procurement Methods – Design – Build

- **Traditional Design Build limits the Owners ability to shape the Design**
- **Design and Construction costs are part of the selection process**
- **Design Build is considered Best Value as opposed to Lowest Cost**
- **Combines and the Request for Qualification Process with a Request for Proposal Process**

16

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Alternative Construction Procurement Methods – Design – Build

- **Selections Process:**
 - **Request for Qualifications (RFQ)**
 - **Interviews**
 - **Request for Proposals (RFP)**
 - **Design and Cost are evaluated**

17

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Alternative Construction Procurement Methods – Design – Build

- **Advantages:**
 - **The Contractor is selected based on a combination of qualifications, expertise, capabilities and price**
 - **Reduction in Owner's risk**
 - **Guaranteed design**
 - **Time Savings**
 - **Fewer Conflicts**
 - **Accountability**
 - **Cooperation**

18

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Alternative Construction Procurement Methods – Design – Build

- **Disadvantages:**
 - **Less design control**
 - **Lack of independent Construction Manager**
 - **More intense contract administration**
 - **Less assurances of a fair price**
 - **More opportunity to dispute the selection process**
 - **Smaller vendor pool**

19

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Alternative Construction Procurement Methods

- **Construction Manager-at-Risk**
 - **Owner Selects a Construction Manager who:**
 - **Advises the Owner**
 - **Manages the Design**
 - **Manage the Construction Contracts**
 - **Coordinates the Work**
 - **Construction Manager is at risk for completing the project as specified, on time and for a guaranteed price**

20

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Alternative Construction Procurement Methods – Construction Manager-at-Risk

- **Advantages**
 - **The Contractor is selected based on a combination of qualifications, expertise, capabilities and price**
 - **Owner only pays the actual cost plus contractor's fees up to a guaranteed maximum price**
 - **Time Savings**
 - **Greater control over the design than in Design – Build**
 - **Benefit from the combined expertise of the designer and contractor working together**
 - **Fewer Changes**

21

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Alternative Construction Procurement Methods – Construction Manager-at-Risk

- **Disadvantages**
 - **More intense contract administration**
 - **Less assurances of a fair price**
 - **More opportunity to dispute the selection process**
 - **Smaller vendor pool**
 - **Few Jurisdictions allow the procurement method**

22

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Alternative Construction Procurement Methods

- **Job Order Contracting (JOC) is a contract for a fixed term or maximum dollar value, whichever occurs first, in which a contractor is selected based on a competitive bid to perform various separate job orders in the future, during the life of the contract.**

<https://www.ucop.edu/construction-services/facilities-manual/volume-4/vol-4-chapter-1-1.3.7.html>

23

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Alternative Construction Procurement Methods – Job Order Contracting

- **JOC does not guarantee a contractor work**
- **Work is assigned on a per job basis through a work order**
- **Costs are negotiated and are usually based on a Unit Price Book**
- **Labor Costs are contracted at the rate in effect at the time that an individual work order is complete**

24

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Alternative Construction Procurement Methods – Job Order Contracting

- **Developing a Unit Book**
 - **Agency develops the Unit Book based on**
 - **Historical data and usage**
 - **Current Market Conditions**
- **Agency may base their Unit Book on an industry accepted estimating and bidding publication**

25

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Alternative Construction Procurement Methods – Job Order Contracting

- **Work Order Process:**
 - **Develop Bidding Documents:** Job specific documentation that will allow the Contractor to submit a price
 - **Site Visit/Pre-Bid Meeting:** Site walk through that allows the Contractor to view the project site
 - **Obtaining Subcontractors and Price Development:** Contract negotiates with subcontractors and develops work order pricing
 - **Owner Review of Price:** Owner reviews the Contractor's price line by line

26

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Alternative Construction Procurement Methods – Job Order Contracting

- **Advantages:**
 - **The Contractor is selected based on their qualifications and expertise**
 - **Shorter lead times for smaller projects**
 - **Lower administrative costs**
 - **Uses pre-established unit prices and markups for all work**
 - **Fewer Change Orders**

27

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Alternative Construction Procurement Methods – Job Order Contracting

- **Disadvantages:**
 - **More intense contract administration**
 - **Pre-Negotiated project may be more expensive than bidding each project**
 - **Owner must be able to use a unit price book and review a contractor's work order proposal**
 - **Contractor may struggle to obtain subcontractors**
 - **More opportunity to dispute the selection process**
 - **Smaller vendor pool**

28

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Alternative Construction Procurement Methods

- **Public-Private Partnership (PPP) is often defined as a long-term contract between a private party and a government agency for providing a public asset or service, in which the private party bears significant risk and management responsibility (World Bank, 2012).**

29

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Alternative Construction Procurement Methods – Public Private Partnership

- **Advantages:**
 - **The Contractor is involved at the design phase**
 - **Private Sector has more incentives to come in on budget**
 - **The risk of higher construction cost is transferred to the Private Sector**
 - **Governments ability to defer maintenance is removed**

30

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Alternative Construction Procurement Methods – Public – Private Partnership

- **Disadvantages:**
 - **Ownership and Control Issues**
 - **Smaller Vendor Pool**
 - **Not all entities are authorized to use PPP**

31

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Contract Administration

- **Lump Sum: An aggregate or lot price which may represent the total price for a group of items in place of or in addition to unit prices for each individual item. The total price of a group of items which is priced as a whole for bidding purposes**
- **Fixed Price Contract: A contract providing for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revisions of the contract price under stated circumstances**

32

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Contract Administration

- **Contract modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract**

HRS 103D - 104

- **Change order means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor**

HRS 103D - 104

33

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Contract Administration

- **Fixed Price Contract and Change Order Elements**
 - **Direct Labor Costs**
 - **Material Costs**
 - **Equipment Costs**
 - **Overhead Costs**
 - **Profit**

34

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Contract Administration

- **Contract Disputes: A dispute is a formal disagreement between the parties to a contract that has resulted in a written claim**
 - **The Contracting Officer has the ability to settle a dispute**
 - **If the contractor continues to dispute the decision it may appeal to a higher authority**

35

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Contract Administration – Contract Disputes

- **The Agency head may hear both sides of a dispute and render a decision**
- **An Alternative Dispute Resolution process may be necessary**
 - **Administrative Hearing: A hearing conducted in an environment similar to a court of law**
 - **Mediation: Both parties present arguments to an independent mediator who attempts to facilitate an agreement**
 - **Arbitration: Both parties present arguments to an independent arbitrator who makes a final decision based on the evidence**

36

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Chief Procurement Office Website <https://www.illinois.gov/cpo/cdb/Pages/default.aspx>

Illinois Capital Development Board <https://www.illinois.gov/cdb/business/Pages/default.aspx>

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43

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