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# School Construction: Contract Basics

OSBA BONDS, BALLOTS AND BUILDINGS CONFERENCE

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# Who we are

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## Presenters

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# Objective

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## Goals for today:

A general understanding of public contracts associated with bonds and bond related capital projects, inclusive of roles and responsibilities, contract types, best practices, and procurement, to make your project successful!

# Your role within your District?

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Who is our audience?

- Understanding your respective role and responsibilities

# Roles and Responsibilities

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## Who should be involved in the contract process?

- District's Business Manager
- District's Superintendent
- Project Manager or Director of Capital Projects
- Board of Directors (serving as Contract Review Board)
- Legal Counsel *who is familiar with Public Works Contracts!*

# Assembling your Project Team

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## Who needs to be “at the table”?

- How do you assemble your project team?
- Do you need a Project Manager/Construction Manager?
- Who should you hire first?
- Timeframe associated with selection/hiring?

# What is a contract?

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National Institute of Governmental Purchasing (NIGP):

*“...a contract is an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act...”*



# What is within a contract?

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## National Institute of Governmental Purchasing (NIGP):

A contract must contain the following:

1. Offer and acceptance
2. Definiteness
3. Legal Consideration
4. Mutuality of Obligation
5. Capacity of the Parties
6. Legal Purpose



# What type of contract should I use?

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## What contracts are involved with Bond projects?

- Personal Services Contracts
- American Institute of Architects (AIA)
- Traditional Design/Bid/Build (aka “Hard Bid”)
- Construction Manager/General Contractor (CM/GC)
- Design/Build

# Request For Proposal (RFP)

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## What is a RFP?

- Qualifications based selection process
  - Public Agency establishes selection criteria and scoring
- Clearly identify the proposed Scope of Work (SOW)/Scope of Services
  - What is the requested Scope of Work?
  - What is the timeframe associated?
  - Provide a tentative budget
- Ensure meeting Legal Requirements
  - Public Advertising
  - Public Hearing (if necessary)

# Request For Proposal (RFP)

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## How do I define my Scope of Work?

Sample from a K-12 Architectural Services RFP:

*The intended scope of the May, 2016 Bond Projects includes one new approximately 75,000 square foot (SF) elementary school, conversion of an existing elementary school into an athletic complex, relocation of the existing transportation location and construction of a new transportation, maintenance and food services office, as well as upgrades to several other District facilities. The contract period is expected to begin immediately upon selection and extend through completion and close-out of the projects in December, 2018. It is anticipated that the Construction Manager/General Contractor (CM/GC) delivery method will be utilized for this project.*

# What are some Evaluation Criteria?

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- *Firm Background*
- *Local Involvement*
- *K-12 Experience and Past Performance*
- *Staffing Plan*
- *Approach*
- *Justification*
- *Energy Trust of Oregon, Renewables and Sustainability*
- *Certification and Licensure*
- *Hourly Rate Schedule (note you cannot ask Architects for fee!)*



# Personal Services Contracts

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## What is a Personal Services Contract & when should I use one?

- Oregon Revised Statute (ORS) 279C.100
  - Architectural & Engineering (A&E)
  - Photogrammetric Mapping, Transportation Planning or Land Surveying Services
  - Related Services – services related to planning, designing, engineering or overseeing public improvement projects
- Up to \$250,000 per project
- Can direct appoint!
- Common for smaller needs – i.e. surveying, hazardous materials assessment, geotechnical, etc.
- ***Work with Legal Counsel to draft the District's own version of the Agreement!***

# Personal Services Contracts

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## Pro's and Con's

- Pro's
  - Straightforward for the Public Agency
  - Allow the Public Agency to select firms without having to conduct a Request for Proposal or Quote process
- Con's
  - Ensuring a level of transparency
  - Public Perception
- ***Get Legal Counsel involved proactively!***

# American Institute of Architects (AIA)

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## Why would I use an AIA Contract?

- Templates of various contracts for a variety of Public Works/Capital Projects related needs
  - Architect and Engineering (A&E)
  - Construction
    - Traditional Design/Bid/Build (aka Hard Bid)
    - Construction Manager/General Contractor (CM/GC)
    - Design/Build
- Industry Standard
- Revised in 2017, ensure District is using the most current versions
- ***A good starting point! - recommend review by Legal Counsel and modifications as necessary***

# American Institute of Architects (AIA)

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## Common AIA Agreements

- A101 – Owner-Contractor Agreement
  - Traditional Design/Bid/Build (aka Hard Bid)
- A133 – Owner/Construction Manager as Constructor
  - Construction Manager/General Contractor (CM/GC)
  - Umbrella Agreement
- A201 – General Conditions of the Contract for Construction
- A133 Exhibit A – Guaranteed Maximum Price (GMP) Amendment
  - Per CM/GC Project
- B101 – Owner/Architect Agreement



# American Institute of Architects (AIA)

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## B101 – Owner/Architect Agreement

- Owner/Architect Agreement
- In 2017 forms were revised
  - Expanded Insurance section
  - Additional Insurance Requirement
  - Copyrights and Licenses for Architect work product
  - Claims and Disputes with the Architect

# American Institute of Architects (AIA)

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## A101 – Owner-Contractor Agreement

- Traditional Design/Bid/Build (aka Hard Bid)
- In 2017 forms were revised
  - A101 contains specific contract information and terms
  - A201 is the companion form containing general contract terms
  - New Liquidated Damages (LD's) provision in 2017
  - Warranties

# Traditional Design/Bid/Build

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Also known as “Hard Bid” or “Low Bid”

- Most traditional form of construction contract
- Architect puts forward Construction Documents or Drawings for competitive bid
- Lowest Responsible and Responsive Bidder is awarded the contract

# American Institute of Architects (AIA)

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## A133 – Owner/Construction Manager as Constructor

- Construction Manager/General Contractor (CM/GC)
- Contract between Owner and Construction Manager as Constructor
- Payment is the cost of the work plus a fee with a Guaranteed Maximum Price (GMP)
- Should be accompanied by AIA A201 for the General Conditions

# American Institute of Architects (AIA)

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## A133 Exhibit A – Guaranteed Maximum Price (GMP) Amendment

- Per CM/GC Project
- Exhibit to the A133
- This form details the Guaranteed Maximum Price (GMP) per project

# Construction Manager/General Contractor (CM/GC)

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## Qualifications based Contractor selection

- Select the CM/GC through a Request For Proposal (RFP) process
- Can identify selection criteria and score proposers accordingly
- Contractor comes on board early in the Design Process
- Provides Constructability Review, estimating services, scheduling, generating interest in the sub-contractor community
- Should be a valued partner to the Project Team!

# Construction Manager/General Contractor (CM/GC)

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- Pro's:
  - Qualifications based selection process
  - Build awareness of projects amongst sub-contractor community
  - Clearly established fee schedule
  - On board early to assist with Design (i.e. materials selection, approach to construction)
  - Savings are returned to the Owner
- Con's:
  - Ensure familiar with legalities around CM/GC selection process
  - Transparency and perception!
  - Use of contingency funds
  - Can be more expensive!

# Pre-Qualification or Request for Qualifications (RFQ):

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## Can I Pre-Qualify General Contractors?

- Conduct a Request for Qualifications (RFQ) process similar to RFP for CM/GC
- Establish evaluation criteria and score proposals accordingly
- Identify a pool of Responsive and Responsible Contractor's who will later bid on project(s)
- Consult Legal Counsel!



# Construction Administration (CA)

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How do I manage the contracts during construction?

- Owner/Architect/Contractor (OAC) Meetings
- Change Orders
- Schedule
- Liquidated Damages
- Contract Closeout

# Owner/Architect/Contractor (OAC)

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## What is an OAC meeting?

- Attendees:
  - District representation (i.e. Business Manager, Superintendent, Director of Capital Projects)
  - Project Manager (if applicable)
  - Architect
  - Contractor (i.e. Project Manager, Superintendent, Project Engineer)
- Meet 1x per week
- Agenda should include:
  - Short term schedule of construction activities (i.e. 5 Week Look Ahead)
  - Design related clarifications (i.e. Requests for Information, Submittals, etc.)
  - Cost impacts (i.e. change orders)

# Change Orders

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## What is reasonable?

- Minor Change/Field Order Directive
- Impact to project schedule
- Unforeseen Conditions
- Change Requests
- Value of Additional Work
  - Related to original Scope of Work (SOW)
  - Dollar increase limits (20%)
  - Unit pricing

# Contract Closeout

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## What is the process?

- Certificate of Occupancy (C of O)
- Record of As-Built Drawings
- Operation and Maintenance (O & M) Manuals
- Release of Liens and Claims
- Owner Training
- Warranty documentation and start of warranty
- Retainage

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# Questions?



## Thank you!

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