



## Travis County Commissioners Court Agenda Request

**Meeting Date:** February 23, 2012

**Prepared By/Phone Number:**

Belinda Powell, Strategic Planning Manager, Planning & Budget Office  
(512) 854-9506

**Elected/Appointed Official/Dept. Head:** Roger Jefferies, County  
Executive of Justice and Public Safety (512) 854-4415

**Commissioners Court Sponsor:** County Judge Samuel T. Biscoe

### **AGENDA LANGUAGE:**

Discuss procurement objectives and constraints for the civil and family courthouse.

### **BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:**

On January 3, 2012 the Commissioners Court contracted with Ernst & Young (E&Y) to develop an analysis for options to deliver a new civil and family courthouse at the site located at 308 Guadalupe.

The attached presentation and draft report synthesizes information heard in a series of individual interviews with members of the Commissioners Court, members of the Courthouse Internal Team, key stakeholders and stakeholder groups, and two public meetings. Feedback from the various meetings was used to inform the development of a series of objectives for the project as well as the procurement of the project. Additionally, a series of constraints for the project have been identified. This information, once approved by the Commissioners Court, will be used to inform the development of a value-for-money analysis to assess procurement options for Travis County to consider for the civil and family courthouse.

### **STAFF RECOMMENDATIONS:**

NA

### **ISSUES AND OPPORTUNITIES:**

NA

### **FISCAL IMPACT AND SOURCE OF FUNDING:**

**AGENDA REQUEST DEADLINE:** All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.

All funds for the Ernst & Young contract are encumbered.

**REQUIRED AUTHORIZATIONS:**

Leroy Nellis, Budget Director, Planning & Budget Office, interim County Executive, Planning & Budget  
Cheryl Aker, County Judge's Office

**ATTACHEMENTS:**

Ernst & Young presentation

Copies to:

The Honorable John Dietz, 250<sup>th</sup> District Court  
The Honorable Lora Livingston, 261<sup>st</sup> District Court  
The Honorable Rosemary Lehmborg, District Attorney  
The Honorable Eric Shepperd, County Court at Law #2  
The Honorable David Escamilla, County Attorney  
The Honorable Amalia Rodriguez-Mendoza, District Clerk  
The Honorable Dana DeBeauvoir, County Clerk  
David Escamilla, County Attorney  
Peg Liedtke, Civil Court Administrator  
Cyd Grimes, Purchasing Agent  
Susan Spataro, County Auditor  
James Collins, First Assistant County Attorney  
Roger Jefferies, County Executive Justice and Public Safety  
Steven Manilla, County Executive of TNR and FMD  
Roger El Khoury, Director Facilities Management  
John Hille, Assistant County Attorney  
Tom Nuckols, Assistant County Attorney  
Leslie Stricklan, Senior Project Manager, FMD

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# Stakeholder Objectives, Constraints and Evaluation Criteria

New Travis County Civil and Family Courthouse  
February 28, 2012

**DRAFT**  
FOR DISCUSSION PURPOSES

**EY ERNST & YOUNG**

# 1. Introduction

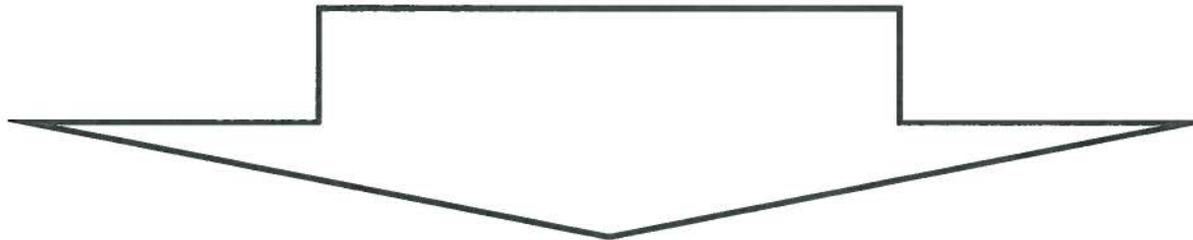
## Objectives and constraints

### 2. Objectives:

- ▶ Project objectives
- ▶ Procurement objectives

### 3. Constraints:

- ▶ Internal constraints
- ▶ External constraints



## 4. Evaluation Criteria to assess merit of each procurement objective

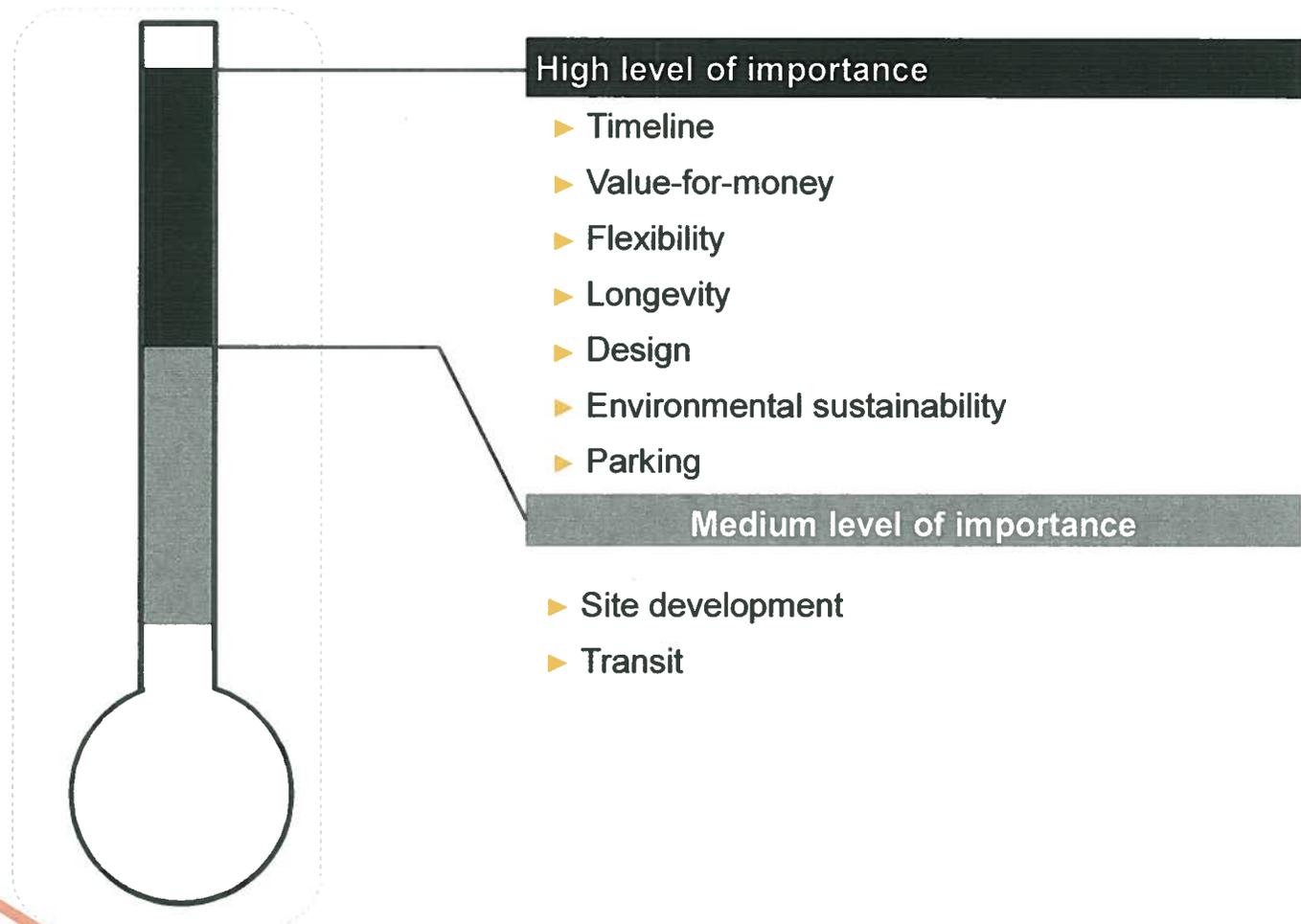
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## 2. Project and procurement objectives

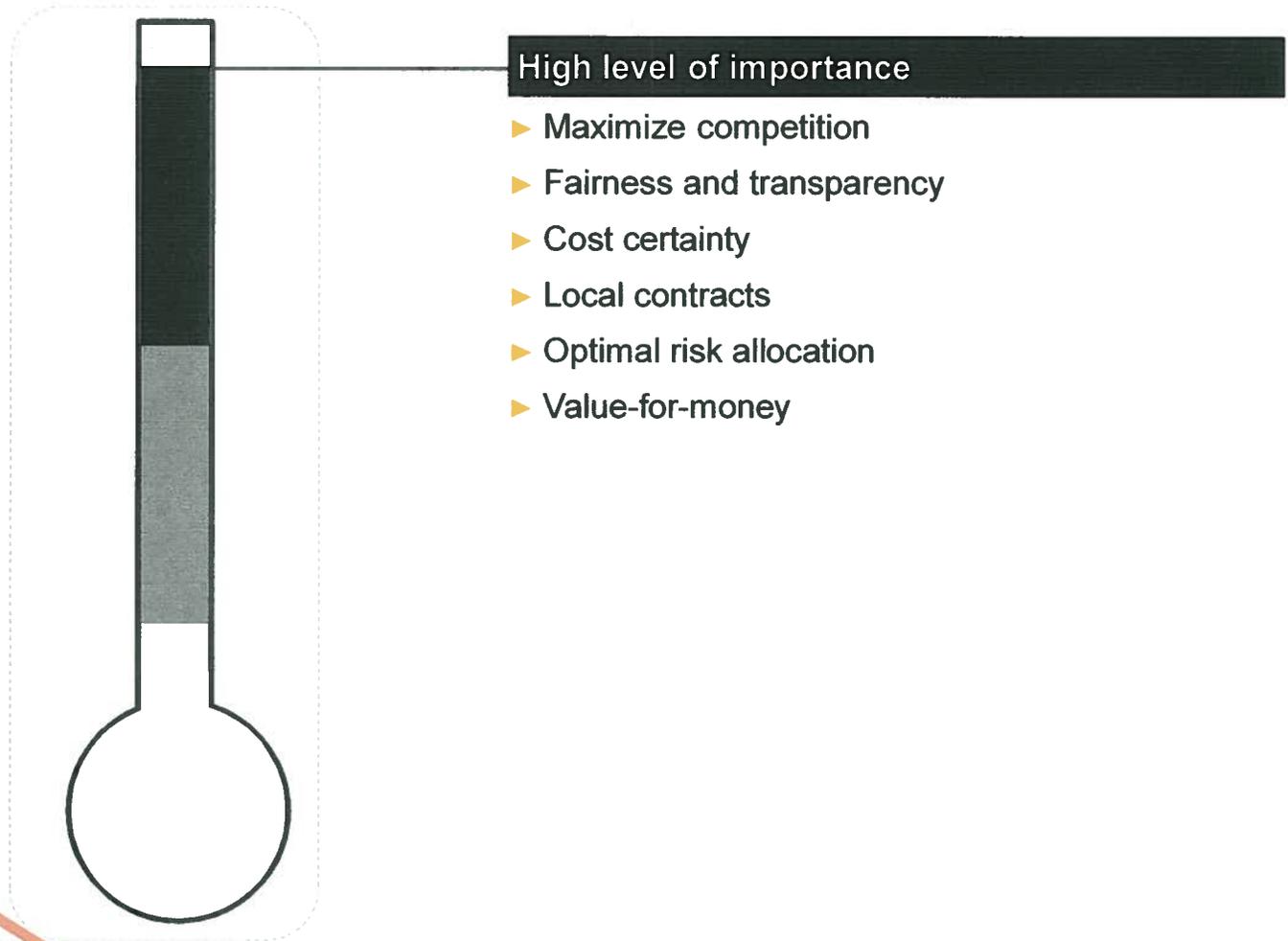
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# Project objectives



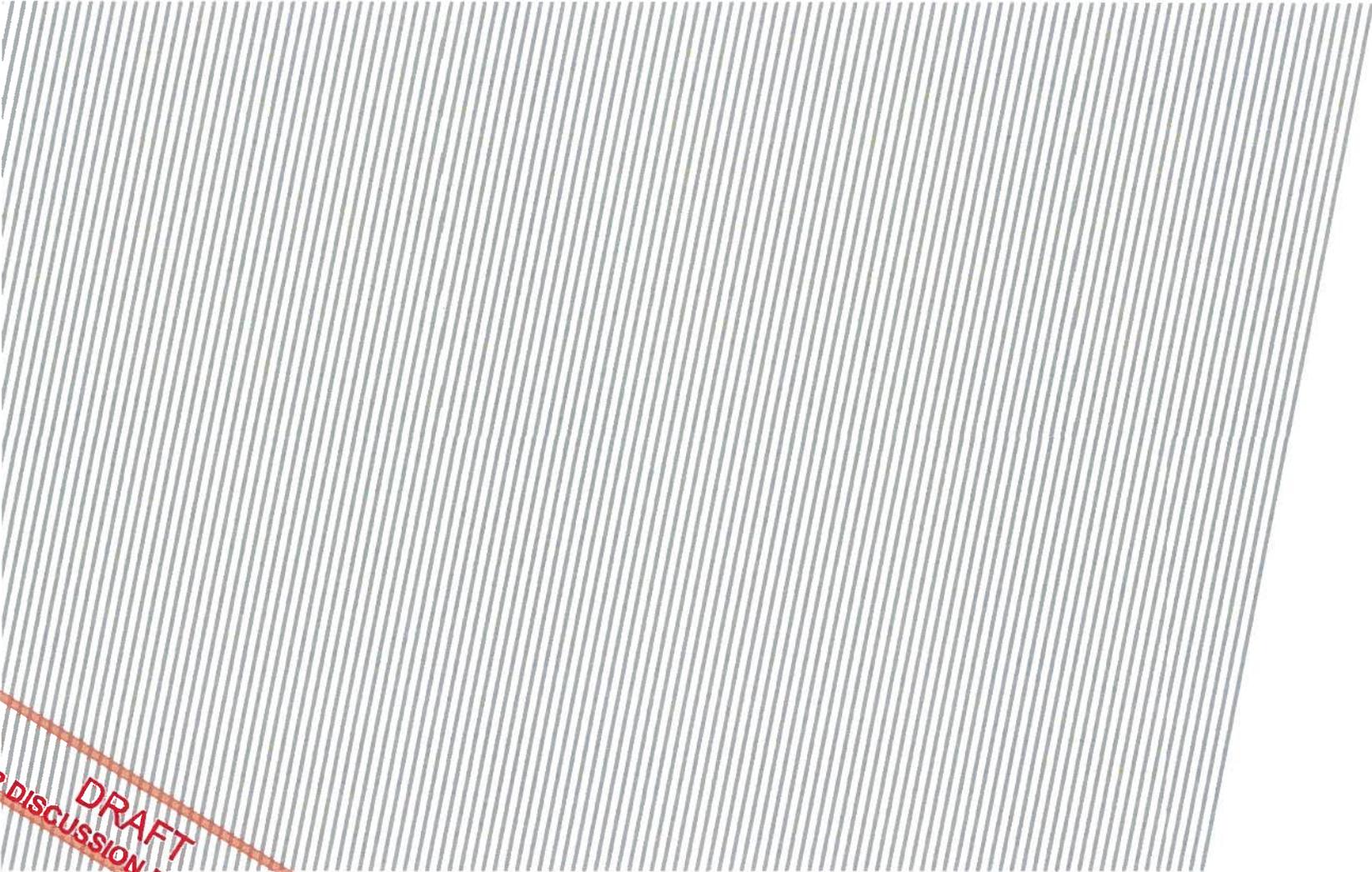
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# Procurement objectives



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# 3. Constraints



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# Constraints to be used in qualitative assessment of procurement options

<b>Internal constraints</b>	<ul style="list-style-type: none"><li>▶ Affordability</li><li>▶ Budgetary control over maintenance spend</li><li>▶ Approvals process</li><li>▶ Specifications</li><li>▶ Appropriations risk</li><li>▶ Procurement resources</li></ul>
<b>External constraints</b>	<ul style="list-style-type: none"><li>▶ Market interest</li><li>▶ Market understanding</li></ul>

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## 4. Procurement options evaluation criteria

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# Evaluation criteria against which potential procurement options will be assessed

Evaluation criteria	Description
Timeliness	▶ Achieves delivery of the Courthouse as soon as possible.
Flexibility	▶ Supports meeting the County's future needs for additional space.
Design	▶ Supports the project objectives for the design of the building including innovation in design and providing a world-class building of significance.
Site development	▶ Captures the value of the commercial/residential development and reduces the cost of the Courthouse to the County.
Asset quality and longevity	▶ Supports the construction of a Courthouse that will be of high quality and will be fit for the purpose for the next 50 to 60 years.
Maximizes competition	▶ Attract a broad field of competitors, thereby driving innovation and value.
Local participation	▶ Support and encourage local participation and local employment
Fairness and transparency	▶ Supports the County's requirements for fairness and transparency.

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# Evaluation criteria against which potential procurement options will be assessed (continued)

Evaluation criteria	Description
Environmental sustainability	▶ Supports the County's objectives for environmental sustainability.
Risk allocation	▶ Allocates material risks to the party best able to manage them.
Cost certainty	▶ Provides the County with certainty of cost for both the construction and the project life.
Value-for-money	▶ Achieves delivery of the Courthouse and provides value-for-money to the County.
Affordable	▶ Profile of contracted payments for the Courthouse is affordable within the funding constraints of the County.
Parking	▶ Provides adequate parking to meet the needs of the judges, staff and users of the building.

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# Restrictions and qualifications

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- ▶ This report (the Report) has been prepared by Ernst & Young, from information and material supplied by Travis County, for the sole purpose of assisting Travis County in its setting of procurement objectives and criteria for the assessment of potential procurement options for the new Civil and Family Courthouse Project (the “Project” or “Courthouse”).
- ▶ The nature and scope of our services was determined solely by the agreement between the Ernst & Young and Travis County. Our work was performed only for the use and benefit of Travis County and others who read this report that were not a party to our agreement with respect to the nature and scope of such services do so at their own risk. We assume no duty, obligation or responsibility whatsoever to any other parties that may obtain access to the Report. The services we performed were advisory in nature. EY did not render an assurance report or opinion under our contract with Travis County, nor did our services constitute an audit, review, examination, or other form of attestation as those terms are defined by the American Institute of Certified Public Accountants. None of the services we provided constituted any legal opinion or advice.
- ▶ In the preparation of this Report, Ernst & Young relied on information provided by Travis County and third parties, and such information is deemed to be complete. Ernst & Young has not conducted an independent review of completeness or validity of the information received from any party.



# **Travis County**

## **New Civil and Family Courthouse Stakeholder objectives, constraints and evaluation criteria**

February 28, 2012

February 28, 2012

Travis County

700 Lavaca Street

Austin, TX 78701

Dear Judge and Commissioners:

We have completed a draft version of Task B.2, 'Stakeholder objectives, constraints and evaluation criteria' of the 'Feasibility analysis for a New Civil and Family Courthouse' at 308 Guadalupe Street in Austin, TX. Our engagement was performed in accordance with our engagement agreement dated January 6, 2012, and our procedures were limited to those described in that agreement.

During the period from January 6, 2012 through February 16, 2012, Ernst & Young: conducted an objective-setting workshop with the Travis County courthouse internal team and held a variety of stakeholder interviews. The analysis of these activities resulted in the attached 'Stakeholder objectives, constraints and evaluation criteria' report.

Our work has been limited in scope and time and we stress that more detailed procedures may reveal issues that this engagement has not. The procedures summarized in our 'Stakeholder objectives, constraints and evaluation criteria' do not constitute an audit, a review or other form of assurance in accordance with any generally accepted auditing, review or other assurance standards, and accordingly we do not express any form of assurance.

Our 'Stakeholder objectives, constraints and evaluation criteria' is intended solely for the information and use of the Travis County Commissioner's Court and is not intended to be and should not be used by anyone other than these specified parties.

Kindly,

Ernst & Young, LLP

# Table of contents

1. Introduction.....	4
1.1 Restrictions and qualifications.....	4
2. Project and procurement objectives .....	6
2.1 Project objectives.....	6
2.2 Procurement objectives.....	7
3. Constraints .....	8
3.1 Internal constraints.....	8
3.2 External constraints .....	9
4. Procurement evaluation criteria .....	10

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# 1. Introduction

Ernst & Young LLP (Ernst & Young) was engaged by Travis County to assist in evaluating the value-for-money assessment of possible procurement models for the new Civil and Family Courthouse Project (the "Courthouse", or the "Project").

The most suitable procurement option for an infrastructure project is the one that best meets the project objectives while demonstrating the best value-for-money to the tax-payer. At a more detailed level, the suitability of a procurement option is driven by its capacity to manage risk appropriately, create incentives for efficient management of costs and revenues and provide the ability to lever competition during the tendering phase. The first stage in the process of evaluating the procurement options is to understand the project and procurement objectives and any constraints that apply and might influence the selection of a procurement model.

The purpose of this report is to present to Travis County the objectives and constraints that we have gathered from discussions with the project team and other stakeholders. To inform the process of determining which objectives, constraints and evaluation criteria will be utilized in ultimately performing the value for money and feasibility analysis for the Project, Ernst & Young facilitated a workshop on January 28, 2012 at which a number of the project team members were present. During the workshop, members of the project team were given the opportunity to express freely their views on what was important for the Project and any obstacles that they saw that might impact the selection of the procurement model.

Ernst & Young has also conducted a number of interviews with key stakeholders in the Project, and the views expressed by these stakeholders have been taken into consideration in the formulation of this report.

This report is broken out into three sections:

- ▶ Objectives of the Project and Procurement;
- ▶ Constraints; and
- ▶ Evaluation Criteria.

From this collation of objectives and constraints, a set of recommended evaluation criteria has been developed that can be used Travis County to assess the merits of each procurement model. These evaluation criteria are detailed in section 4.

## 1.1 Restrictions and qualifications

This confidential report (the "Report") has been prepared by Ernst & Young, from information and material supplied by Travis County, for the sole purpose of assisting Travis County (the "County") in setting its procurement objectives and criteria for the assessment of potential procurement options for the new Civil and Family Courthouse Project (the "Project" or "Courthouse").

The nature and scope of our services was determined solely by the agreement between the Ernst & Young and Travis County. Our work was performed only for the use and benefit of Travis County and others who read this report that were not a party to our agreement with respect to the nature and scope of such services do so at their own risk. We assume no duty, obligation or responsibility whatsoever to any other parties that may obtain access to the Report. The services we performed were advisory in nature. EY did not render an assurance report or opinion under our contract with Travis County, nor did our services constitute an audit, review, examination, or other form of attestation as those terms are defined by the American Institute of Certified Public Accountants. None of the services we provided constituted any legal opinion or advice.

In the preparation of this Report, Ernst & Young relied on information provided by the Travis County and third parties, and such information is deemed to be complete. Ernst & Young has not conducted an independent review of completeness or validity of the information received from any party.

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## 2. Project and procurement objectives

### 2.1 Project objectives

The Project objectives identified by the Travis County courthouse internal team are summarized in the table below.

Category	Project objectives	Importance
Timeline	<ul style="list-style-type: none"> <li>▶ To deliver the Courthouse as early as possible. The current desired timeline projects completion of the new Courthouse within three to five years (master plan shows completion in 2017). However the steadily increasing case demand on the Court, as well as condition and amenities of the existing facilities, is such that there is already an urgent need for the new Courthouse.</li> <li>▶ There is also a desire to take advantage of current low interest rates.</li> <li>▶ Therefore the earlier the Courthouse can be delivered the better.</li> </ul>	High
Value-for-money	<ul style="list-style-type: none"> <li>▶ To maximize the value of each dollar spent to build and operate the Courthouse and to remain within the constraints of affordability to the County.</li> </ul>	High
Site development	<ul style="list-style-type: none"> <li>▶ To maximize the value, and certainty of value, that can be derived from the development potential of the site, thereby reducing the overall cost to the County.</li> <li>▶ The County is not averse to taking or sharing development risk if it could bring down the cost of the Courthouse by maximizing the potential value of the site.</li> <li>▶ Provide the neighbourhood with a structure that seeks to enhance the community.</li> </ul>	Medium
Flexibility	<ul style="list-style-type: none"> <li>▶ To provide for future flexibility for court usage</li> <li>▶ Provide sufficient expansion space at the site for the County's needs through to 2035, and consideration for future potential needs past 2035.</li> </ul>	High
Longevity	<ul style="list-style-type: none"> <li>▶ To deliver a Courthouse that will be fit for the purpose for 50 to 60 years.</li> </ul>	High
Design	<ul style="list-style-type: none"> <li>▶ To be a world class building of significance/a grand public building.</li> <li>▶ To incorporate and capitalize on the frontage with Republic Park.</li> <li>▶ To be timeless (i.e., still be a public building with presence in 50 years time)</li> </ul>	High
Environmental sustainability	<ul style="list-style-type: none"> <li>▶ To achieve and exceed the Travis County LEED Silver standard for all new construction.</li> <li>▶ To include water and energy conservation measures, which are highly valued by the County.</li> </ul>	High

Category	Project objectives	Importance
Transit	▶ To effectively coordinate and integrate with proposed intermodal transit initiatives.	Medium
Parking	▶ Travis County desires at a minimum to provide adequate parking to meet the needs of judges, staff and users of the building.	High

Other project objectives that were considered to be of low importance, by the Travis County courthouse internal team, were not discussed in detail during the objectives and evaluation criteria workshop and have therefore been excluded.

## 2.2 Procurement objectives

The project team also considered its objectives for the procurement process. Procurement objectives are closely aligned with the project objectives but relate mainly to the desired outcomes from the procurement process and the resulting contractual structure. These objectives are summarized in the table below:

Category	Procurement objectives	Importance
Maximize competition	▶ To drive competition between proponents, thereby encouraging innovation and maximizing the value for money.	High
Fairness and transparency	▶ To be open, transparent and fair and stand up to highest levels of scrutiny.	High
Cost certainty	▶ To have certainty over the cost of the Project from the point of contract award.	High
Local contracts	▶ To employ local contractors in the design construction and maintenance of the Courthouse.	High
Optimal risk allocation	▶ To allocate project risks to the party best able to manage them.	High
Value-for-money	▶ To arrive at a procurement method that provides the opportunity for the Project to maximize value-for-money.	High

### 3. Constraints

In determining the optimal procurement model for the Courthouse, it is necessary to understand what constraints apply that might impact the feasibility of certain models or their potential to deliver value-for-money. Constraints can be internal, i.e. imposed by the County and related stakeholders, or external, coming from the bidding contractors.

#### 3.1 Internal constraints

The table below summarizes the internal constraints that have been identified by Ernst & Young and need to be considered in the qualitative assessment of the procurement options

Constraint	Details
Affordability	<ul style="list-style-type: none"> <li>▶ The County estimates that there is capacity for raising an additional \$350 million over the next seven years. Any capital contribution to the development would need to fit within this envelope of debt capacity.</li> <li>▶ Any lease payments or availability type payments (as would be seen under a DBFM model) need to be funded out of the annual Operations and Maintenance budget, even if the payments are capital in nature. According to county staff in the Planning and Budget office a permissible increases in the Operations and Maintenance budget could accommodate an annual payment (lease or availability type) of approximately \$12 million in 2013. This value could increase before the Courthouse is operational.</li> </ul>
Budgetary control over maintenance spend	<ul style="list-style-type: none"> <li>▶ Under a DBFM the County's payments to the private sector partner would be fixed subject to the partner maintaining the Courthouse to the specified standard with no ability to avoid the costs due to budgetary issues / constraints.</li> </ul>
Approval process	<ul style="list-style-type: none"> <li>▶ The procurement model must be approved by the Commissioners Court, and the Commissioners Court must also approve the final agreement for the Courthouse.</li> <li>▶ Recent contracting experience suggests it takes four to six months to obtain approval for issuing the RFQ documents. It then takes six to nine months from issuing the RFQ to awarding the contract.</li> <li>▶ The County must have the ability to enter into the relevant contracts whether this is a DBFM contract or a more traditional transaction structure. The legal authority is currently being reviewed by the legal team</li> </ul>
Specifications	<ul style="list-style-type: none"> <li>▶ Value-for-money under a DBFM model is most likely when the requirements of the County can be set down in a set of output or performance specifications rather than detailed input specifications. The County needs to allow proponents freedom to innovate and determine their best solution that meets the performance specifications.</li> <li>▶ The extent to which the County can stand back from the detailed design will directly impact the potential for a DBFM model to deliver value.</li> <li>▶ The County will need to manage the stakeholder desire to influence the designs received from proponents following submission. However, the County will have a</li> </ul>

Constraint	Details
	number of opportunities to comment and influence the design during both the determination of the specifications and in a series of confidential design meetings with the potential private partners. The County will need to carefully manage stakeholder expectation around this process.
Appropriations risk	▶ Need to include a “funding out” clause. This is standard in the County’s long- term contracts.
Procurement resources	▶ In order for the County to undertake a significant project like this it will require significant resources whether the procurement is a DBFM or more traditional. However, given the relative innovative nature of a DBFM it is likely that this route would require additional resources both internal and external to manage the procurement.

Another area that can sometimes be considered a constraint has been analyzed, but is not considered to be a material constraint for this project:

- ▶ Existing contractual obligations. There are no existing contracts for maintenance services that would prevent such services from being included within a long-term contract for the Courthouse.

### 3.2 External constraints

External constraints such as the market’s interest in a particular procurement model or the failure to understand the risks associated with a particular project can sometimes influence the selection of a procurement model. These areas are summarised in the table below.

Constraint	Details
Market interest	<ul style="list-style-type: none"> <li>▶ There is significant market interest in this project, as demonstrated by the responses received from the Request for Expressions of Interest issued in 2011.</li> <li>▶ The market would appear to be accepting of a range of procurement models including Design Build, Privatized lease-to-own, and Design Build Finance Maintain.</li> <li>▶ If the contract were to be interwoven with the commercial/ residential tower development opportunity, this might create a complex project that would deter some participants and limit competition.</li> </ul>
Market understanding	<ul style="list-style-type: none"> <li>▶ The Courthouse project on its own should not present any complex risk issues for the market to understand.</li> <li>▶ If the contract were to be interwoven with the commercial/ residential tower development opportunity, this might create a complex project with complex risk issues that could be difficult for parties to understand, price efficiently which could result in decreased value for money.</li> </ul>

## 4. Procurement evaluation criteria

Based on the analysis of objectives and constraints for this Project, the following recommended evaluation criteria have been developed against which the potential procurement options can be assessed:

Evaluation criteria	Description
Timeliness	▶ Achieves delivery of the Courthouse as soon as possible.
Flexibility	▶ Supports meeting the County's future needs for additional space.
Design	▶ Supports the project objectives for the design of the building including innovation in design and providing a world-class building of significance.
Site development	▶ Captures the value of the commercial/residential development and reduces the cost of the Courthouse to the County.
Asset quality and longevity	▶ Supports the construction of a Courthouse that will be of high quality and will be fit for the purpose for the next 50 to 60 years.
Maximizes competition	▶ Attracts a broad field of competitors, thereby driving innovation and value.
Local participation	▶ Support and encourage local participation and local employment
Fairness and transparency	▶ Supports the County's requirements for fairness and transparency.
Environmental sustainability	▶ Supports the County's objectives for environmental sustainability.
Risk allocation	▶ Allocates material risks to the party best able to manage them.
Cost certainty	▶ Provides the County with certainty of cost for both the construction and the project life.
Value-for-money	▶ Achieves delivery of the Courthouse and provides value-for-money to the County.
Affordable	▶ Profile of contracted payments for the Courthouse is affordable within the funding constraints of the County.
Parking	▶ Provides adequate parking to meet the needs of judges, staff and users of the building.