



**Travis County Commissioners Court Agenda Request**

**Meeting Date:** April 30, 2013

**Prepared By/Phone Number:** Ken Gaede, 854-9894; Leslie Stricklan, 854-4778

**Dept. Head:** Roger El Khoury, M.S., P.E., Director, FMD, 854-4579

**County Executive:** Leslie Browder, Planning and Budget, 854-9106 *JB*

**Sponsoring Court Members:** County Judge Samuel T. Biscoe

**AGENDA LANGUAGE:**

Consider and take appropriate action regarding County building at 416 W. 11<sup>th</sup> Street, Austin, Texas (formerly PTA property). (This item may be taken into Executive Session under the Consultation with Attorney or Real Property exceptions.)

**BACKGROUND/SUMMARY OF REQUEST:**

In December 2012, Travis County purchased the 0.5 acre corner property at 11th and San Antonio Street in downtown Austin for development of a future County office building for the District Attorney as the primary anchor tenant. This request is for Commissioners Court approval of the project delivery method and other related actions to initiate this project and authorize the Facilities Management Department to manage the project for the County.

**STAFF RECOMMENDATIONS:**

The Facilities Management Department (FMD) recommends that the Commissioners Court:

1. Approve the use of the Construction Manager at Risk (CMAR) project delivery method for this project based on determination that this is the best value method for this project. (Refer to Attachments 1-4 for definitions & roles, process, government code and draft schedule for the CMAR method.)
2. Approve the designation of FMD as the Project Manager, providing County staff support and oversight for the project.
3. Approve the project scope definition as a 200,000 GSF facility with

130,000 GSF office building of seven stories and 70,000 GSF parking structure of three levels underground, intended for primary occupancy by the District Attorney offices and Grand Jury Suites, with a tunnel connection to the Criminal Justice Center (CJC) complex.

4. Direct staff to work with the Purchasing Office to proceed with developing the Request for Qualifications (RFQ) for Professional Architectural/Engineering Services for this project to bring back to Commissioners Court for approval prior to issuance.

#### **ISSUES AND OPPORTUNITIES:**

The new office and parking facility will provide urgently needed space for the District Attorney to vacate the CJC complex in order to permit expected Criminal Courts expansion there, as originally anticipated when the CJC was built in 2000. The proposed facility will include 130,000 GSF office space on seven floors and 70,000 GSF underground parking structure on three levels. This will provide enough space to meet the District Attorney's projected needs through 2035, including two Grand Jury suites, a shared building amenity large conference room and ground floor retail space.

Assuming the recommended Construction Manager at Risk project delivery method is approved, the proposed overall project duration would be approximately 32 months from project initiation through construction substantial completion as shown in Attachment 4. If the Commissioners Court approves the recommended project delivery method, scope and design phase funding by the end of April 2013, the project could reach substantial completion by end of December 2015.

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

Estimated funding of \$130,858 is needed in Fiscal Year 2013 to begin programming and schematic design, and can be funded from the General Fund Allocated Reserve.

The remainder of funding needed for the design phase is estimated at approximately \$2 million. The overall project budget is estimated at \$38,530,300, including the design phase budget. The funding for the balance of the project budget will be addressed through the annual budget processes for Fiscal Years 2014 and 2015. Analysis previously presented to the Commissioners Court regarding funding for this project has focused on the future issuance of Certificates of Obligation with a 20-year maturity as the primary funding source.

If the Commissioners Court approves the project delivery method, scope and design phase funding by the end of April 2013, the construction funding should be made available by April 2014 in order to stay on schedule for proposed project substantial completion in December 2015.

**ATTACHMENTS/EXHIBITS:**

1. Construction Manager At Risk Project Delivery Method – Definitions & Roles
2. Construction Manager At Risk Project Delivery Method – Process
3. Government Code for CMAR Method
4. Draft Project Schedule for CMAR Delivery Method

**REQUIRED AUTHORIZATIONS:**

N/A

Copies to:

The Honorable Rosemary Lehmborg, District Attorney

Kenneth Evans, District Attorney's Office

Cyd V. Grimes, CPM, Purchasing Agent

Marvin Brice, CPPB, Assistant Purchasing Agent

John Hille, County Attorney's Office

John Carr, Administrative Director, Facilities Management Department

Belinda Powell, Strategic Planning Manager, Planning and Budget Office

## FACILITIES MANAGEMENT DEPARTMENT

Roger A. El Khoury, M.S., P.E., Director



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### Construction Manager at Risk (CMAR) Project Delivery Method

#### Definitions and Roles

- CMAR: Construction Manager at Risk.** The CMAR is a consultant to the Owner during the design phase. However, after the Guaranteed Maximum Price (GMP) is established and the project progresses into the construction phase, the CMAR assumes the role of a general contractor and is no longer serving as an agent for the Owner. The CMAR assumes the risk for construction of the facility at the contracted price. Through a competitive bidding process, the CMAR selects subcontractors for the various elements of the construction and is responsible for their performance.
- A/E: Architect / Engineer.** The design team is composed of the selected architecture firm, their engineering team members, and other specialty design consultants as required for the Project. The A/E is hired through the RFQ procurement process based on the team best qualified to design this specific project. The A/E team is professionally responsible for the building and site design, for applying their professional seals to the project documents, and for providing construction phase services to observe the construction and advise the owner on construction quality and conformance to the plans and specifications.
- PM: Project Manager.** In accordance with the A/E and CMAR contracts, FMD acts as the Owner's agent on behalf of the Commissioners Court, providing County staff support and project oversight. The PM manages all aspects of the project from initiation to final completion and close-out of all project contracts. The PM manages the various project contracts, including that of the A/E and the CMAR, insuring that the consultants, contractors, and vendors are complying with their contract requirements and delivering to the County the intended products and services. In the role of PM, FMD also manages the design, selection, procurement, delivery, and installation of furniture (FF&E) for the project. In cooperation with the users, the County's Information Technology Services Department, and the vendor providing moving services, FMD manages and coordinates the transition and move to the new facility. The PM facilitates the coordination of the various project elements and communication between the multiple parties, including County staff and departments. All project management related to procurements is done in close cooperation with Purchasing.
- CA: Contract Administrator.** The Travis County Purchasing Agent acts as the overall Contractor Administrator. The Contractor Administrator may designate representatives to transmit instructions and receive information. The Contractor Administrator acts as the County's representative in the issuance and administration of any Contract in relation to disputes. Any document, notice, or correspondence not

issued by or to the Contract Administrator in relation to disputes is void unless otherwise stated in the Contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Contract Administrator, or other authorized County person, the Contractor must submit a written notice to the Contract Administrator within thirty calendar days after receipt of the document, notice, or correspondence outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, the Contractor may submit a written Notice of Appeal to the Travis County Commissioners Court, through the Contractor Administrator, if the Notice is submitted within ten calendar days after receipt of the unsatisfactory reply. The Contractor then has the right to be heard by Travis County Commissioners Court.



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### Construction Manager at Risk (CMAR) Project Delivery Method

#### Process

##### Project Initiation:

##### **Commissioners Court approves:**

- Construction Manager at Risk (CMAR) Project Delivery Method
- Facilities Management Department (FMD) as Project Manager
- Project Scope, including designation of primary occupant
- Project Budget and Funding
- Project Schedule

##### Pre-Design Phase:

##### **Competitive Procurement of Architect / Engineering Firm (A/E):**

- FMD, Purchasing, and County Attorney collaborate to prepare A/E procurement documents including RFQ, Selection Criteria, draft PSA (contract), and Scope of Services
- **Court approves RFQ documents and A/E Selection Committee**
- Purchasing issues RFQ
- A/E firms prepare and submit RFQ response to Purchasing
- Under Purchasing oversight, A/E Selection Committee reviews RFQ responses and ranks respondents
- **Court approves negotiations to begin with highest-ranked A/E respondent**
- FMD, Purchasing, & County Attorney negotiate contract and fee with highest-ranked firm
- **Court approves A/E contract**

##### **Competitive Procurement of Construction Manager at Risk (CMAR):**

- CMAR procurement process begins during Pre-Design Phase, following commencement of A/E procurement, with the goal to have the CMAR under contract by Design Development Phase
- FMD, Purchasing, and County Attorney collaborate to prepare CMAR procurement documents including RFQ/RFP, Selection Criteria, and CMAR Contract
- CMAR procurement documents will also include A/E's Schematic Design documents depicting preliminary construction Scope of Work
- **Court approves RFQ/RFP documents and CMAR Selection Committee**

- Purchasing issues RFQ and forms CMAR Selection Committee. FMD recommends A/E team be represented on CMAR Selection Committee.
- CMAR firms prepare and submit response to RFQ
- CMAR Selection Committee reviews RFQ responses and short lists up to 5 respondents
- Short-listed respondents prepare and submit responses to RFP. RFP responses to include proposed pre-construction fee, construction management fee, general conditions costs, CMAR contingency, and other relevant information
- CMAR Selection Committee reviews RFP responses and ranks respondents
- **Court approves negotiations to begin with highest-ranked CMAR respondent**
- FMD, Purchasing, & County Attorney negotiate contract and fee with highest-ranked firm
- **Court approves CMAR contract (although the CMAR procurement begins during the Pre-Design Phase, the goal is to have the contract ready for Court approval by the Design Development Phase below)**

### **Design Phase:**

#### **Schematic Design:**

- Purchasing issues NTP to A/E
- A/Es meet with FMD, ITS, and User Departments to validate and complete the design criteria, identification of space needs, and other Owner project requirements
- A/Es prepare Schematic Design (SD) documents
- FMD, Information Technology Services (ITS), and user departments review and approve SD documents
- FMD and A/E reconcile SD cost estimate to keep project within budget and scope
- **Court approves SD documents**

#### **Design Development:**

- A/Es prepare Design Development (DD) documents
- Purchasing issues NTP to CMAR for Pre-Construction Services
- CMAR begins reviewing DD documents and providing cost, constructability, and value engineering (VE) recommendations
- FMD, ITS, and user Departments review and approve DD documents
- FMD and CMAR reconcile DD cost estimate to keep project within budget and scope
- A/E completes site plan documents and submits for regulatory review and approval
- A/E prepares furniture plans in cooperation with FMD and the User groups
- FMD manages preparation of furniture lists including existing furniture to be moved to the new building, existing furniture to be moved to the Purchasing warehouse, and new furniture

#### **Construction Documents:**

- A/Es prepare Construction Documents (CDs)
- CMAR reviewing CD's and continues providing cost, constructability, and VE recommendations

- CMAR and Travis County Purchasing host HUB Mixer
- FMD, ITS, and user Departments review and approve CDs
- FMD and CMAR reconcile CD cost estimate to keep project within budget and scope
- A/E submits completed CDs for building permit review and approval
- CMAR begins subcontractor bidding process with completed CDs
- CMAR develops Guaranteed Maximum Price (GMP)
- FMD and Purchasing review GMP prior to submitting for Court agenda
- **Court approves GMP**

### **Construction Phase:**

- Purchasing issues Construction Phase NTP to CMAR following Court approval of GMP
- Construction Phase begins with NTP and ends with Substantial Completion
- In coordination with Purchasing, FMD obtains furniture quotes from vendors, prepares furniture delivery schedules, and begins furniture procurement process
- FMD coordinates with Users, ITS, and County move vendor to plan and schedule moves to new building
- **Change Orders exceeding \$50,000 will be brought to Court for approval**

### **Transition Phase:**

- CMAR completes Punch List items to achieve Final Completion
- ITS installs network equipment and brings network up in new building
- FMD manages delivery and installation of new furniture
- FMD manages User Department move into new spaces
- FMD works with A/E, CMAR, and other vendors to close-out contracts

### **Post-Occupancy / Warranty Phase:**

- Warranty issues are communicated and monitored by FMD Maintenance
- Upon close-out of all project contracts, FMD's project management role mostly ends unless a latent design defect or latent construction defect surfaces, at which point FMD will manage the resolution of such issues

Vernon's Texas Statutes and Codes Annotated  
Government Code

Title 10. General Government

Subtitle F. State and Local Contracts and Fund Management

Chapter 2267. Contracting and Delivery Procedures for Construction Projects

Subchapter F. Construction Manager-At-Risk Method

**§ 2267.251. Contracts for Facilities: Construction Manager-at-risk**

(a) In this chapter, the “construction manager-at-risk method” is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

(c) A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

**§ 2267.252. Use of Architect or Engineer**

(a) On or before the selection of a construction manager-at-risk, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer for a project may not serve, alone or in combination with another person, as the construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

**§ 2267.253. Selection Process**

(a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.

(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:

(1) a statement as to whether the selection process is a one-step or two-step process;

(2) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and

(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.

(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.

(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.

(g) Not later than the 45th day after the date on which the final proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

**§ 2267.254. Selection of Offeror**

(a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2267.253(g) public.

**§ 2267.255. Performance of Work**

(a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

(b) A construction manager-at-risk may seek to perform portions of the work itself if:

(1) the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and

(2) the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

**§ 2267.256. Review of Bids or Proposals**

(a) The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

**§ 2267.257. Default; Performance of Work**

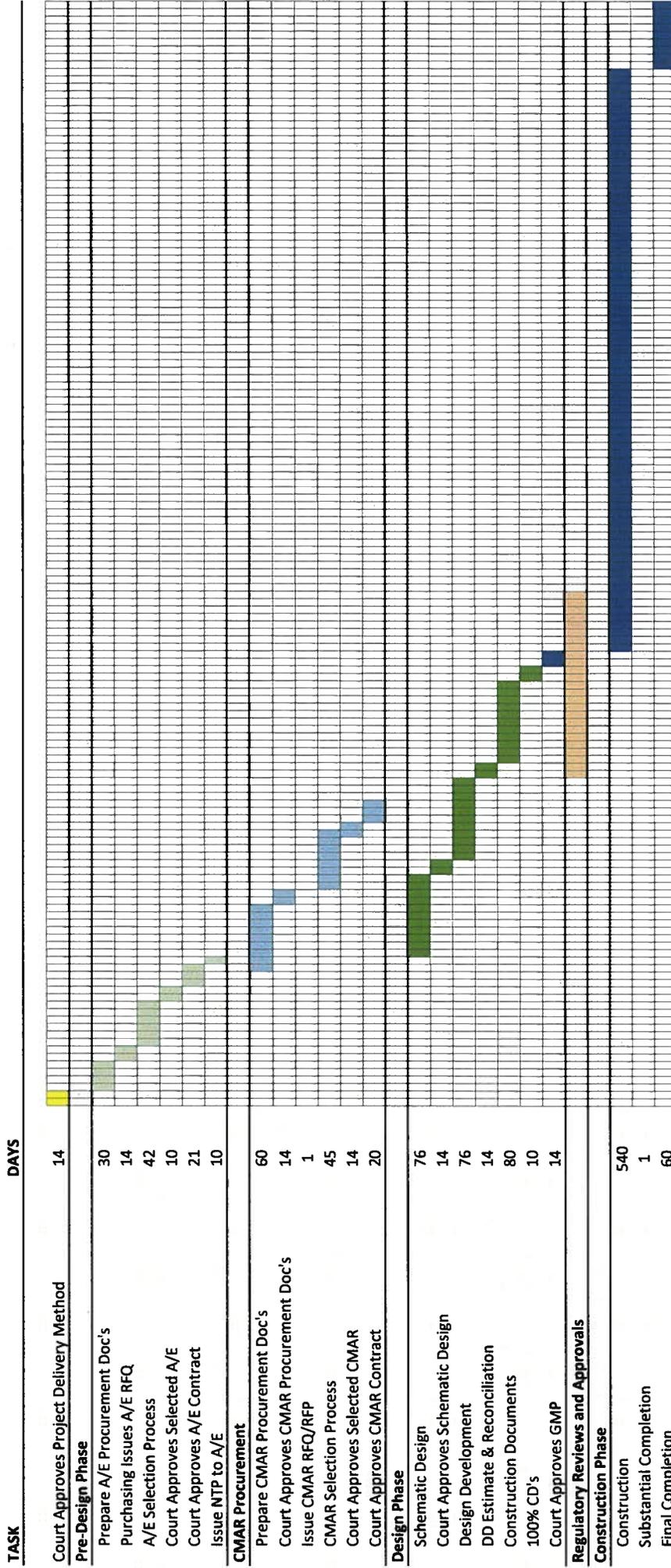
If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this subchapter, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

**§ 2267.258. Performance or Payment Bond**

(a) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications.

(b) The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

## CONSTRUCTION MANAGER AT RISK (CMAR) OPTION: 31.6 MONTHS



\* Total Duration is from initial Court approval until Substantial Completion, not including Final Completion.