

# Construction Delivery Methods for Texas school districts



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## History

Prior to 1995, public school districts were required to utilize competitive bidding for the award of their construction contracts.

In 1995, the Texas Legislature passed Senate Bill No. 1 – intended to decentralize authority and return control of the management of schools to the local school districts.

### Senate Bill No. 1

A new section (44.031) was added to the Texas Education Code, modifying the basic purchasing statutes for school districts and introducing the concept of “best value procurement” for contracts of \$25,000 or more. School districts were granted the flexibility of choosing any of a list of available methods of contracting.

## Senate Bill No. 1 (continued)

Before the passage of Senate Bill No. 1, school districts were required to award construction contracts to the responsible bidder offering the lowest price.

Senate Bill No. 1 departed from that traditional basis for awarding contracts by allowing school districts to use any of a variety of different contracting methods to obtain the "best value" for the school district.

## Factors to determine “Best Value”

In determining what constitutes the “best value” to the district, in addition to the purchase price, school districts may consider the following additional factors:

- reputation
- quality of services
- appropriateness of experience
- past relationship with the district
- ability of the district to comply with laws and rules relating to historically underutilized businesses
- total long-term cost to district
- any other relevant factor

## Senate Bill No. 1 (continued)

Although the passage of Senate Bill No. 1 achieved the legislative purpose of affording school districts much greater flexibility in how they contracted, the new legislation did not provide adequate guidance to the school districts on what procedures should be utilized to implement various available contracting methods.

## Senate Bill No. 583

The 1997 Texas Legislature passed Senate Bill No. 583, which established more specific procedures for school districts to follow in utilizing design-build contracts and established procedures for school districts to follow in entering into contracts with construction managers-agents, construction managers-at-risk, and contractors pursuant to competitive sealed proposals or competitive bidding.

# Senate Bill No. 669

In 1999, Senate Bill No. 669 was implemented to fine-tune a number of provisions first introduced in SB583. The following changes are worth noting.

1. Request for Proposals - An RFP, versus a competitive sealed proposal, can no longer be used to procure construction services.
2. Emergency Procurement - Returning to prior statutory language, emergency procurement contracts for replacement or repair of facilities, not just school equipment, are allowed via methods other than those required by Chapter 44.
3. Delegation – A Board must provide notice whenever it chooses to delegate its authority to a designated representative or committee.
4. Determination of Procurement Method - A Board must first determine which method of procurement provides best value for their district before advertising.
5. Evaluation of Bids and Proposals - A District must publish the specific criteria, along with weighting criteria, used to evaluate offerors.
6. Public Information – A District must document and make public the basis of its construction contract selection not later than seven days after contract award.

## Senate Bill No. 669 (continued)

7. Design-Build Contract Bonds – For design build contracts where a fee has not been determined at time of contract award, payment and performance bonds must be provided in an amount equal to the project budget.
8. CM-Agent – A CM Agent can no longer perform "general conditions" work; rather the role is limited to consulting services only.
9. CM-at-Risk Selection Process - A construction manager-at-risk can now be selected via either a one-step or two-step process.
10. Pre-Qualification - The pre-qualification process for CM-at-risk and competitive sealed proposal selection has been eliminated.
11. Replacement of Subcontractor by CM-at-Risk – When replacing a subcontractor that defaults, a CM-at-risk can either perform the subcontract work or replace the subcontractor without the need to re-advertise.
12. Job Order Contracts - Job order contracting can be used for minor construction, not just repair and rehabilitation as was the previous limitation.

## Construction Procurement Options:

- A. Design-Build
- B. Construction Manager – At-Risk
- C. Construction Manager – Agent
- D. Competitive Bidding (design-bid-build)
- E. Competitive Sealed Proposals

### A. Design-Build Contracts

Under the design-build method of contracting, the public owner awards a single contract to the design-builder to design and construct the public work. Thus, the design-builder undertakes responsibility for both the design and construction of the project.

## Design Build Contracts (continued)

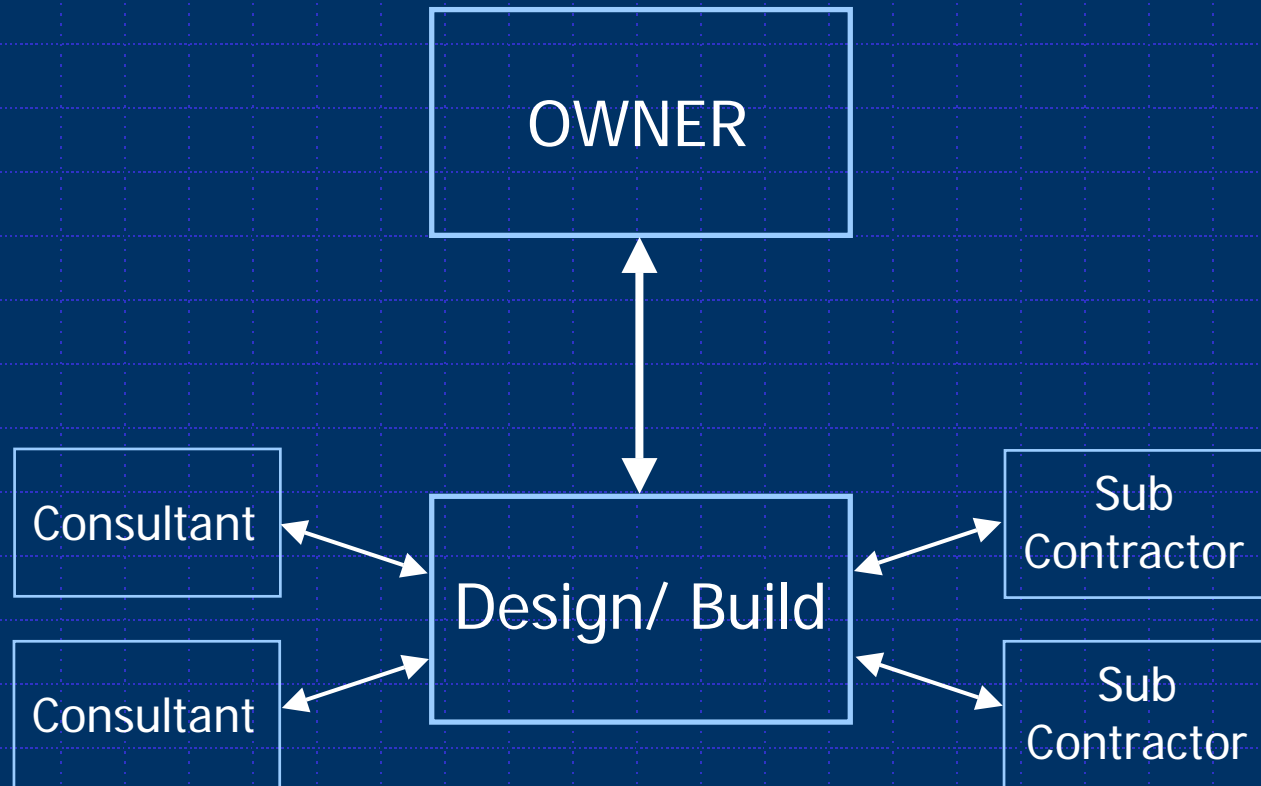
### Advantages:

- Selection flexibility.
- Team Concept.
- Single point of accountability for design and construction.
- Enables fast-track delivery (construction begins before design is complete), saving time.
- Early GMP facilitates alternative financing methods.
- GMP eliminates Owner concern with cost overruns.

### Disadvantages:

- No check and balance between architect and builder.
- Owner must select a team rather than the best architect and best builder.
- Design is completed after GMP is given.
- Difficult to control quality because design/build team must only meet minimum criteria standards.

# Design Build Contracts (continued)



## B. Construction Manager – At-Risk

A construction manager-at-risk is intended to assume the risk for construction at the contracted price in the same manner as a general contractor; but also provides consultation to the school district regarding construction during and after the design of the facility. In selecting the construction manager-at-risk, the school district is required to utilize the competitive sealed proposal process.

## Construction Manager – At-Risk (continued)

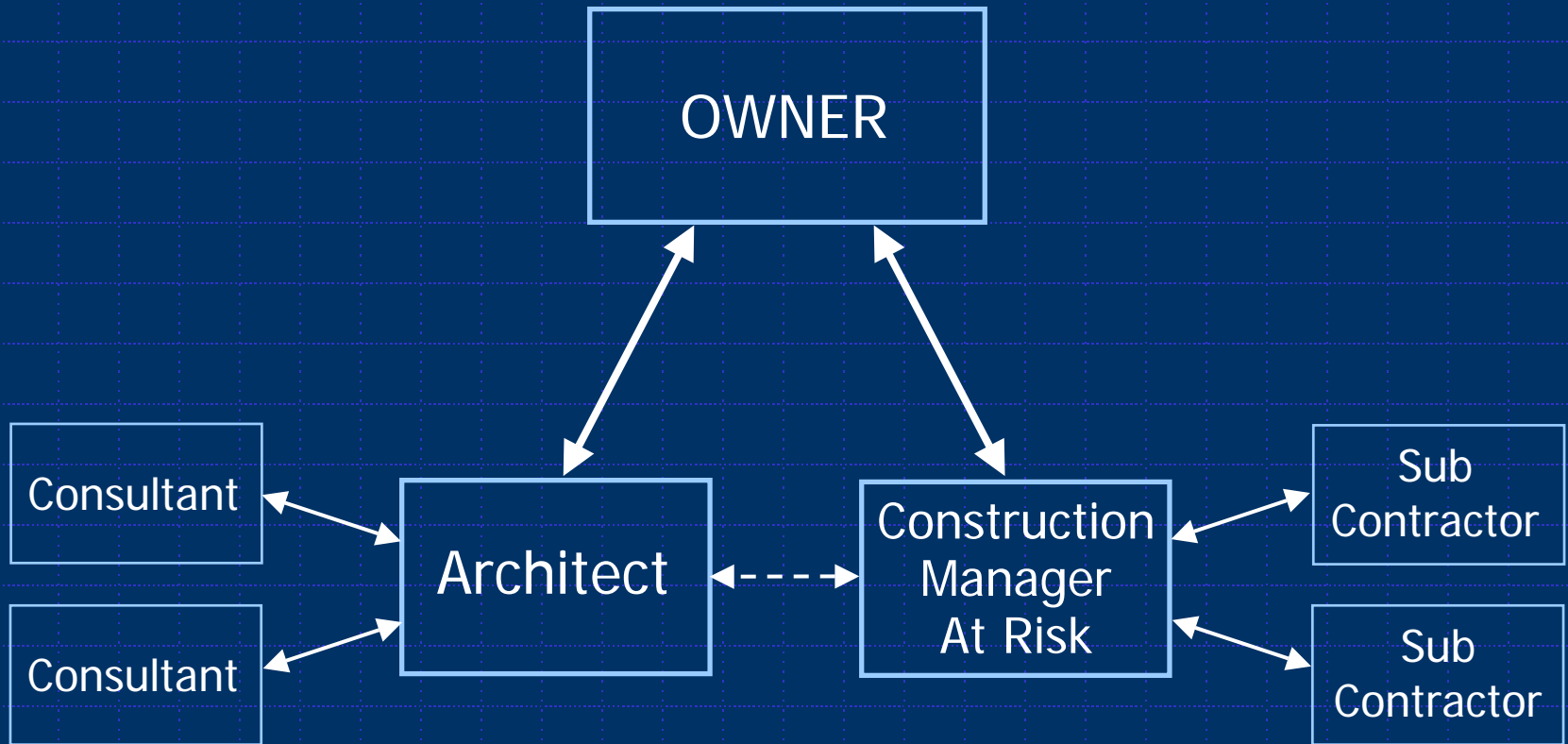
### Advantages:

- Team Concept
- Construction firm selected by interview based on quality rather than low cost.
- Early CM involvement in estimating and constructability
- Owner selects architect and CM separately and may be involved in selection of subcontractors
- Competitive pricing for subcontractor work
- Single point of accountability: CM at-Risk signs contracts with all subcontractors.
- Guaranteed maximum price.
- Enables fast-track delivery – time savings
- Good for large, complex projects and multi phase projects that are time critical

### Disadvantages:

- Difficult for district to evaluate validity of GMP and value of contract
- District typically pays a premium, due to less competition in bidding
- Potential adversarial relationship when design intent is challenged by price cutting

# Construction Manager – At-Risk (continued)



## C. Construction Manager–Agent

A construction manager-agent is intended to represent the school district in a fiduciary capacity and may not self-perform any portion of the actual design or construction of the project, including the general conditions, as provided by the contract. The general conditions are defined to be on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

## Construction Manager–Agent (continued)

If a school district chooses the construction manager-agent method for construction of a school project, then the school district must also obtain a general contractor, trade contractor(s), or subcontractor(s), to serve as the prime contractor(s) for their specific portion(s) of the work on the project. These contractors must be obtained through contracting methods that are in accordance with applicable law.

## Construction Manager–Agent (continued)

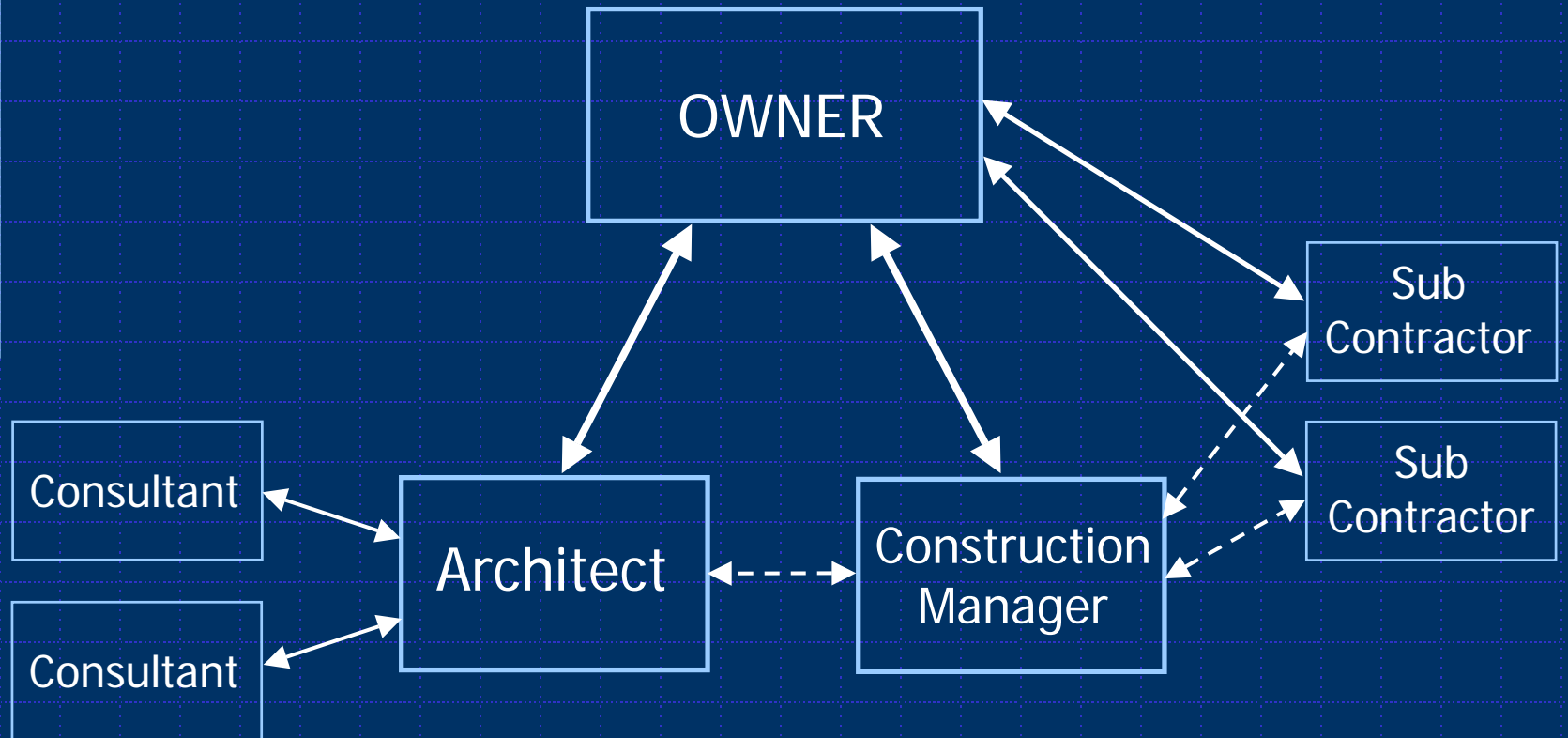
### Advantages:

- CM Agent selected on qualifications rather than low bid.
- Early CM involvement in estimating and constructability.
- Owner selects architect, CM and subcontractors.
- Enables fast-track delivery (construction begins before design is complete), saving time.
- Flexibility in packaging and increased opportunities for local participation

### Disadvantages:

- CM has no contractual responsibility with subcontractors.
- Final price is not established until all packages are bid.
- No guaranteed maximum price.
- Owner manages multiple contracts.
- Cost may be higher with multiple prime contractors.
- Higher owner administration costs to manage project.
- No single point of responsibility.

# Construction Manager-Agent (continued)



## D. Competitive Bidding (design-bid-build)

Senate Bill No. 583 retained the traditional concept of selecting a contractor through competitive bidding, but makes some changes in competitive bidding procedures.

## Competitive Bidding (continued)

Foremost, it provides that the school district should award to the bidder offering the "best value" according to the selection criteria established by the school district. This is a fundamental change from the concept of being required to award to the lowest bid. The lowest price alone may not necessarily offer the "best value", depending on the criteria the school district adopts (typically time and money).

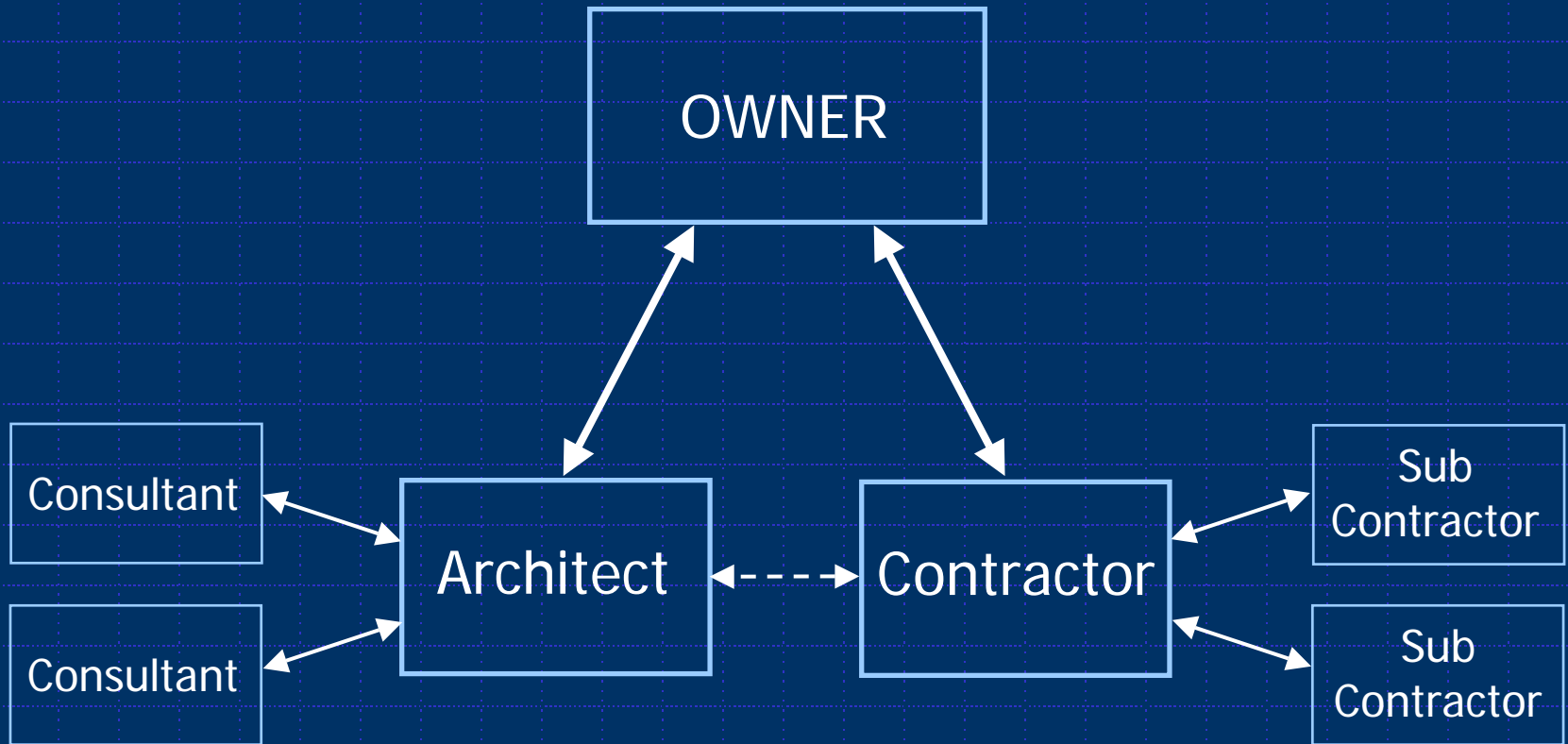
## Competitive Bidding (continued)

A school district may choose to make price the primary or even the sole criteria if it determines that price will provide the "best value"; but it is not compelled to do so, as was the case under the traditional Texas competitive bidding procedures.

## Competitive Bidding (continued)

Additionally, there is a requirement to award the contract at the bid amount, to the bidder offering the “best value” in relation to the school district selection criteria (i.e. not a negotiated contract amount). The school district is not allowed to discuss the bids with bidders for purposes of securing clarifications and changes or to negotiate with the selected bidder for cost reductions in the price of the contract to be awarded by the school district.

# Competitive Bidding (continued)



## E. Competitive Sealed Proposals

Under the competitive sealed proposals procurement method, the school district selects an Architect/Engineer to prepare construction documents for the project. The school district then issues a Request for Proposals for construction of the project based on contractor selection criteria as established by the school district to be the “best value” to the district for the project.

## Competitive Sealed Proposals (continued)

The process involves basically four steps:

- Select an architect or engineer to prepare construction documents for the project
- Prepare an RFP that will include: construction documents, selection criteria, estimated budget, project scope, schedule, and other information required to respond
- Advertise the time by when and place where proposals will be received at least once a week for at least two weeks before the deadline for receiving the proposals
- The final step is for the district to select the offeror that offers the best value based on its published selection criteria and its ranking of the proposals

## Competitive Sealed Proposals (continued)

### Selection Criteria may include:

- Price
- Experience
- Past Performance
- Safety Record
- Proposed Personnel
- Methodology
- Other factors demonstrating the capability of the offeror

## Competitive Sealed Proposals (continued)

The school district is required to: (1) receive and publicly open the proposals and (2) read aloud the names of the offerors and the monetary proposals, if any, stated in each proposal. The school district may discuss proposals with offerors after the opening, to allow for clarification and changes.

## Competitive Sealed Proposals (continued)

Thus, the major difference between the competitive sealed proposal method and traditional competitive bidding is that post-bid negotiations may take place and a contract may be awarded at a price or on terms other than those originally submitted. In a traditional competitive bidding situation, the school district must award, if at all, to one of the bidders on the exact same basis as was originally bid.

## Competitive Sealed Proposals (continued)

The school district has forty-five days after the proposal opening to evaluate and rank each proposal submitted in relation to its published selection criteria. Once the “best value” offeror is determined, the school district may discuss options with the selected offeror for cost reduction. If the district is unable to come to terms with the first ranked offeror, discussions are to terminate and the district must proceed to the next ranked offeror and repeat the process until a contract agreement is reached or all proposals are rejected.

## Competitive Sealed Proposals (continued)

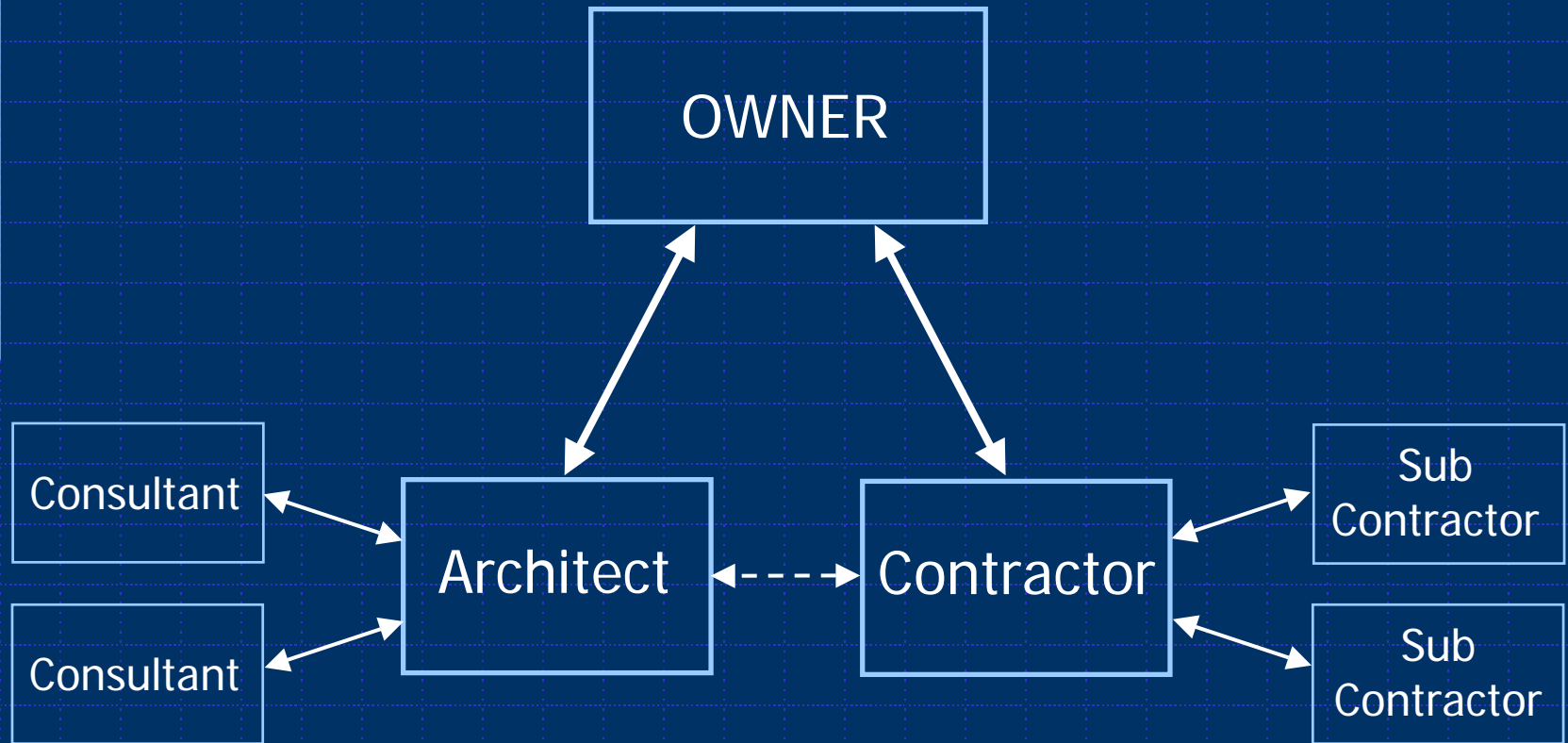
### Advantages:

- Defined project scope @ time of proposal.
- Flexibility in contractor selection.
- Enables the scope to be redefined to fit the budget without having to re-propose.
- Single point of accountability.
- Allows award based on value rather than price alone through evaluation process.
















### Disadvantages:

- Linear process requires more time.
- No design or budget input from contractor prior to proposal.
- Not suited for projects that are sequence or schedule sensitive.
- Price not established until design is complete.

# Competitive Sealed Proposals (continued)



# Alternative Delivery System Summary

Comparison of Alternate Delivery Systems				CONSIDERATIONS			
Legend				Lower First Cost	Increased Quality	Project Organization/Owner Control	Faster Construction
	Best (More often than not)						
	Better (Usually)						
	Marginal (Usually)						
?	Hit or Miss						
DELIVERY SYSTEMS							
Construction Manager-At-Risk				?			
Construction Manager-Agent							
Competitive Sealed Proposals							
Design Bid Build					?	?	?