

MEMORANDUM

DATE: DECEMBER 17, 2002

TO: ALEX RUIZ, CITY MANAGER
GERALD HUNT, CITY ATTORNEY

FROM: GLENN GIMBUT, ASSISTANT CITY ATTORNEY

RE: METHODS OF PROCUREMENT OF PUBLIC BUILDINGS

The purpose of this memorandum is to briefly outline the changes in Arizona law and the methods by which public buildings may be built in Arizona. The law provides three methods construction. First is the traditional method of selecting an architect by a competitive selection process, then placing the project out to bid and awarding a contract to the lowest responsible bidder. This is currently called "design-bid-build." The second is "design-build." This is defined at ARS §34-101 as:

- "Design-build" means a project delivery method in which:
- (a) There is a single contract for design services and construction services.
 - (b) Design and construction of the project may be in sequential phases or concurrent phases.
 - (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Yuma County has built a couple of its buildings this way. This method would cover the "lease purchase" type of construction/financing of buildings.

The third method, currently being tried by the City of Yuma is "construction manager at risk." This is defined at ARS §34-101 as:

- "Construction-manager-at-risk" means a project delivery method in which:
- (a) There is a separate contract for design services and a separate contract for construction services.
 - (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
 - (c) Design and construction of the project may be in sequential phases or concurrent phases.
 - (d) Finance services, maintenance services, operations services, preconstruction

services and other related services may be included.

My understanding of "construction manager at risk" is that one enters into contracts with an engineer, architect, or contractor to provide for building design and construction with a negotiated ceiling on the price to be paid and the "at risk" part is that if it costs more, then the vendor is the one who is at risk.

We are allowed to customize our process of procurement. As stated in ARS §34-101: "A combination of construction and, as elected by the agent, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section."

A method that worked well for the cities of Lake Havasu City, City of Mesa, City of Glendale, and City of Apache Junction was to use a professional construction manager services who did not have an interest in the outcome other than to be sure the municipality got a good product at the budgeted amount.

This process will work in any of the three methods of procurement. First the city is put through a "needs assessment." In this process the city and its staff are put through a professional process of determining its needs for the present and the near foreseeable future, i.e. the next ten years. This takes into consideration the current staffing and projected staffing over the next decade and the building needs to accommodate that growth. It also takes into consideration location, land availability and financial resources. It develops different options to meet the building and space needs, and a "plus" and "minus" assessment. It provides an informational base upon which to make choices. Once accomplished, you now have good information to decide exactly what you want to build and when. You have exact information to give an architect of what you want designed, rather than have the architect guess. This saves design costs and helps to be sure that what is designed is what you expected.

Then the construction manager helps you select the architect and organizes that selection process. Once the building is designed, the construction manager organizes the construction bidding process and the selection of the contractor. After that the manager oversees the construction by the contractor and helps avoid change orders and cost overruns, as well as insuring a quality job.

Construction manager at risk was a system designed to be close to this process. There is one vendor to whom the City contracts and it is their job to deliver a product on time and on budget or be at risk. The weakness is that there is an incentive to cut corners. The construction manager system that I described above is one where the manager is neither the architect nor the contractor and therefore has no financial ties to the project. There is no financial incentive to cut corners to cut costs or make the project unduly expensive. (One traditional method of hiring an architect is to pay the architect a percentage of the overall cost of the project. This gives the architect an incentive to increase the cost by a more expensive design.)

At present time the requirements for competitive selection is that some competitive selection process must be used if we are contracting for services requiring "Technical registrant" services which are any of the professional services listed in title 32, chapter 1 of the Arizona Revised Statutes or a licensed contractor. See ARS §§34-101, 34-103, 34-603. Since a needs assessment does not

fall into the services of either a licensed contractor or a "technical registrant," it falls outside the scope of something requiring competitive selection under state law.

I hope this memo answers some of the questions that have been posed. If there are any additional questions, please do not hesitate to ask.