

FACILITIES CONSTRUCTION  
CONSTRUCTION MANAGER-AT-RISK

CVD  
(LEGAL)

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**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB.

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“Construction manager-at-risk method” is a delivery method by which a district 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. *Gov’t Code 2269.251(a)*

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repairs of a facility at a contracted price as a general contractor and provides consultation to a district regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price. *Gov’t Code 2269.251(b)*

A district may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, a district must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:

1. Selecting a contracting method;
2. Giving public notice of the project;
3. Publishing contract selection criteria;
4. Making evaluations public after the contract is awarded; and
5. Providing for inspection, verification, and testing necessary for acceptance of the facility by the district.

*Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058, .251(c)*

**Architect /  
Engineer**

On or before the selection of a construction manager-at-risk, the district shall select or designate an architect or engineer or architect to prepare the construction documents for the project. *Gov’t Code 2269.252(a)* [See CV]

The district’s architect or engineer for a project, or an entity related to the district’s architect or engineer, may not serve, alone or in combination with another, as the construction manager-at-risk. The engineer or architect is not prohibited from providing customary construction phase services under the architect’s or engineer’s

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original professional service agreement in accordance with applicable licensing laws.

An entity is related to the district's architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner or has any other relationship in which the district's architect or engineer has an ownership interest, or is subject to common ownership or control, or is party to an agreement by which it will receive any proceeds of the construction manager-at-risk's payments from the district.

*Gov't Code 2269.252(b), (c)*

**Selection Process**

A district shall select the construction manager-at-risk in either a one-step or two-step process. A district 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 a district in its selection of a construction manager-at-risk.

A district shall state the selection criteria in the request for proposals or qualifications.

If a one-step process is used, a district may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, a district may not request fees or prices in step one. In step two, a district 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 its price for fulfilling the general conditions.

*Gov't Code 2269.253(a)–(e)*

**Opening and  
Evaluating  
Proposals**

At each step, a district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, a district shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date on which the final proposals are opened, a district shall evalu-

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ate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. *Gov't Code 2269.253(f)–(g)*

**Selection**

A district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district 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. *Gov't Code 2269.254(a)–(c)*

**Notice of Rankings**

Not later than the seventh day after the date the contract is awarded, the district shall make the proposal rankings public. *Gov't Code 2269.254(d)*

**Trade Contractors /  
Subcontractors**

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. 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 district determines that the construction manager-at-risk's bid or proposal provides the best value for the district.

*Gov't Code 2269.255*

**Bids or Proposals**

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 district. All bids or proposals shall be made available to the district 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. *Gov't Code 2269.256(a)*

If the construction manager-at-risk reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, the district 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 district's requirement that another bid or proposal be accepted. *Gov't Code 2269.256(b)*

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Default

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 policy, 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. *Gov't Code 2269.257*

**Payment and  
Performance Bond  
Amounts**

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 district must each be in an amount equal to the project budget, as specified in the request for proposals or qualifications. The construction manager shall deliver the bonds not later than the tenth 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 a district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. *Gov't Code 2269.258* [See CV for more information on payment and performance bonds.]