

Approved: 3-1-10  
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 11:00 a.m. on February 11, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes  
Julian Efird, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Connie Burns, Committee Assistant

Conferees appearing before the Committee:

Eric Stafford, Associated General Contractors of Kansas  
Chad Austin, Kansas Hospital Association  
Dan Morgan, The Builders Association

Others attending:

See attached list.

Chairman Brungardt called for approval of minutes for January 26,27, 28, and February 3 and 4, distributed on February 8, 2010.

Senator Abrams made a motion to approve the minutes as written. Senator Owens seconded the motion. The motion carried.

**SB 513 - County alternative project delivery construction; hospital districts; other changes.**

Chairman Brungardt opened the hearing on **SB 513**.

Staff provided an overview of the bill.

Eric Stafford, Associated General Contractors of Kansas, spoke in favor of the bill. (Attachment 1) In 2008, the Legislature passed SB 485 which gave counties the ability to utilize construction management at-risk (CM at-risk) and design-build alternative delivery methods. The bill has two significant changes in addition to making technical changes to existing statute. An unintended consequence of **SB 485** was the exclusion of district hospitals from utilizing alternative delivery methods while all other public hospitals have the ability if they so choose. To fix this problem, **SB 513** changes the definition of "board" to include district hospitals, since they do not fall under the supervision of a board of county commissioners.

The second change addresses another unintended consequence of the existing alternative delivery statutes. As part of the CM at-risk procurement process, the owner (county) gives a request for proposals to pre-qualified firms and interviews each pre-qualified firm after all proposals have been submitted; these interviews took place during a school board meeting for the public to watch. ACG general contractor members have stated these interviews contain proprietary and financial information which is an exception under the Kansas Open Meetings Act which allows the use of executive session. Therefore, AGC is asking to include language that these interviews take place in executive session to protect confidential information (page 6, line 11). Mr. Stafford provided a power point on alternative delivery.

Chad Austin, Kansas Hospital Association, appeared as proponent of the bill. (Attachment 2) The bill would afford district hospitals the same opportunities allowed to county entities and hospitals under the Alternative Project Delivery Building Construction Procurement Act; and would make several technical amendments and would change the definition of "Board" to include those boards as defined under KSA 80-2501.

Dan Morgan, The Builders Association, provided written testimony in support of the bill. (Attachment 3)

Chairman Brungardt closed the hearing on **SB 513**.

CONTINUATION SHEET

Minutes of the Senate Federal and State Affairs Committee at 11:00 a.m. on February 11, 2010, in Room 144-S of the Capitol.

**SB 514 - Kansas unified school district alternative project delivery building construction procurement act.**

Chairman Brungardt opened the hearing on **SB 514**.

Eric Stafford, Associated General Contractors of Kansas, appeared as a proponent of the bill. (Attachment 4) The bill makes similar changes for school districts as **SB 513** makes for counties and most of the changes are technical in nature to remain consistent with county statutes, with the exception of the addition that the interviews take place in executive session (page 2, lines 35-36).

Dan Morgan, The Builders Association, provided written testimony in support of the bill. (Attachment 5)

Chairman Brungardt closed the hearing on **SB 514**.

The Chairman asked the committee for interest in working bills heard today.

**SB 513 - County alternative project delivery construction; hospital districts; other changes**  
**SB 514 - Kansas unified school district alternative project delivery building construction procurement act.**

**SB 513 and SB 514**, a motion was provided to combine the two bills and move out favorably as amended by Senator Morris. Senator Reitz seconded the motion. After committee discussion the motion was withdrawn.

Chairman opened the meeting to discussion on bills in committee that will be worked next week.

**SB 478 - Revision of the Kansas cigarette and tobacco products act**

**SB 454 - License to sell alcoholic beverages; fees, term and eligibility**

The next meeting is scheduled for February 16, 2010. The meeting was adjourned at 11:50 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
GUEST LIST

DATE 2-11-10

| NAME                     | REPRESENTING              |
|--------------------------|---------------------------|
| Kari Presley             | Kearney & Associates Inc. |
| Eric Stafford            | AGC of KS                 |
| Cory Peterson            | AGC of KS                 |
| Don Morgan               | Builder's Association     |
| Brend Koops              | Hein Law Firm             |
| <del>Whitney James</del> | Lukas Lijewski S.S.       |
| TED Hedger               | CAPITOL STATEMENTS.       |
| Ken Gaches               | GBA                       |
| TAVIS LOWE               | Little Girl's Reliance    |
| Chad Austin              | KHA                       |
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**TESTIMONY OF  
ASSOCIATED GENERAL CONTRACTORS OF KANSAS  
BEFORE SENATE COMMITTEE ON FEDERAL & STATE AFFAIRS  
SB 513**

February 11, 2010

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

**The AGC of Kansas supports Senate Bill 513 and asks that you recommend it favorably for passage.**

In 2008, the Kansas legislature passed Senate Bill 485 which gave counties the ability to utilize construction management at-risk (CM at-risk) and design-build alternative delivery methods.

SB 513 has two significant changes in addition to making technical changes to existing statute. An unintended consequence of SB 485 was the exclusion of district hospitals from utilizing alternative delivery methods while all other public hospitals have the ability if they so choose. To fix this problem, SB 513 changes the definition of "board" to include district hospitals, since they do not fall under the supervision of a board of county commissioners.

The second change addresses another unintended consequence of the existing alternative delivery statutes. As part of the CM at-risk procurement process, the owner (county) gives a request for proposals to prequalified firms and interviews each prequalified firm after all proposals have been submitted. Due to interpretation by a school district in Kansas, these interviews took place during a school board meeting for the public to watch. AGC general contractor members have stated these interviews contain proprietary and financial information which is an exception under the Kansas Open Meetings Act which allows the use of executive session. Therefore, AGC is asking to include language that these interviews take place in executive session to protect confidential information (page 6, line 11).

**Again, the AGC of Kansas respectfully requests that you recommend SB 513 favorably for passage.** Thank you for your consideration.

## 75-4319

**Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited; certain documents identified in meetings not subject to disclosure.** (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

**(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;**

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection (e) of K.S.A. 38-1508 and amendments thereto;

(9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

(10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119 and amendments thereto;

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto; and

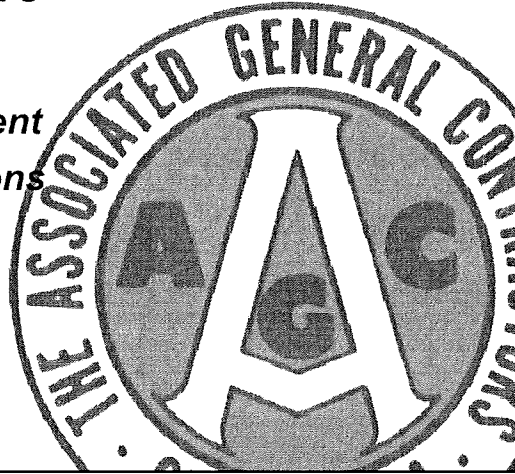
(15) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2008 Supp. 75-7427, and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

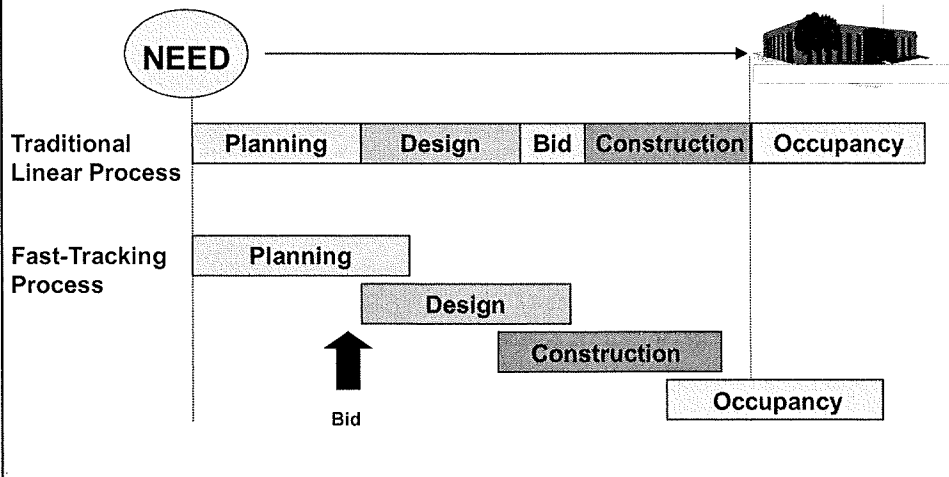
(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

## What is Alternative Delivery?

*Understanding Different Project Delivery Options*



## The Four Phases (every project goes through)



## **List of Delivery Methods Allowed in KS Statute**

Design - Bid - Build (Low Bid)

CM/General Contractor (at-Risk)

Schools, Counties, State Agencies

Design/Build

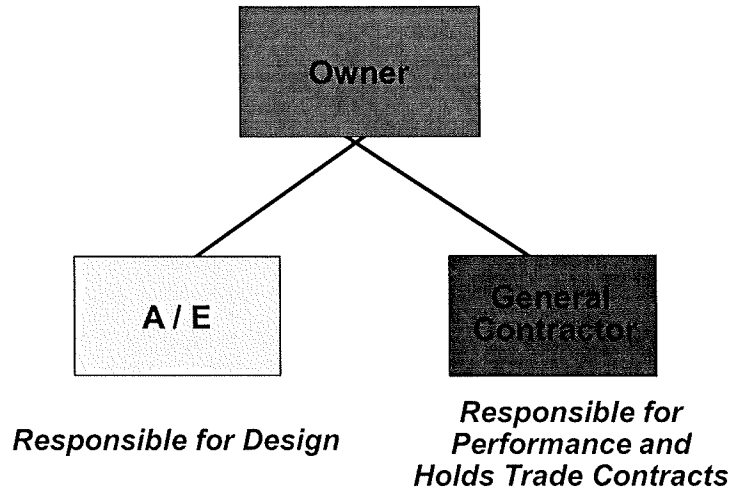
State Agencies, Counties

## **What is Design-Bid-Build?**

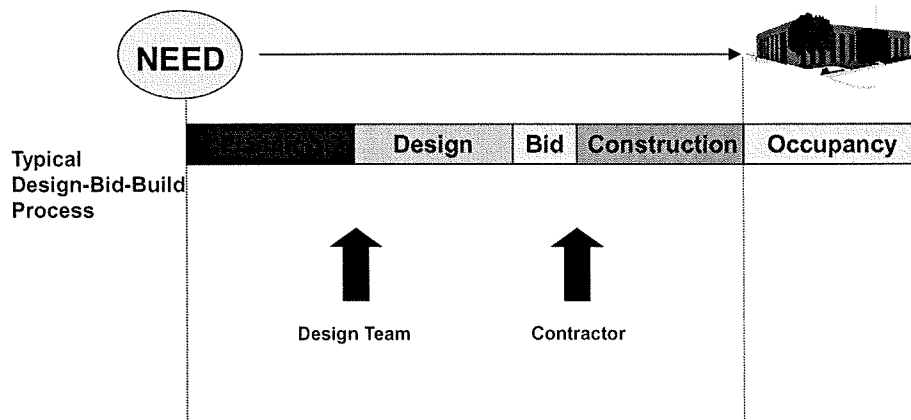
- Considered the traditional method of construction
- Owner selects designer to design
- Contractor then selected by lowest responsible bid – single price (including alternates)
- Design & construction contracts held by owner
- Subcontracts held by general contractor
- Contractor guarantees a set price – assumes risk of completing project for that amount

# Design-Bid-Build

(Two Separate Contracts for Design & Construction)



## Typical Design-Bid-Build Process (The Four Phases)





## Design/Bid/Build - Summary

### **“Defining” Characteristic(s):** (uniquely defines it from other methods)

- ✓ Separate Contracts for Design & Construction
- ✓ Final Selection Based 100% on Total Cost

### **“Typical” Characteristics:**

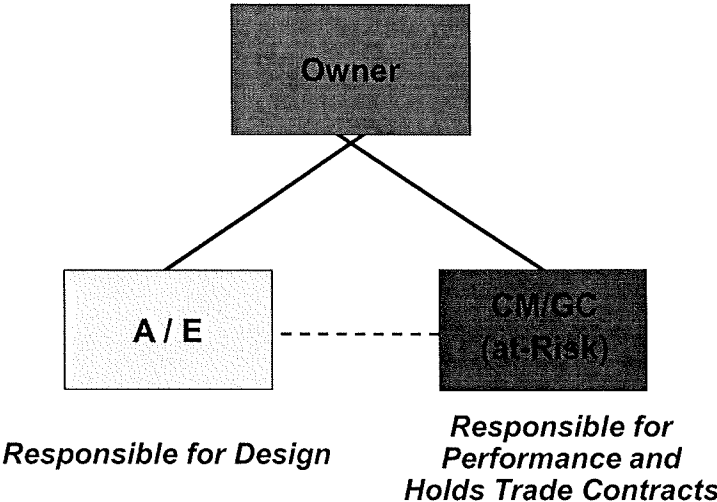
- ✓ Design Documents complete

## What is CM/GC (at-risk)

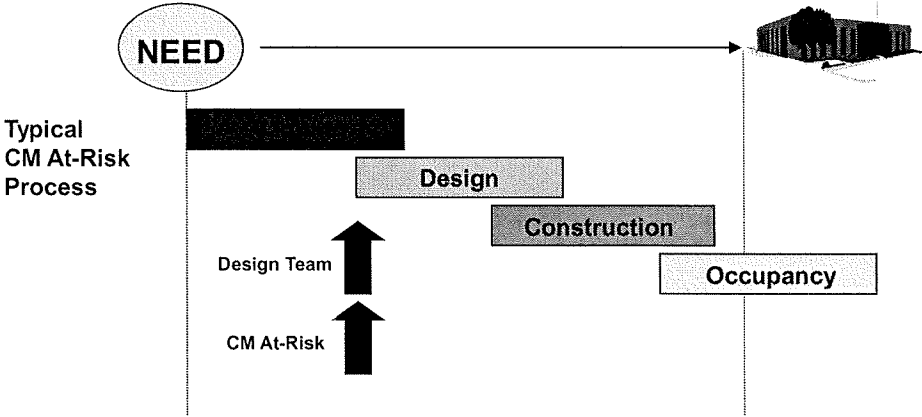
- Construction entity serves as traditional GC
- Involved from design phase to construction completion
- Awarded job before plans complete – not based solely on price
- Holds all trade contracts
- Monitors costs, time, quality & safety
  - takes financial responsibility*
- Provides a guaranteed maximum price
  - *Assumes financial risk*

# Construction Management at-Risk

(Two Separate Contracts for Design & Construction)



# Typical CM at-Risk (The Four Phases)



## CM at-Risk - Summary

### “Defining” Characteristics:

(uniquely defines it from other methods)

- ✓ Separate Contracts for Design & Construction
- ✓ Final Selection not Based 100% on Total Cost
- ✓ CM/GC Holds Trade Contracts/Performance Risk

### “Typical” Characteristics:

(are not unique to one delivery method)

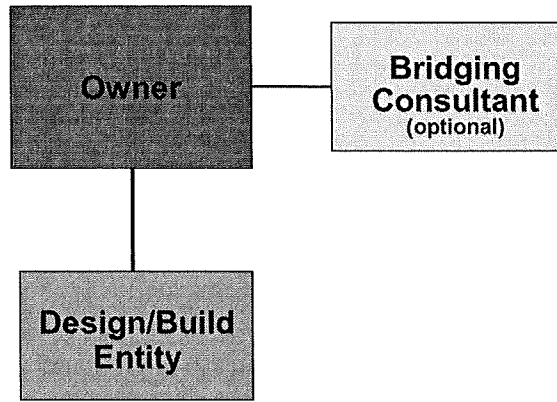
- ✓ Fast-Tracking Design/Construction
- ✓ Preconstruction Services
- ✓ Guaranteed Maximum Price/Schedule

## What is Design Build

- Single entity – single contract
- Design Builder assumes responsibility and risk for arch/eng design and construction
- Involved from design to construction completion
- Holds all trade contracts
- Monitors costs, time, quality & safety
  - takes financial responsibility*
- Selected prior to knowing what cost of project established
- Provides a guaranteed maximum price
  - *Assumes financial risk*

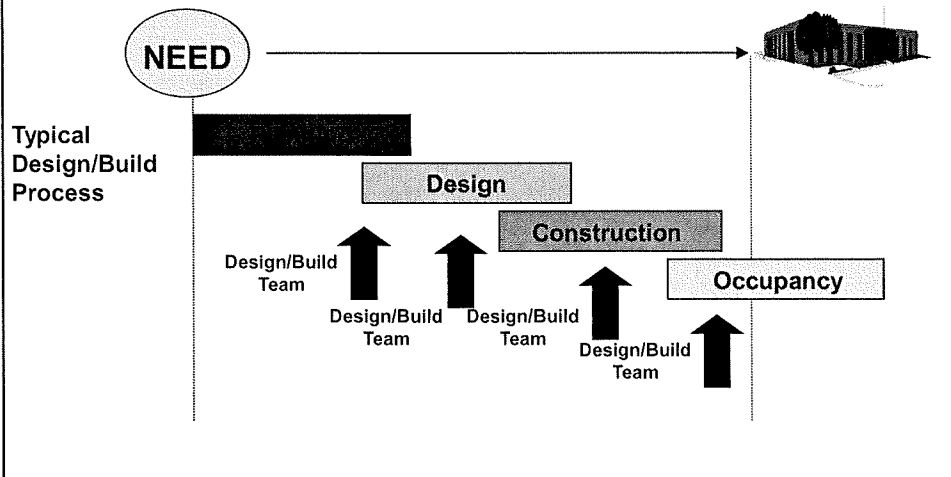
# Design/Build

(One Single Contract for Design & Construction)



*Responsible for Design,  
Construction Performance and Holds  
Trade Contracts*

## Typical Design/Build Process (The Four Phases)



## Typical Structure of the Design/Build Entity

### Design/Build Entity

- Integrated Firm - All services in-house
- Contractor Led (design subcontracted)
- Joint Venture (architect-contractor j.v.)
- Architect Led (construction subcontracted)

## Design/Build - Summary

**“Defining” Characteristic(s):**  
(uniquely defines it from other methods)

✓ Single Point of Responsibility

**“Typical” Characteristics:**

- ✓ Fast-Tracking Design/Construction
- ✓ Preconstruction Services
- ✓ Guaranteed Maximum Price/ Schedule

## ***Design-Bid-Build***

### Pros:

- Well established – many contractors ready to bid
- Best understood by owners and public
- Long established legal & procedural guidelines
- Low bid provides reliable market price for project
- Avoids favoritism & allows all qualified contractors to compete on equal basis
- Owner has clear idea of finished product prior to construction

## ***Design-Bid-Build***

### Cons:

- D-B-B linear sequence may require considerable time
- No guarantee bids won't exceed budget – could lead to delays, rebidding or cancellation of project
- Adversarial relationships can develop – three principal parties have different financial goals
  - Owner – best possible building at lowest cost
  - Architect – satisfy owner – aesthetic requirements
  - Contractor – complete job within time & price specified
- Differences in interpretation of contracts possible
- Differences may result in claims to be resolved

## **CM/GC**

### Pros:

- Usually quicker process than D-B-B – *possible cost savings*
- Potential CM/GC can be pre-qualified and short-listed
- Fewer disputes, changes, claims and delays – cooperative relationship
- CM can be brought on early - perform preconstruction tasks
- Smooth integration of design and construction – CM can make recommendations during design
- Value engineering/constructability/cost reduction by CM prior to completion of contract documents
- Guaranteed Maximum Price provided

## **CM/GC**

### Cons:

- Some duplication of admin tasks – CM, Design Team,
- Loss of objectivity may be perceived as public owners select CM on qualifications rather than strictly price
- Owners may require more cost monitoring than lump sum contracting
- GMP contracts with shared savings clause, contractors have to avoid focusing on savings-split rather than effective performance

## ***Design Build***

### Pros:

- Contractual merger of design & construction saves time
- Long lead time items can be identified, ordered prior to start of construction
- Owners can get quick and reliable answers on issues as effects of design decisions on costs and schedule
- Project cost can be determined relatively soon
- Contract documents can be less detailed
- Value engineering & constructability review enhanced
- Complex projects – full integration of design & construction enables fast schedule with reasonable budget
- Project close out smoother – fewer parties
- Fewer disputes, changes, claims and delays

## ***Design Build***

### Cons:

- Owner must provide clear statement of scope & requirements
- Potential loss of checks & balances – designer & constructor
- Loss of objectivity may be perceived as public owners select DB on qualifications rather than strictly price
  - If selected on low bid – time & cost savings could be lost
- Insurance/design liability must be addressed – design services require licenses
- Less detailed documents may result in misunderstandings by owner
- Owners may require more cost monitoring than lump sum contracting



## Factors to Help Determine “Which Delivery Method?”

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>✓ Ability to Fast Track</li><li>✓ Open book approach</li><li>✓ Ability to pre-qualify</li><li>✓ Contractors involved early in the process</li><li>✓ Collaborative (not an adversarial) process</li><li>✓ Experts are involved early in the process</li><li>✓ Focus is on the project's best interests</li><li>✓ Early cost feedback</li><li>✓ Rewards performance</li></ul> | <ul style="list-style-type: none"><li>✓ Early construction input in the design phase</li><li>✓ Higher quality product</li><li>✓ Better risk management</li><li>✓ Fewer claims/lawsuits</li><li>✓ Customer-oriented focus</li><li>✓ Low cost growth (fewer change orders)</li><li>✓ Based on trust among all participants</li><li>✓ Potential savings are returned to the Owner</li></ul> |
|---|--|

## Types of Selection Processes

# Typical Selection Types

## 1. Low Bid

- Total Construction Cost, is the only selection criteria.  
(Total Construction weighted 100%)

## 2. Best Value Bid

- Total Construction Cost including the Cost of Work is a weighted selection criteria.  
(Total Construction Cost weighted between 0% & 100%)
- Qualifications
- Time

## 3. Qualifications Based Selection

- Cost of Work is not a selection criteria.  
(Total Construction Cost weighted 0%)
- Qualifications
- Time
- May include general conditions and fee

# Typical Delivery Options (with Selection Types)

| DELIVERY METHODS | SELECTION TYPES   |  |  |
|------------------|---|--|--|
|                  | Competitive Sealed Bid<br>(Low Bid)<br><br>Total Construction Cost is sole criteria for final selection | Competitive Sealed Cost Proposal<br>(Best Value)<br><br>Total Construction Cost and other criteria are weighted factors in the final selection | Competitive Sealed Qualifications Proposal<br>(Qualifications Based Selection)<br><br>Total Construction Costs are <u>not</u> a factor in the final selection criteria |
| Design/Bid/Build | X   |  |  |
| CM/A (agency)    | X CM<br>X Contractors   | X  | X  |
| CM/GC (at-risk)  |   | X  | X  |
| Design Build     | X   | X  | X  |



Tom Bell  
President and CEO

TO: Senate Federal and State Affairs Committee  
FROM: Chad Austin  
Vice President, Government Relations  
DATE: February 11, 2010  
RE: Senate Bill 513

The Kansas Hospital Association appreciates the opportunity to provide testimony in support of Senate Bill 513. The proposed legislation would afford district hospitals the same opportunities allowed to county entities and hospitals under the Alternative Project Delivery Building Construction Procurement Act.

The original legislation allowing county entities and school districts to use an alternative project delivery program was passed during the 2008 session. Under K.S.A. 19-216b through 19-216f, the statutes refer solely to county entities and defines "Board" to mean the board of county commissioners or its designees. Senate Bill 513 would make several technical amendments and would change the definition of "Board" to include those boards as defined under K.S.A. 80-2501. The reference to K.S.A. 80-2501 would allow the approximately 20 district hospitals in Kansas to utilize the alternative project delivery program.

Attached to our testimony is a letter of support from the hospital administrator, Mr. Curt Colson, at Satanta District Hospital. The Kansas Hospital Association would strongly encourage the favorable passage of Senate Bill 513.

Thank you for your consideration of our comments. I would be happy to stand for questions.

Sn Fed & State  
Attachment 2



**SATANTA DISTRICT HOSPITAL, CLINICS & LONG TERM CARE**

February 4, 2010

Kansas Legislature  
Topeka, Kansas

Re: Support of SB513

Dear Legislators:

Satanta District Hospital & LTCU is a licensed 13-bed Critical Access Hospital with an attached 44-bed long term care unit and two (2) Rural Health Clinics serving the health care needs of Haskell county and surrounding communities. Our district hospital opened in 1953 and was organized as a not-for-profit, political sub-division of the State of Kansas. Hospital governance is provided by a five member board publicly elected by the residence living within the designated boundaries of the district. Hospital districts are a separate municipality and operated independently from county operations.

Satanta District Hospital's Board of Trustees and administration are asking for your support in passing SB 513. Being the sole provider of health care and elderly nursing services in Haskell County, our Board is keenly aware of the growing need for Senior Housing in rural Kansas. Our board is currently in the process of evaluating and considering the many different design and construction options available. However, we've come to realize hospital districts are burdened with more obligations in the design and construction phase, which can be overwhelming to manage and does not provide the same cost-containing measures.

County hospitals are currently afforded the opportunity to design and construct buildings and other structures under what is known as the "*County Alternative Project Delivery Building Construction Procurement Act*". K.S.A. 19-216b through 19-216g. Current legislation allows county hospitals the ability to use an "integrated comprehensive building design and construction process, including all procedures, actions, sequences of events, contractual relations, obligations, interrelations and various forms of agreement all aimed at the successful completion of the design and construction of buildings and other structures....based on a qualification and best value approach."

Under current legislation, Hospital Districts in Kansas, such as Satanta District Hospital & LTCU, are not included in this legislation by way of definition. The specific use of language such as "county" and "Board", which is defined as a Board of County Commissioners, excludes Hospital Districts from the same building opportunity as county owned hospitals. I do not believe it was the intention of the legislative decision to purposefully exclude and prevent Hospital Districts from using a cost-effective and integrated comprehensive building design and construction method.

Therefore, Satanta District Hospital & LTCU respectfully asks and encourages the Kansas Legislature to support and approve the passage of SB513.

Sincerely,

Curt Colson  
CEO/Administrator  
Satanta District Hospital,  
Clinics & Long Term Care  
PO Box 159 \* 401 Cheyenne  
Satanta, KS. 67870

Satanta District Hospital  
401 Cheyenne  
PO Box 159  
Satanta, KS 67870  
[www.satantahospital.org](http://www.satantahospital.org)  
Phone: 620-649-2761  
Fax: 620-649-2776

**WRITTEN TESTIMONY TO THE  
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
REGARDING SENATE BILL 513**

Dan Morgan

The Builders' Association and Kansas City Chapter, AGC

February 11, 2010

Thank you, Mister Chairman, and members of the committee. My name is Dan Morgan. I am the governmental affairs consultant in Kansas for the Builders' Association and the Kansas City Chapter, AGC and formerly served as executive director of these organizations. The Builders' Association and KC Chapter, AGC represent more than 1,100 general contractors, subcontractors and suppliers engaged in the commercial and industrial building construction industry. Half of our members are located in the Kansas City area and are either domiciled in Kansas or perform work in the state. I appreciate the opportunity to provide this written testimony in support of Senate Bill 513.

Legislation adopted in 2008 allows boards of county commissioners to use either the "construction management at risk" or the "design-build" method of delivery on county building construction projects in the state. These "alternative delivery" methods have proved to be sound alternatives to the traditional design-bid-build method of delivery in appropriate circumstances. And, by law, such alternative delivery methods are only used after a determination has been made that it is in the public interest to do so. Senate Bill 513 would amend the definition of "board" (see page 1, lines 37-39) in current law in order to allow hospital boards (as defined in K.S.A. 80-2501) to utilize these delivery methods in appropriate circumstances as well.

When determining whether alternative delivery is appropriate for a project, members of the board would consider such factors as whether its use would result in substantial savings of time or money, whether there is a need to overlap the design and construction phases on the project and whether use of an accelerated schedule is needed to make repairs in an emergency situation. The use of alternative delivery is not intended as a substitute for awarding public contracts to the lowest responsible bidder. Rather, it is meant to provide a viable alternative in certain circumstances and only after a determination has been made that it would be in the public interest.

In an environment where more and more local governments are opting to use these delivery methods on certain projects, we appreciate the fact that this area of Kansas law conforms well to current alternative delivery law affecting state agencies. It also provides uniform procedures for all pertinent boards to follow when awarding such contracts. Finally, we also support language in the bill which provides that the board shall interview each of the prequalified firms in executive session so that sensitive information contained in such firm's proposals can be kept confidential. We respectfully ask that you recommend SB 513 favorably for passage. Thank you very much.

Sn Fed & State  
Attachment 3



Building a Better Kansas Since 1934  
200 SW 33<sup>rd</sup> St. Topeka, KS 66611 785-266-4015

4

**TESTIMONY OF  
ASSOCIATED GENERAL CONTRACTORS OF KANSAS  
BEFORE SENATE COMMITTEE ON FEDERAL & STATE AFFAIRS  
SB 514**

February 11, 2010

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

**The AGC of Kansas supports Senate Bill 514 and asks that you recommend it favorably for passage.**

In 2008 Senate Bill 485 was introduced which gave counties the ability to utilize construction management at-risk (CM at-risk) and design-build alternative delivery methods. When the bill reached the House, language was added from SB 642 authorizing school districts to utilize the CM at-risk delivery method.

SB 514 makes similar changes for school districts as SB 513 makes for counties. Most of the changes are technical in nature to remain consistent with county statutes, with the exception of the addition that the interviews take place in executive session (page 2, lines 35-36). As with SB 513, this change addresses another unintended consequence of the existing alternative delivery statutes.

As part of the CM at-risk procurement process, the owner (school district/board) gives a request for proposals to prequalified firms and interviews each prequalified firm after all proposals have been submitted. Due to interpretation by a school district in Kansas, these interviews took place during a school board meeting for the public to watch. AGC general contractor members agreed holding these hearings in public was not the intent of the bill because these interviews contain proprietary and financial information which is an exception under the Kansas Open Meetings Act which allows the use of executive session.

**Again, the AGC of Kansas respectfully requests that you recommend SB 514 favorably for passage.** Thank you for your consideration.

Sn Fed & State  
Attachment 4  
2-11-10

**WRITTEN TESTIMONY TO THE  
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
REGARDING SENATE BILL 514**

Dan Morgan

The Builders' Association and Kansas City Chapter, AGC

February 11, 2010

Thank you, Mister Chairman, and members of the committee. My name is Dan Morgan. I am the governmental affairs consultant in Kansas for the Builders' Association and the Kansas City Chapter, AGC. I formerly served as executive director of these organizations. The Builders' Association and KC Chapter, AGC represent more than 1,100 general contractors, subcontractors and suppliers engaged in the commercial and industrial building construction industry. Half of our members are located in the Kansas City area and are either domiciled in Kansas or perform work in the state. I appreciate the opportunity to provide this written testimony in support of Senate Bill 514.

Senate Bill 514 concerns the use of the "construction management at risk" method of procurement of building construction projects for school districts in appropriate circumstances. The process for selecting the successful construction manager for any given project is a three step process.

The first phase involves the submission of qualifications and bonding capacity by competing firms, the evaluation of such submissions and the preparation of a short list of firms which have the best and most relevant qualifications to perform the services required for the project. Those firms are then invited to participate in Phase II in which they are required to submit more in depth information regarding their firms and their proposals such as experience or references relative to the project; resumes of proposed project personnel; overviews of preconstruction services and construction planning; proposed safety plans; and fees for preconstruction services, general conditions and overhead and profit. Phase III involves the selection of the firm providing the best value based on the proposal criteria and weighting factors used to emphasize important elements of the project.

Mr. Chairman and members of the committee, we support the new language contained in the third phase of this selection process (lines 34-37 on page 2) which calls for the selection recommendation committee to interview each of the firms *in executive session*, and not in public, so that such firms' proprietary and financial information is protected and so that no competing firm obtains unfair advantage. Thank you very much for your favorable consideration of SB 514.