

**ALTERNATIVE CONSTRUCTION DELIVERY METHODS  
FOR PUBLIC WORKS PROJECTS**

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# ALTERNATIVE CONSTRUCTION DELIVERY METHODS FOR PUBLIC WORKS PROJECTS

## Section 1: Alternative Construction Delivery Methods

Chapter 2269 of the Texas Government Code sets out the six (6) types of construction delivery methods which may be used by local governments and most State agencies<sup>1</sup> in the procurement of a contractor or construction manager agent for a public works project. These methods are:

- Competitive Sealed Bids
- Competitive Sealed Proposals
- Construction Manager Agent
- Construction Manager at Risk
- Design Build
- Job Order Contract

These methods and the procurement requirements are more fully described in Section 4 below. In addition, a comparison of these methods is set out in Appendix 1 to this paper.

If the construction cost will exceed \$50,000, one of these construction delivery methods must be used and the procedures for procurement set out in Chapter 2269 must be followed.

With certain limited exceptions, a governmental entity subject to Chapter 2269 must use the procedures set out in this chapter for selecting a contractor or construction manager agent in place of any other method of procurement that it may be authorized to use under other statutes. Section 2269.003 states that except for the limited exceptions described in that section, “this chapter prevails over any other law relating to a public work contract.”

## Section 2. Use in Architectural or Civil Engineering Projects

Governmental entities are authorized to use the following alternative construction delivery methods for construction projects that involve the construction of a “facility,” which is defined in Chapter 2269 as an “improvement to real property.” These methods may be used for both architectural and civil engineering projects. The subchapters of Chapter 2269 in which each of these methods is described is set out in parenthesis.

- Competitive sealed bids (subchapter C);
- Competitive sealed proposals (subchapter D);
- Construction manager agent (subchapter E);
- Construction manager at risk (subchapter F);

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<sup>1</sup> Chapter 2269 excepts out certain State agencies that are not subject to the provisions of Chapter 2269, including Texas Department of Public Transportation, university systems and regional toll authorities. See Sections 2269.004 - .010.

Chapter 2269 also authorizes governmental entities to use the Design Build method for construction of architectural projects and certain civil engineering projects, but these methods are described in separate subchapters, and have different procurement requirements. The Design Build method for civil engineering projects can only be used by a governmental entity with a population of over 100,000, and the number of projects that can be performed in any year using this method is limited.

- Design Build for architectural projects (subchapter G)
- Design Build for certain civil engineering projects (subchapter H)

The Job Order Method cannot be used for civil engineering projects. It can only be used for a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building.

### Section 3. General Procurement Matters

Each of the alternative construction delivery methods has its own procurement procedure prescribed by the applicable subchapter of Chapter 2269, and outlined in Section 4 below. Solicitation will be by request for bids, request for proposals, or request for qualifications followed by request for proposals, as prescribed. Notice of the solicitation must be given in a newspaper of general circulation once each week for at least two weeks prior to the deadline for submission.

There are some general procurement requirements which must be considered by the governmental entity in pursuing a procurement.

- A. *Selection of Delivery Method.* If the governmental entity plans to use any method other than Competitive Sealed Bid, then before sending out its notice for procurement, the governing body of the governmental entity must make a finding that the contemplated method provides the “best value” to the entity for that project.
- B. *Delegation of Authority.* The governing body of the governmental entity may delegate the authority to choose the delivery method or to conduct the evaluations. If authority to conduct the evaluations is delegated to a person or committee, then the solicitation documents, or a rule adopted by the governmental entity must describe the limits of the delegation and the identity of the person or persons to whom the delegation has been made.
- C. *Selection Criteria and Selection Method.* Chapter 2269 provides that the governmental entity may use selection criteria in selecting a contractor or construction manager agent. The solicitation documents will set out the criteria to be used, and assign a weight to each of the criteria, which may include:

- (1) the price;
- (2) the offeror's experience and reputation;
- (3) the quality of the offeror's goods or services;
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) the offeror's safety record;
- (6) the offeror's proposed personnel;
- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

If the Competitive Sealed Bid process is used, these selection criteria can only be used to determine whether the contractor is a responsible bidder, because the award can only be made to the lowest responsible bidder.

If any other delivery method is used, the respondents will be graded based on the selection criteria set out in the solicitation, and the award will be made to the respondent who provides the "best value" to the governmental entity for the project. The award does not have to be made based on the lowest price. The governmental entity will rank the respondents based on their scores on the selection criteria, and will begin negotiations with the first-ranked respondent and commence negotiations with the next ranked respondent. This process will be repeated until a selection is made or all respondents are rejected.

#### Section 4. Delivery Methods and Procurement Requirements

The following is a brief description of the delivery methods and the procurement requirements for each. The governmental entity is described as the "Owner." The Architect or Engineer is described as the "A/E." See Appendix 1 for a comparison of these methods.

A. Competitive Sealed Bid This method is the traditional method of competitive bid.

- The Owner selects an architect or engineer (“A/E”) using the Professional Services Procurement Act (Chapter 2254 Texas Government Code) to design the project and develop the plans and specifications for the project (“Plans”).
- The Owner issues a Request for Bids in which the Owner provides the Plans, the owner’s estimated construction budget, the project scope and schedule, and other relevant information. The Owner may use selection criteria to determine whether a bidder is responsible.
- The Owner selects the bidder who is the lowest responsible bidder.

B. Competitive Sealed Proposals This method is similar to Competitive Bid method except that proposals are used instead of bids, award can be made based on criteria other than price, and the Owner may negotiate a proposal with the proposer.

- The Owner selects the A/E to design the project and develop the Plans.
- The Owner’s governing body determines that this method provides the best value
- The Owner requests sealed proposals based on the Plans, and the solicitation documents set out the Selection Criteria established by the Owner, the Estimated Construction Budget, Project Scope, Project Schedule and other relevant factors.
- The proposals are publicly opened and the names of the proposers and the dollar amount of their proposals are read aloud
- The Owner evaluates and ranks each proposal and makes its selection of “best value” based on the selection criteria and ranking
- The Owner begins negotiation with the first ranked proposer, and if negotiations are not successful, terminates negotiations with that proposer and moves to the next-ranked proposer until a contract is selected or all proposers are rejected.

C. Construction Manager at Risk. In this method, the Construction Manager provides pre-construction services during the design of the project to help prevent constructability problems and to reduce costs, and serves as the general

contractor during construction. The contract will usually provide for a guaranteed maximum price for construction.

- The Owner selects the A/E to design the project and prepare the Plans.
- At the same time, or at any time thereafter, the Owner selects the Construction Manager at Risk (“CMR”) through either a one-step or two-step process. In the one-step process, the Owner uses a Request for Proposals (“RFP”); in the two-step process, the Owner first sends out a Request for Qualifications (“RFQ”), then selects five or fewer candidates to receive the RFP.
- The Owner evaluates and ranks each contractor and makes its selection of “best value” based on the selection criteria and ranking.
- The Owner begins negotiation with the first ranked contractor, and if negotiations are not successful, moves down the rank until a selection is made or all proposers have been rejected.

4. Construction Manager as Agent. This is a method where the Construction Manager generally serves as a project manager and does not have any responsibility for construction. If the Owner is acting as its own general contractor, and enters into contracts with trade contractors, the CMA will administer the contracts and coordinate performance.

- Owner selects A/E to design project and prepare Plans and a contractor to perform construction using one of the other construction delivery methods
- Owner selects Construction Manager as Agent (“CMA”) through an RFP on the basis of demonstrated competence and qualifications in the same manner as under the Professional Services Procurement Act
- The CMA serves as a consultant to the Owner, and oversees and coordinates work under the construction contract

5. Design/Build for architectural projects. This is a method where the Owner contracts with a single entity to design and build the project.

- Owner selects its own A/E to develop a design-criteria package for the project.
- Selection of the design/build team, consisting of AE and the contractor, is made in two phases. In Phase 1, Owner prepares an RFQ for a design/build team that includes general information on the project, selection criteria, project scope, budget, and the design-criteria package, and evaluates each respondent based on experience, competence and other qualifications.

- In Phase 2, the Owner selects five or fewer respondents to receive an RFP. The Owner will rank the teams and make its selection based on the selection criteria and ranking.
- If Owner cannot negotiate a contract with the first ranked team, it moves down the rank until a design builder is selected or all respondents are rejected.
- The design/build team designs the plans and constructs the project.
- The team is responsible for all pre-construction and construction phase services described in their scope of work.

6. Job Order Method. This method is used for repairs, rehabilitation alteration or minor construction for a building or buildings **when the work is of a recurring nature**, such as recarpeting, reroofing, or repainting interiors or exteriors, **but the delivery times are indefinite**. It cannot be used for civil engineering project or for large construction projects, such as the construction of a building.

- If a job order contract or an order requires A/E services, those services must be provided in accordance with the manner provided by law.
- To select the contractor, the Owner prepares an RFP which sets out the Selection Criteria, and may require a proposal for unit prices. The Owner evaluates and ranks the contractors.
- The Owner may select more than one contractor in connection with each RFP. Each contractor will then be eligible to perform job order contracts for the Owner.
- After the award, when the need for specific work arises, the Owner may contact any of the approved job order contractors and ask them to submit a proposal for the specific tasks that need to be done/. If a proposal is accepted, the work will be performed under the specific job order.

7. **Design Build For Certain Civil Engineering Projects**. Under this method, the Design Builder performs the complete design of the project based on a project criteria package, and other information provided by the Owner. This method may only be used by a governmental entity that (i) has a population of over 100,000 within the entity's geographic boundary or service area or (ii) is a board of trustees governed by Chapter 54, Transportation Code. Selection is based on both technical and cost proposals, using an RFQ followed by an RFP. Chapter 2269 limits the number of projects that governmental entities can perform in one year using this method.

# APPENDIX 1

## ALTERNATIVE CONSTRUCTION DELIVERY METHODS

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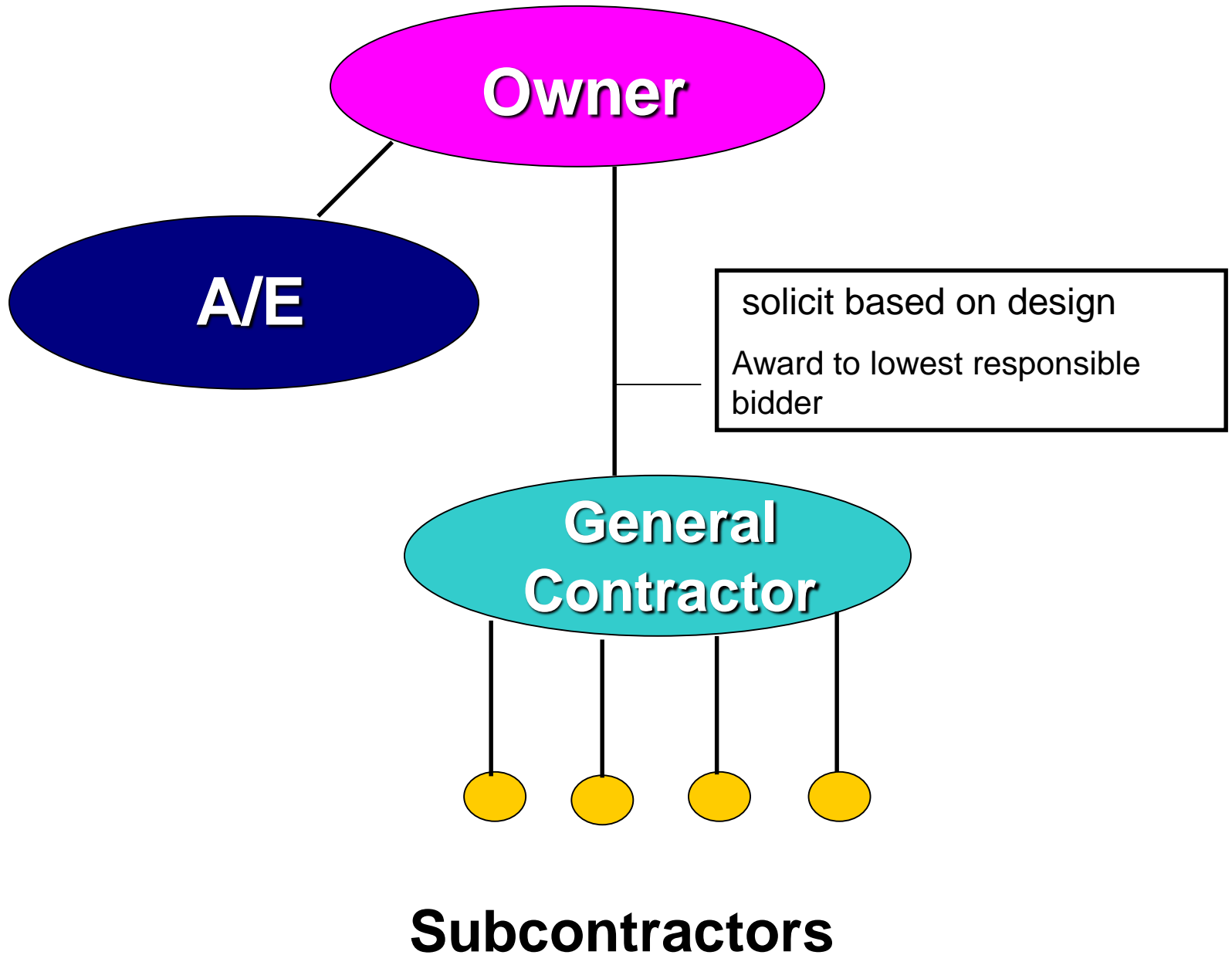
# Construction Projects

A. There are six (6) alternative construction delivery methods under Ch. 2269, Texas Gov't Code.

- Competitive Sealed Bid
- Competitive Sealed Proposal
- Construction Manager at Risk
- Construction Manager Agent
- Design Build
- Job Order Contract

These methods are briefly described and compared in this appendix.

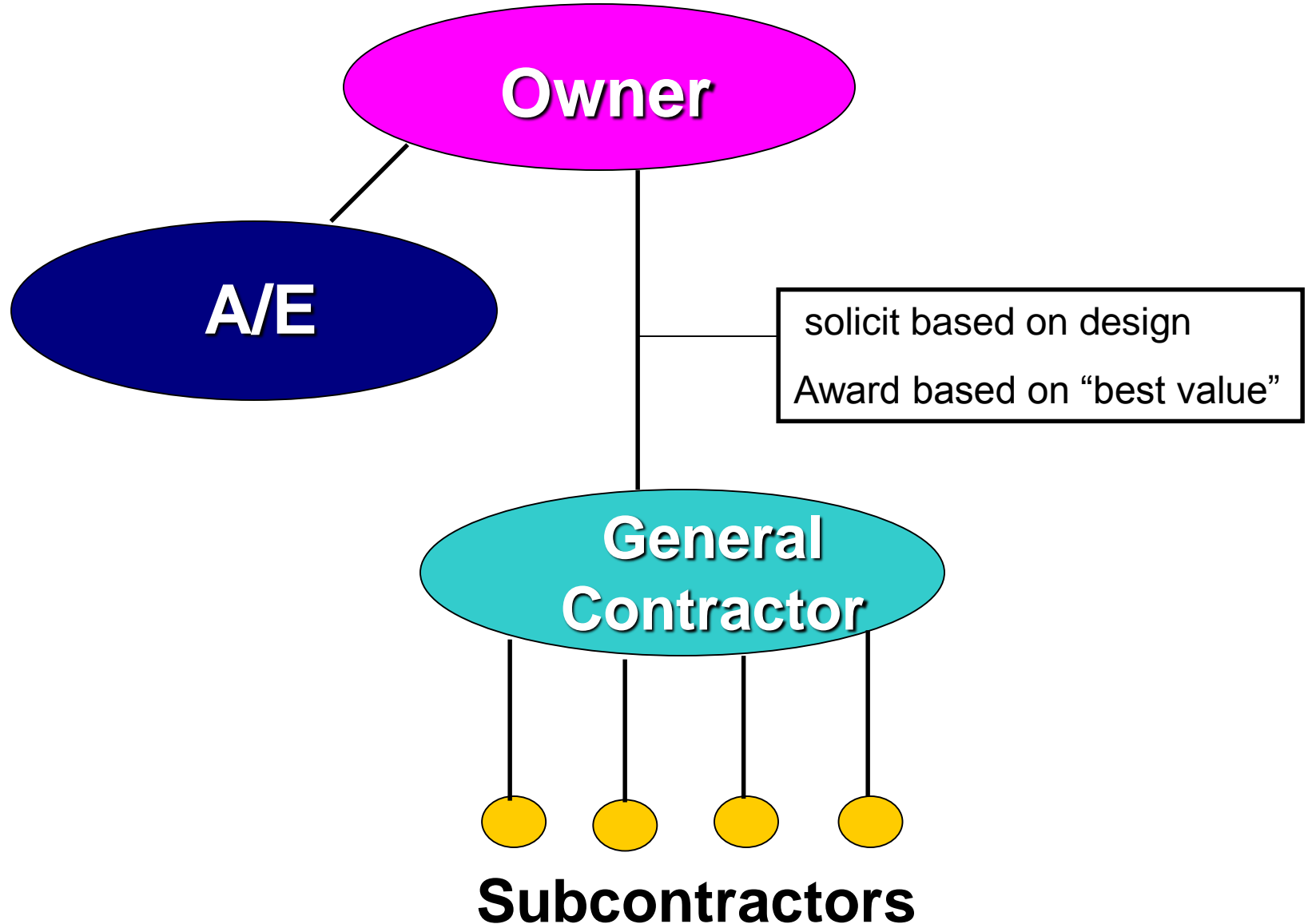
# COMPETITIVE SEALED BID



# Competitive Sealed Bid for Construction

1. Project is fully designed by architect.
2. Owner advertises for bids based on construction plans.
3. No selection criteria used.
4. Award must be made to lowest responsible bidder.

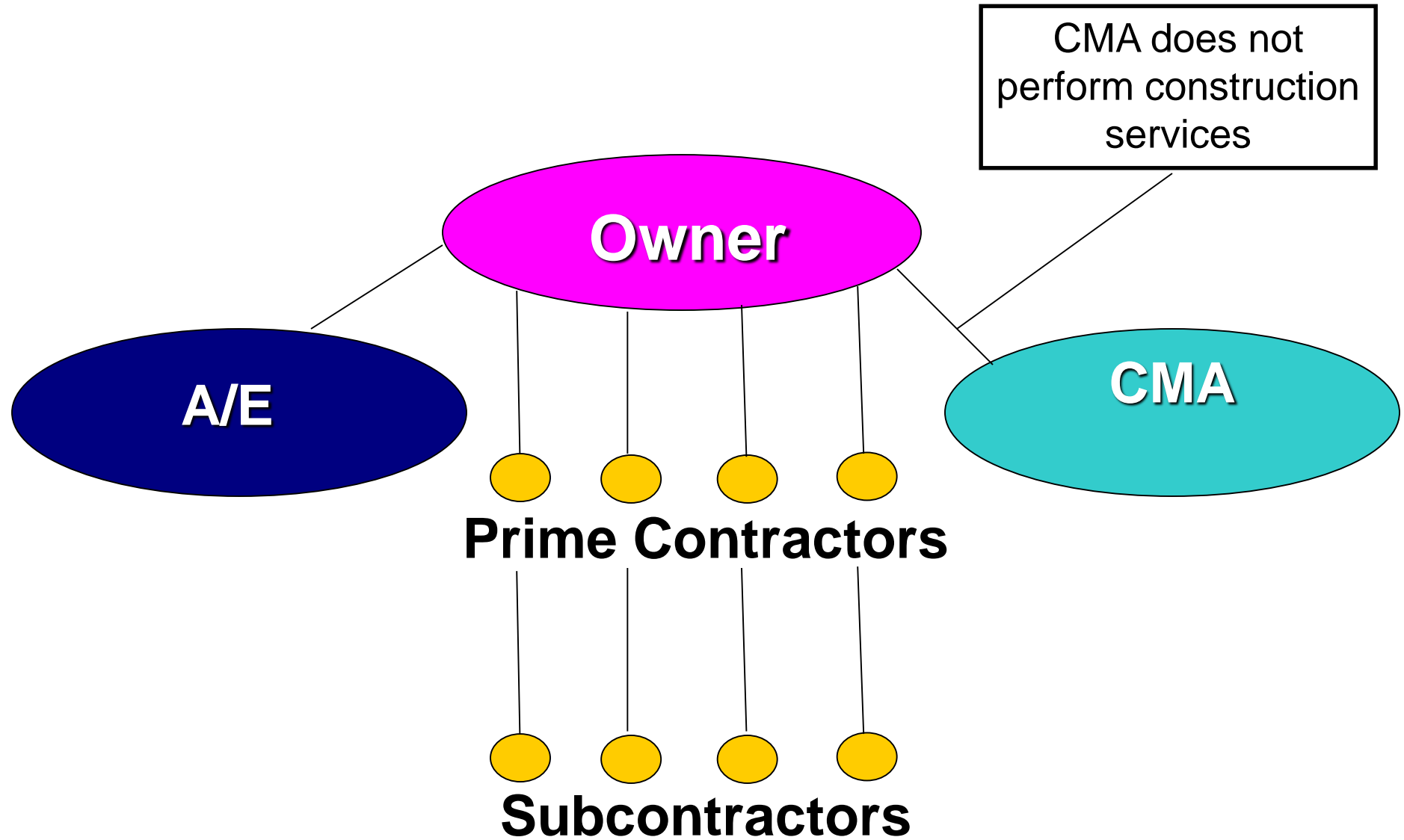
# COMPETITIVE SEALED PROPOSAL



# Competitive Sealed Proposals for Construction

1. Project is fully designed by architect.
2. Owner advertises for proposals based on construction plans.
3. Owner uses selection criteria to select contractor.
4. Award based on lowest price is not required.
5. Owner can negotiate terms with proposer.

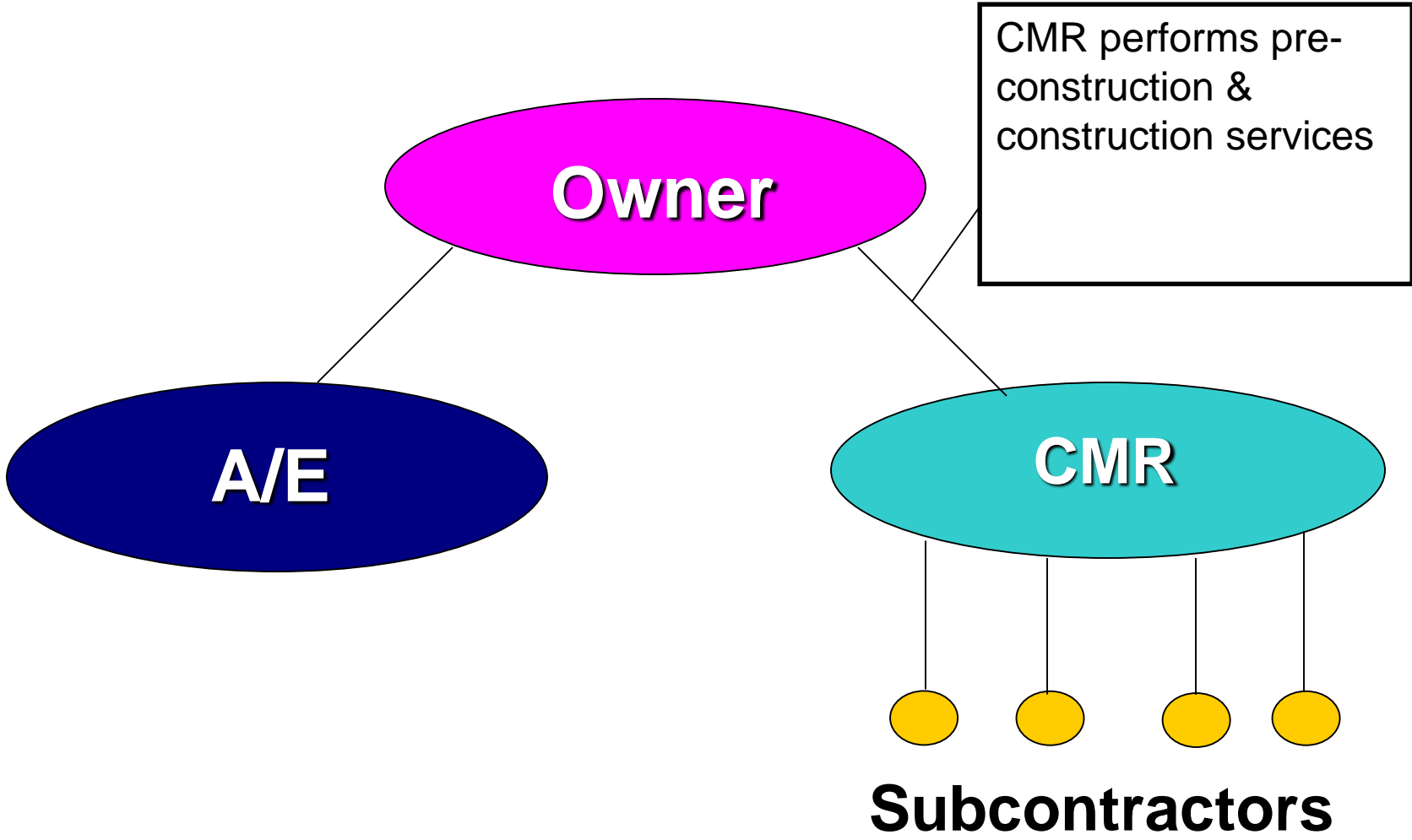
# CONSTRUCTION MANAGER AGENT



# Construction Manager Agent

1. CMA is not a contractor.
2. CMA is the agent of the Owner who supervises construction ( Project Manager).
3. This method is often used when Owner acts as general contractor, and enters into contracts with trade contractors.

# CONSTRUCTION MANAGER AT RISK

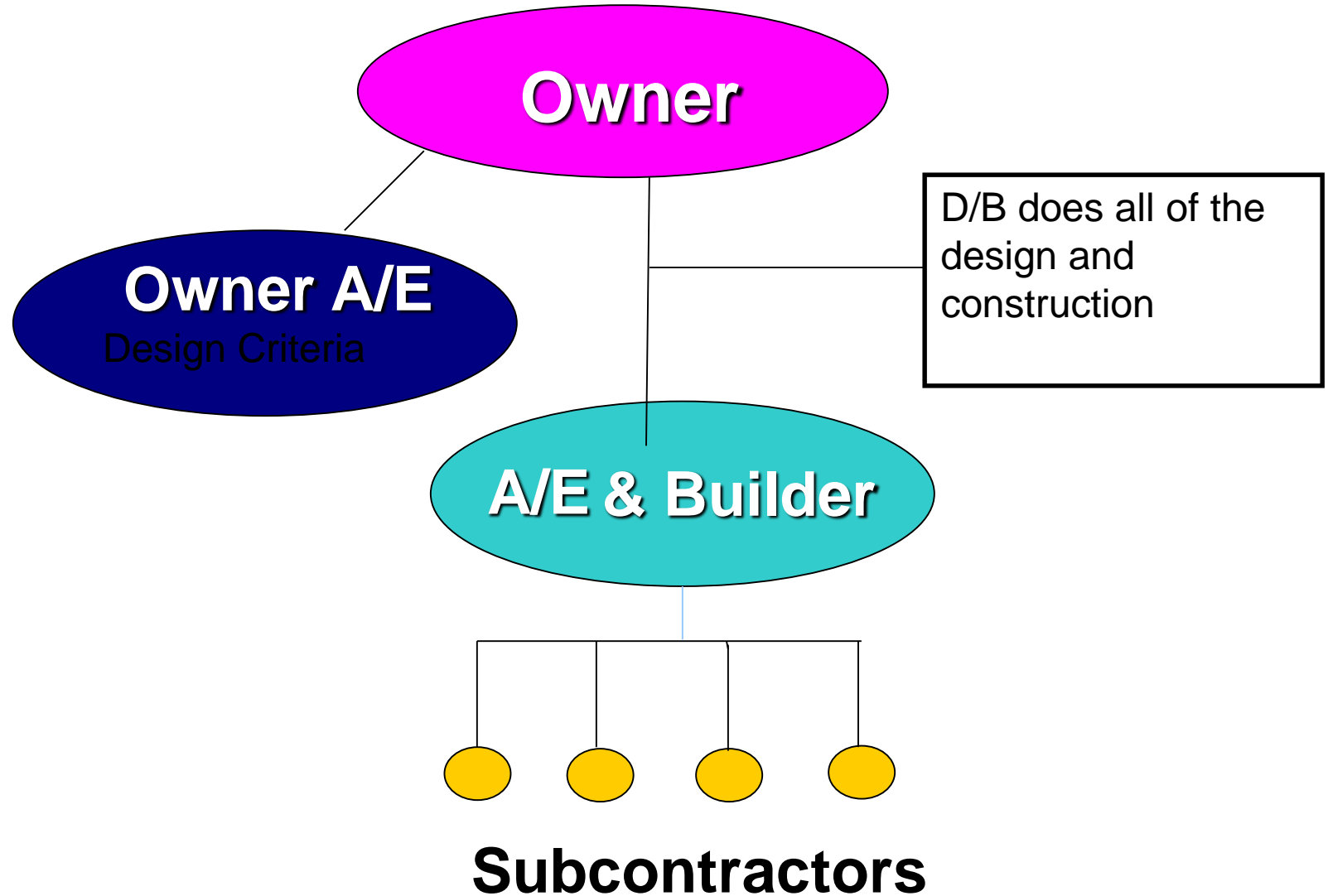




# Construction Manager at Risk

1. Owner enters into contracts with CMR and architect at the same time.
2. There are no design documents when Owner advertises for CMR.
3. Architect designs project and CMR reviews for problems and helps reduce costs (value engineering).
4. When design complete, CMR proposes a construction price – normally a Guaranteed Maximum Price.
5. Owner either accepts proposal and CMR constructs project or rejects proposal and Owner seeks another contractor.

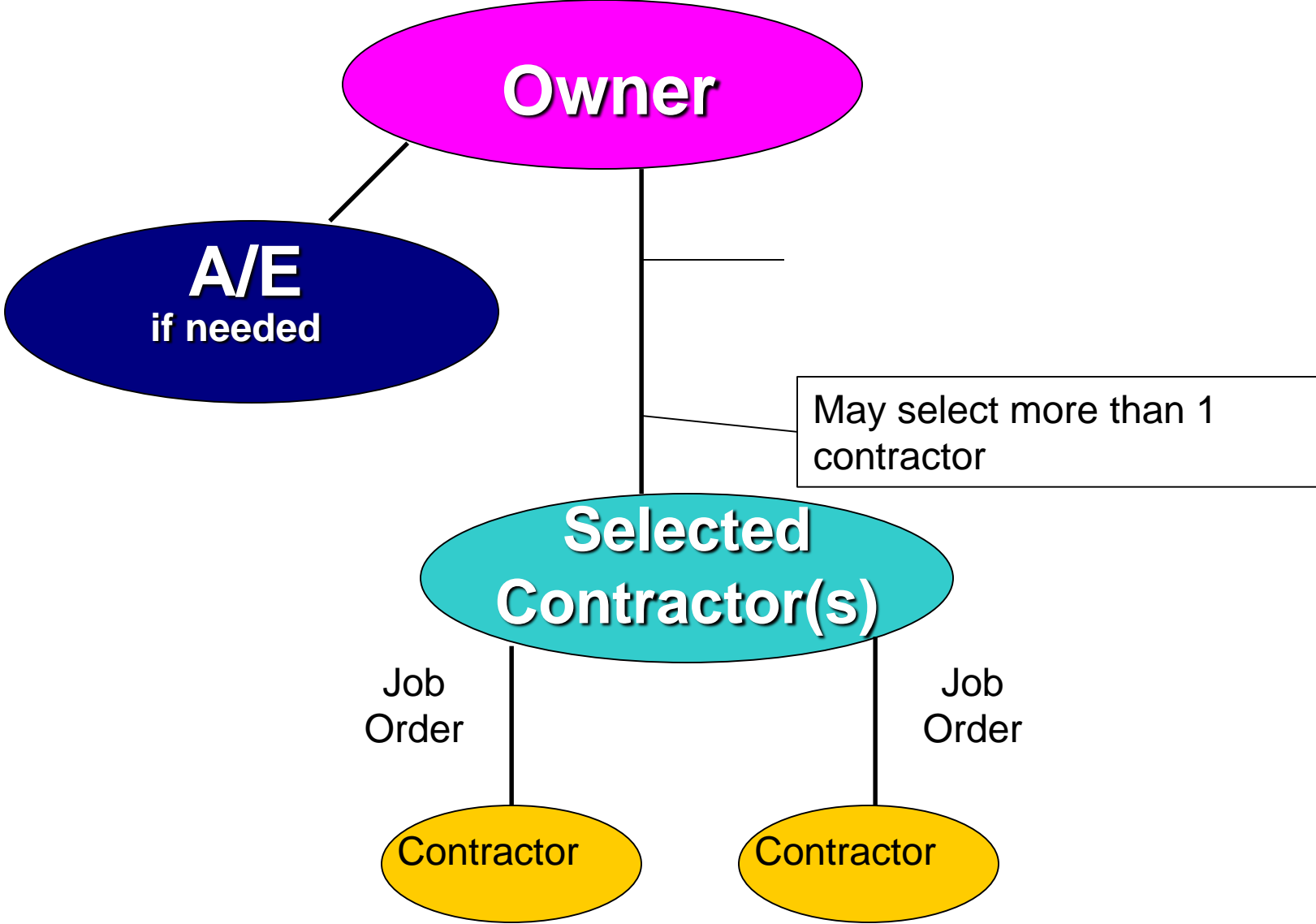
# DESIGN/BUILD METHOD



# Design-Build

1. Owner selects architect as Owner's representative to develop criteria for building design.
2. Owner selects a Design-Build Team to (a) design the building based on the design criteria, and (b) construct building.
3. There are no design plans when Owner solicits for Design-Build Team.
4. Building is required to be built within approved construction budget.

# JOB ORDER CONTRACT



# Job Order Contract

1. Owner advertises for contractor to perform projects of a recurring nature, such as: (a) Flooring; (b) Roofing; (c) Painting & Drywall Repair; (d) Renovation.
2. Owner can select more than one contractor.
3. When need for work arises, Owner can obtain price proposals and contract with any approved contractor for the work.