

NEW RULES GOVERNING THE PROCUREMENT OF CONSTRUCTION USING APDM

On February 26, 2007, the Arizona State Board of Education (Board) approved proposed new rules governing the school district procurement of construction using an Alternative Project Delivery Method (APDM). The Board is required under State law to adopt rules governing school procurement, including adopting rules governing school district procurement of construction services by construction-manager-at risk, design-build, qualified select bidders list, and job-order-contracting methods of project delivery. The new rules approved by the Board address each of these areas.

The new rules include a list of factors that school boards must consider and include in a written determination, finding that the use of APDM is in the best interest of the district. These factors include such things as industry practices, expected benefits and drawbacks of a particular alternative project delivery method, cost controls to produce a best value design solution for a given budget, value engineering benefits, scheduling issues, and project complexity and district ability to manage such a project.

The rules incorporate much of the existing law and requirements related to alternative project delivery methods for other public entities in Arizona, but also include, as direction to school districts, specific evaluation criteria that must be a part of any Request for Qualifications issued by a school district using APDM. The evaluation criteria specified in the new rules include, at a minimum, a firm's capabilities and qualifications supporting the scope of the work, the proposed project team, method of approach including a subcontractor selection plan and safety plan, the respondent's safety record, projected construction schedule, current workload, five examples of similar work, current bonding capacity, any judgments or liens, unresolved bond claims or deficiency orders issued by Arizona Registrar of Contractors against the respondent in the last three (3) years, or any bankruptcy filings during the last three (3) years.

The rules are comprehensive, and provide significant and detailed direction to school districts that desire to utilize APDM for construction projects. All school district APDM procurement and contract documents currently used should be reviewed for compliance with the new rules.

The Board forwarded the new rules for publication to the Secretary of State on March 16, 2007. The Board and the Secretary of State's Office will post notification of the effective date of the new rules. In the interim, the new rules can be found on the Board's website, at www.ade.state.az.us/stateboard/rulepackages.asp. To see the new rules, click the link to the Alternative Project Delivery Methods under Approved Rules.

By Christopher A. Schmaltz

Mr. Schmaltz represents municipalities and school districts around the state in areas of construction procurement and contracting, zoning, real estate development, public finance, and elections.

This Education Law Alert provides general information to the clients and friends of Gust Rosenfeld P.L.C. It is not intended to provide specific legal advice. Please contact your attorney if you have any specific questions. If you do not have an attorney, you may contact one of the attorneys listed below for questions concerning the new rules governing the school district procurement of construction using APDM:

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