

**CHAPTER 3
PRELIMINARY PROJECT PLANNING
SUB-CHAPTER 3.1
SELECTING
PROJECT DELIVERY METHOD &
SOURCE SELECTION METHOD**

3.1.1 AUTHORIZED PROJECT DELIVERY METHODS - SC Code Ann § 11-35-3005 & 11-35-3010

The Procurement Code requires an Agency to make a written determination of the project delivery method that will be most advantageous for the State for the specific project at hand. The following are project delivery methods authorized by statute:

1. Design-Bid-Build
2. Construction management at-risk (CM/at-risk) also known as CM/Constructor (CM/C);
3. Design-build;
4. Operations and Maintenance;
5. Design-build-operate-maintain;
6. Design-build-finance-operate-maintain; and
7. Any other combination of design, construction, finance, and services for operation and maintenance the Board or State Engineer may authorize.

It is normal to find different parties with different understandings concerning what each of the terms used above means. For this reason, some jurisdictions have adopted a project delivery method translator a version of which is published below. This translator does not include finance, operations, and maintenance additions to the design-build project delivery method.

PROJECT DELIVERY OPTIONS TRANSLATOR – DEFINING CHARACTERISTICS OF EACH OPTION

Design & Construction Services Combined in One Contract	No	No	No	Yes	Yes
Cost of Work a Selection Criteria	Yes	Yes	No	Yes	No
Total Construction Cost Sole Selection Criteria	Yes	No	No	No	No
	↕	↕	↕	↕	↕
Common Names Used	Design-Bid-Build - Competitive Sealed Bids	CM at Risk/CM Constructor – Competitive Cost Proposal	CM at Risk/CM Constructor – Competitive Qualifications Proposal (Note: Agency must have strong written justification for approval to make Selection that does not consider fee as a factor)	Design-Build – Competitive Cost Proposal	Design-Build – Competitive Qualifications Proposal (Note: Code places severe limitations on selection that does not consider price as a factor)
	↕	↕	↕	↕	↕
Insert Your Own Name for Each Method					

For the Procurement Code's definition of each authorized selection method, see SC Code Ann. § 11-35-2910.

3.1.2 AGENCY ASSESSMENT OF PROJECT AND SELECTION OF PROJECT DELIVERY METHOD - SC Code Ann § 11-35-3010 and Regs 19-445.2145(B)

Early in the planning stages of a project, an Agency must determine which project delivery method to use for the delivery of design and construction services. The Agency should make this determination as soon as sufficient information is available to make an informed decision following the determination procedures below. This may be either before or after initial establishment of the permanent improvement project (PIP) with the Joint Bond Review Committee and Budget and Control Board. Often this will be at the completion of programming.

The Agency must select the method "which is most advantageous to the State and results in the most timely, economical, and successful completion, of the project. *SC Code Ann § 11-35-3010(1)*. In selecting the appropriate project delivery method, the Agency must carefully assess the requirements the project must satisfy and other characteristics that would be in the best interest of the State. The Agency assessment must consider and answer who, what, where, when, why, and how questions regarding factors related to the infrastructure facility and how these factors support one delivery method over another. The following specific factors are set forth in the Procurement Code:

1. Facility
 - a. What type of infrastructure facility or service is the Agency acquiring?
 - b. What is the size, scope, complexity, and technological difficulty of the infrastructure facility?
 - c. To what extent are design requirements for the infrastructure facility known, stable, and established in writing?
2. Location of facility
 - a. What are the attributes the site must have?
 - b. What sites are available?
 - c. Are there unique characteristics of available sites that would impact project?
3. Time Deadlines
 - a. What is the earliest date on-site work can start?
 - b. What is the deadline for completion of the infrastructure facility?
 - c. Does the Agency have critical intermediate deadlines between start and completion of the project?
4. Financing to support design, construction, operations, maintenance, repairs, and demolition over the facility life cycle including:
 - a. What are the projected life cycle costs?
 - a. What are the potential sources of funding for these costs?
 - b. What is the projected cash flow requirement?
5. Available Project Delivery Methods
 - a. What are the comparative advantages and disadvantages of each method for the infrastructure facility?
 - b. How the Agency may appropriately configure and apply each method to fulfill the Agency's requirements for the infrastructure facility?
 - c. What project delivery methods has the Agency used on similar infrastructure facilities in the past and what were the results?
6. Decision making and administrative services
 - a. Which State personnel are available to the Agency to make decisions and administer the project and what are their relevant experiences, skill, and abilities?
 - b. To what extent can the Agency appropriately assign decision-making and administration to designers, builders, construction managers at risk, design-builders, design-build-operations producers, design-build-finance-operations producers, peer reviewers, or operators?
 - c. To what extent can the Agency appropriately assign decision-making and administration to outside consultants, including construction managers (agent)?

The Procurement Code designates design-bid-build as an appropriate project delivery method for any infrastructure facility project except guaranteed energy, water, or wastewater savings contracts. *See SC Code Ann Reg. 19-445.2145(B)(3)*. Except in the case of guaranteed energy, water, or wastewater savings contracts, an Agency may choose design-bid-build as the source selection method for a project without further project specific justification. However, a written determination must still be prepared and placed in the procurement file. A sample determination for this purpose is included in this Manual in 3.1.5 below. A determination of project delivery method for guaranteed energy, water, or wastewater savings contracts is not necessary as the delivery method is dictated by the nature of guaranteed energy, water, or wastewater savings contracts (i.e. design-build or a permutation of design-build).

3.1.3 SELECTING SOURCE SELECTION METHOD – SC Code Ann § 11-35-3015

The source selection method is the method the Agency will use to procure design and construction services. The Procurement Code prescribes source selection methods for most project delivery methods. These methods are as follows:

1. Design-Bid-Build
 - a. Architect-engineer, construction management, and land surveying services procured using qualification based selection procedures of SC Cod Ann § 11-35-3220.
 - b. Construction services procured using competitive sealed bidding as provided in SC Code Ann § 11-35-1520.
2. Construction Management at Risk
 - a. Architect-engineer and land surveying services procured using qualification based selection procedures of SC Cod Ann § 11-35-3220.
 - b. Construction Manager at Risk procured using competitive sealed proposals as provided in SC Code Ann § 11-35-1530 or competitive sealed bidding as provided in SC Code Ann § 11-35-1520. While the Procurement Code does allow procurement of the CM at Risk using competitive sealed bidding, OSE finds it difficult to imagine the circumstances under which this would be advantageous to the State since bidding would require a complete or nearly complete design negating many of the benefits of this delivery method.
3. Operations and Maintenance – Any source selection method allowed by SC Code Ann § 11-35-1510.
 - a. Section 11-35-1525 (Fixed Priced Bidding);
 - b. Section 11-35-1528 (Competitive Best Value Bidding);
 - c. Section 11-35-1530 (Competitive Sealed Proposals);
 - f. Section 11-35-1550 (Small Purchases);
 - g. Section 11-35-1560 (Sole Source Procurements);
 - h. Section 11-35-1570 (Emergency Procurements);
 - i. Section 11-35-3220 (Architect Engineer, Construction Management and Land Surveying Services Procurement Procedures); and
 - j. Section 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).
4. Design-Build – Competitive sealed proposals as provided in SC Code Ann § 11-35-1530.
5. Design-Bid-Operate-Maintain - Competitive sealed proposals as provided in SC Code Ann § 11-35-1530.
6. Design-Bid-Finance-Operate-Maintain - Competitive sealed proposals as provided in SC Code Ann § 11-35-1530.
7. Any other combination of design, construction, finance, and services for operation and maintenance the Board or State Engineer may authorize pursuant to SC Code Ann § 11-35-3005(2) - Any source selection method allowed by SC Code Ann § 11-35-1510.

3.1.4 WRITTEN DETERMINATION OF APPROPRIATE PROJECT DELIVERY METHOD - SC Code Ann § 11-35-3010 and Regs 19-445.2145(B)(4)

After assessing the requirements of the project and selecting the most advantageous project delivery method, the Agency must prepare a written report (the determination) signed by the Agency Head which sets forth the facts and considerations leading to the selection of the particular method. This determination must:

1. Describe the selected project delivery method;
2. Describe the source selection method (See SC Code Ann § 11-35-3015 and 3.1.3 above);
3. Describe any additional procurement procedures (See SC Code Ann §§ 11-35-3023 & 11-35-3024(2)(c) and Sub-Chapter 3.2 for allowed additional procedures);
4. Describe the types of performance security selected (See SC Code Ann § 11-35-3030 & 11-35-3037 and Chapter 2); and
5. Set forth the facts and considerations leading to these selections:
 - a. See and address factors discussed in 3.1.2 above including why other delivery methods are either not practical or not advantageous to the State;
 - b. Set forth basis for selecting source selection method (if by statute, cite statute);
 - c. Set forth basis for selecting additional procurement procedures; and
 - d. Set forth basis for selecting performance security (if by statute, cite statute).

The written determination must meet the requirements set forth in Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003). The Agency will find the Sloan decision posted at http://www.mmo.sc.gov/webfiles/MMO_Legal/Decisions/Sloan_v_Greenville_School_Dist_%5B98-CP-23-2816%5D.pdf. Under Sloan, the determination must fulfill two purposes:

1. It must effectively inform the State Engineer and, by extension, the Budget & Control Board, why the selected method of contract administration works to the Agency and State's best advantage for the project at issue, and
2. It must provide the citizens of South Carolina a window into the Agency's "decision-making process – safeguarding the quality and integrity of the contract awards through public accountability."

"If the written determination provides sufficient factual grounds and reasoning for the ... public to make an informed, objective review of these decisions, then it has accomplished its purpose." Sloan.

The Agency must submit the signed written determination to the State Engineer along with a request to use the alternative method. The State Engineer has ten days to review and determine his position with respect to the proposed method. If the State Engineer disagrees with the agency, the State Engineer shall provide written notification to the Board and the agency stating the reasons for contesting the selected method. The Board shall make the final decision as to the approved method of construction contracting.

3.1.5 WRITTEN DETERMINATION SELECTING DESIGN-BID-BUILD - SC Code Regulation 19-445.2145(B)(3)

If an agency's written determination regarding the project delivery method reads as follows, the agency's recommendation is automatically approved by the State Engineer's Office. The agency shall maintain a copy of the original written determination in its project files.

DETERMINATION TO USE DESIGN-BID-BUILD

Agency Name: _____
Project Name: _____
Project No: _____

Regarding the above referenced project, I have determined as follows: [1] Design-bid-build is the appropriate project delivery method, as provided by Regulation 19-445.2145(B)(3). [2] Competitive sealed bidding is the appropriate source selection method, as provided by Section 11-35-3015(2)(b). [3] No additional procurement procedures, as addressed in Sections 11-35-3023 and 11-35-1024(2)(c), will be

utilized. [4] Bonds or a certified cashier's check, as provided in Section 11-35-3030 and Regulation 19-445.2145(C), will be required based on the project delivery method.

Consistent with Paragraph 3.1.5 of the Manual for Planning and Execution of State Permanent Improvements, Part II, this written determination was automatically approved.

By: _____
(Agency Head)

Date: _____