

School Construction from Start to Finish: A Project Checklist

Find the professionals and professional knowledge you need to keep school construction on track

By Terry Fielden, LEED AP BD+C, Ken Florey, J.D., Matt Gardner, J.D., Nelson Gray, and Howard Metz, J.D.



LISA F. YOUNG/STOCK.ADOBE.COM

Determining the Project Delivery Method

You have several options for how your project is delivered:

- Design-build, if legally allowed for your district
- Traditional approach using an architect and general contractor
- Construction management (CM), either as adviser (CMa) or constructor (CMc)

In both CM delivery models, the construction manager issues scopes of work to be bid on as multiple prime trade contracts. That means that your district will publicly issue bids for each construction trade, such as excavation, electrical work, plumbing, masonry, and carpentry, as well as general trades. The district receives the bids and the school board awards the contracts.

Under the CMa method, the board delegates construction administration to the district staff. The district holds all subcontractor contracts following board award and undertakes legal responsibilities to construct the building. The construction manager role is limited to advising the district, supervising the scheduling, and coordinating the trades for the project.

Under the CMc method, the district assigns the contracts to the construction manager, who is essentially the single point of responsibility. A

What do you need to consider when embarking on a school construction project? The following checklist will help you navigate some major challenges and address issues that may have financial repercussions.

We encourage you to consult with your district's attorney and construction professionals to discuss these subjects while you establish a budget and explore the applicable local and state laws governing school construction projects.

Selecting the Architect

Selecting the architect for the project is a factor in both cost

and ultimately the curricular functionality of the project. Prepare and publicly issue a thorough request for qualifications to garner submissions.

Form a committee to review and short-list firms to interview. We suggest interviewing a maximum of six firms. Then, take time to visit their recently completed projects, interview building occupants, and verify construction costs.

Conduct the interviews and select the architect who most closely matches the district's vision and mission. Negotiate the best possible deal without compromising service. Remember, you get what you pay for.

CMc holds all trade contracts while undertaking legal responsibilities to construct the building following board award.

A construction manager is selected in a similar fashion to the architect. We recommend that districts obtain a fee study with the firm's qualifications. Please note that the legal requirements for selecting your architect and construction manager will vary by state.

Supplementing District Expertise

Consider using an owner's representative (OR) as a trusted professional on your project team. The OR acts as a consultant who has a fiduciary duty to look after the district's interests. The OR can assist a school district that may not have an experienced construction staff. The OR can review or prepare certain construction documents, such as change orders and contractor claims, and can assist with material selection and various other aspects of the project.

Tackling Intergovernment Hurdles

Your project team must address several government requirements.

Zoning review. Back in the day, zoning reviews were not required. Today, many municipalities have the authority to review the use of the property for a school site as well as other elements, such as height, setbacks, number of parking spaces, and quality of appearance.

The zoning entity does not necessarily have the absolute authority to deny school improvements or construction, but the process may be as short as three months or as long as a full year. Therefore, develop a positive relationship by reaching out early to begin partnership discussions.

Water detention. Schools cannot ignore the potential flooding impact of converting open land that absorbs water to a site covered with

a structure and asphalt. Water detention can take many forms: detention areas, permeable paver parking lots, walkways, and even underground storage vaults.

If your available land is constrained, the cost of water detention can be significant. The local government has the final say on the amount of water detention required. Direct your consultants to determine the water storage required and add money to the budget.

Site access. A school facility creates traffic hindrances that will burden surrounding roads with school buses and chaotic parents dropping off and picking up students. You probably need to consult with your state, county, city, or village about access points to the public roads for your new building or parking lot improvements. Requirements may be vastly different for a rural or urban area.

Utilities, connections, and permits. Connecting the new school facility to existing utilities is critical. Any form of school construction may require additional water, storm and sanitary sewers, or other common utilities, such as telephone, electricity, and broadband access.

Districts often overlook these costs at the start of the project, particularly when selecting the site. Anticipate and understand how access to existing utilities can dramatically increase or decrease the cost of your overall project.

Finally, determine which government body will determine the points of connections and conduct inspections by consulting with that authority in the conceptual planning stage.

Participating in the Public Bidding Process

Most state laws require public bidding for school construction projects. Litigation related to bidding problems is more common than you may think. Consulting with legal professionals throughout the bid

process is critical to minimize problems and prevent a small problem from turning into a large one that negatively affects your project time line and budget.

This public bid policy ensures that school districts spend public funds wisely and that contractors have an equal opportunity to perform the work. School districts must recognize this dual purpose throughout the bidding process. Many problems can occur throughout the public bid process that may require rebidding or adjusting the project scope to stay on budget.

Reviewing Construction Bonds and Certificates of Insurance

Regardless of the delivery method, a critical step is verifying the legitimacy and accuracy of all construction bonds and certificates of insurance submitted by any company involved in your project.

More and more, performance or payment bonds are defective or fraudulent. A certificate of insurance may appear legitimate but may not adequately protect the district.

Direct your district insurance underwriter to review the requirements for endorsements and additional insureds. Your attorney and underwriter can suggest the necessary coverage for the contractors that will best protect the district's interests. Insurance language is critical and requires input from industry professionals.

Controlling the Budget

Many factors can negatively affect your project budget. Change orders may be required because of incomplete design documents at the time of bids or unforeseen conditions at the job site.

You may experience "scope creep" if the district continually adds elements to the project, significantly increasing the scope and blowing an enormous hole in your budget. You may want to retain a cost-estimating

professional to prepare a detailed cost estimate rather than relying on a general estimate often prepared by the project architect.

Establish a project contingency that is congruent with the financial risk. Keep in mind that renovations require a higher contingency amount to cover unanticipated costs, such as hidden structural conditions or poor prior construction. New construction generally requires lower contingency amounts, as the design is more complete and controlled.

Completing the Project on Time

The most critical step for your project is to set a realistic project time line. The time line should address every element of the school construction process: property acquisition, financing, zoning approvals, architectural plans and specifications, construction, and project closeout—all of which usually take significantly longer than anticipated at the outset of the project.

If you do not have a carefully prepared and realistic project time line, the school may not open on time. As well, attempting to complete a project with an unrealistic or overly aggressive schedule will almost guarantee cost overruns.

Addressing Union-Labor Problems

Labor issues related to union and nonunion workforces are common in school construction. Being proactive and planning are the best ways to prevent problems. If you are in a state like Illinois that has a history of union and nonunion disputes, consider implementing a project labor agreement that can effectively prevent a labor dispute from disrupting your project.

Set up contingency plans in the event a labor dispute leads to a project shutdown, whether through picketing or appearance of the infamous inflatable rat.

Addressing Contractor Problems

Problems with contractors are almost a certainty. Anticipate problems and address them before they happen.

Contractor default. The biggest concern is contractor default. Requiring contractors to obtain performance and payment bonds for your project is critical and is generally required by law. Performance and payment bonds are essentially an insurance policy against a contractor's failing to perform as required by the contract documents.

A payment bond protects the district if a contractor fails to pay subcontractors or material suppliers. It requires a surety to cover any missing payments so the school district is not liable for funds legitimately paid to a contractor that the contractor failed to disburse.

Setting the appropriate quality ratings for bond and insurance companies is critical. Do not underestimate the power that a contractor's bonding company has to control a defaulting contractor and submit to the school district's demands.

Your project will suffer greatly if you are unfortunate enough to have a contractor that is not materially performing as required by the construction documents.

Properly select your bidders with appropriate qualification requirements and use your construction professionals to thoroughly vet your winning bidder before awarding the contract.

Your contract documents should give you options to avoid default catastrophe. Include the right to terminate a contractor for convenience at any time during the project and pay only for work completed.

This provision allows you to terminate the contractor before a bankruptcy occurs and your project is embroiled in the bankruptcy estate battle.

Construction defects. Defects are common in school construction projects. A defect can arise from a design deficiency, contractor error, or any combination of both factors. Defects might not appear for many years after the project is complete.

Contractors may tell districts that a warranty has expired and that the contractors have no obligation to remedy or fix the problem. However, the school district may be able to recover from the design professional, contractor, or other responsible party long after the warranty has expired. Carefully drafted contract language will protect a district and provide recourse for these defects.

Districts may need to use outside professionals for a forensic investigation of the defects to determine who is responsible, to determine the appropriate fix, and to assign the cost of the repairs to the appropriate parties.

Being Prepared

Clearly, construction carries a significant amount of risk. Those included here are some of the most common risk areas—be forewarned and forearmed. As school business professionals, we have an obligation to protect the interests of our trusting parents and taxpayers. Find the combination of professionals to help you succeed!

Terry Fielden is director of K-12 for International Contractors in Elmhurst, Illinois. Email: tfielden@iciinc.com

Ken Florey is an attorney with Robbins Schwartz in Chicago, Illinois. Email: kflorey@robbins-schwartz.com

Matt Gardner is an attorney with Robbins Schwartz in Chicago, Illinois. Email: mgardner@robbins-schwartz.com

Nelson Gray is assistant superintendent for business services for Des Plaines CCSD 62 in Des Plaines, Illinois. Email grayn@d62.org

Howard Metz is an attorney with Robbins Schwartz in Chicago, Illinois. Email: hmetz@robbins-schwartz.com