

WEST VIRGINIA DIVISION OF HIGHWAYS

Policies and Procedures Concerning Design-Build Projects

Purpose.

This document has been prepared in order to comply with West Virginia Code § 17-2D-2 allowing for 10 pilot projects over a three year period with an aggregate total of \$150 million. Design-Build seeks to provide one or more of the following: a savings of time, cost, and administrative burden; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses and improved coordination of efforts.

Authority.

These procedures are authorized pursuant to WV Code §17-2D-1 through §17-2D-5

Policy.

WVDOH may use, where determined appropriate by the Commissioner of Highways (Commissioner), the Design-Build Method of Project Delivery. When Design-Build is used, WVDOH shall enter into a contract with a single entity to provide both engineering/design services and construction services. The Design-Build method may be determined by the individual needs and merits of the project.

Pre-qualification.

- (1) WVDOH shall issue a Request for Qualifications (RFQ) for consultants soliciting qualification statements for interest in participating in the Design-Build Program. The WVDOH will compile a list of all prequalified consultants and the list will be made available to all prequalified design-build proposers to allow coordination.
- (2) WVDOH shall also issue a Request for Qualifications (RFQ) soliciting qualification statements from design-build proposers wishing to submit proposals on a WVDOH Design-Build project. The RFQ shall state the minimum and maximum number of qualified proposers that will be invited to submit final proposals. In the event an RFQ is not issued, then proposals will only be accepted from firms on the WVDOH pre-qualified contractors list.
- (3) Pre-qualification for both consultants and contractors shall be based on an evaluation of the criteria set forth in the RFQ, including, but not limited to: construction experience design experience, technical competence; capability to perform, including financial, manpower, and equipment resources; experience in other Design-Build projects; and past performance.
- (4) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number designated in the RFQ.

Request for Proposals (RFP).

- (1) The RFP shall include the information required by WV Code §17-2D-3.
- (2) WVDOH shall award projects based on the low acceptable bid or as described in Items 6 & 7 under “Project Selection.”
- (3) The RFP shall require separate technical and price proposals, meeting requirements as stated in the RFP if the value-based selection process is utilized. The RFP may require proposals to meet a mandatory technical level, and may include a request for alternative proposals.
- (4) Technical solutions/design concepts contained in proposals shall be considered proprietary information unless a stipend is paid. If a stipend is paid, the WVDOH will become the owner of the technical solutions/design concepts as contained in the proposals.

Project Selection.

- (1) Each of the ten pilot projects shall have a minimum size of \$3 million and a maximum of \$50 million.
- (2) Pilot projects funding shall be from normal State funds and Federal appropriations. Special funding above the regular federal core funding as defined in 17-2D-2(e) shall mean funding from congressional earmarks and any Competitive Surface Transportation Grants received as a result of the American Recovery and Reinvestment Act of 2009, and shall not (a) be limited to the aforementioned funding parameters or (b) be included as a part of the ten pilot projects.
- (3) WVDOH shall only award contracts for two design-build projects which bundle multiple highway projects.
- (4) Projects from \$3 million to \$20 million:
 - (a) Shall be selected based on low bid;
 - (b) Shall open participation to all prequalified teams; and
 - (c) Shall contain no stipends.
- (5) Projects from \$20 to \$50 million:
 - (a) Shall be selected from a short list under current procurement procedures based on the current criteria of 3 or any within 5 points.
 - (b) Shall be considered for stipends at a rate of 0.18% of the estimate (ranging from \$36,000 to \$90,000 per team). Terms and conditions for the stipend, if applicable, shall be included in the Request for Proposal.
 - (c) One project may be awarded in the \$40 to \$50 million dollar range.
- (6) One project, where traffic inconvenience and delays must be held to a minimum, shall be awarded on the low score of (a) construction and (b) number of days to complete times the project’s daily value.
- (7) One project shall be awarded on a best value formula where the technical score and price determine the successful proposal.
- (8) All remaining projects shall be selected based on low bid.

Required Contract Clauses.

The Design-Build contract documents shall include the contract clauses set forth in West Virginia Administrative Code §17-2D-3, subject to such modifications as the Commissioner deems advisable. Any modifications shall be supported by a written determination of the Commissioner that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

Award

There is no requirement that a Design-Build contract be awarded by the WVDOH. Following award, a contract shall be executed and notice given to the successful Design-Build proposer to proceed with the work.

Definitions.

As used in this document:

- (1) “Engineering/design services” are those professional services within the scope of the practice of engineering.
- (2) “Best Value” same as Value-based; see below.
- (3) “Business” means any corporation, partnership, individual sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (4) “Change order” means a written order signed by the procurement officer, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the procurement officer to order without the consent of the contractor of any written alteration in specification, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (5) “Commissioner” refers to the Commissioner of the West Virginia Division of Highways.
- (6) “Construction” means the process of building, renovating, altering, improving, or repairing of any public highway. “Construction” does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (7) “Contract” means any state agreement for the procurement or disposal of supplies, services, design, or construction.
- (8) “Design-Build” means a project delivery method whereby the design and construction phases are combined into a single project. This method of design and construction can include the design-build provider acquiring the right of way as part of the contract.
- (9) “Maintenance” refers to a commitment to maintain a highway facility in an acceptable condition for an established period of time.
- (10) “Procurement” means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, service, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including

description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

- (11) “Request for Proposals” (RFP) means an advertisement requesting proposals for work in accordance with the requirements outlined in the design-build criteria package
- (12) “Request for Qualifications” (RFQ) means an advertisement requesting statements of qualifications. It contains at least the desired minimum qualifications of the design-builder, criteria for evaluation, a scope of work statement, and general project requirements.
- (13) “Responsive bidder or proposer” means an entity or person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.
- (14) “Sealed” does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.
- (15) “Services” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end project other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.
- (16) “Specification” means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspection, testing, or preparing a supply, service, or construction item for delivery.
- (17) “Stipend” refers to the fee paid to unsuccessful firms for development of a responsive proposal.
- (18) “Supplies” means all property, including equipment, materials, and printing.
- (19) “Value-based” refers to a procurement process where price and other key factors are considered in the evaluation and selection process.
- (20) “WVDOH” refers to the West Virginia Division of Highways, a Division of the West Virginia Department of Transportation (WVDOT).