

WEST VIRGINIA DIVISION OF HIGHWAYS

Policies and Procedures Concerning Design-Build Projects

Purpose

- (1) This document has been prepared in order to comply with West Virginia Code 17-2D-2. 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-2 through 17-2D-5.

Policy

- (1) 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. Projects shall be awarded to the lowest responsible bidder.
- (2) A design-build project may be let to contract only in accordance with the commissioner's established policies and procedures concerning design-build projects.
- (3) Projects receiving funding above the amount of federal core funding as appropriated to the state by formula in a federal highway authorization may utilize the program, but shall not be included in the expenditure limits.

Pre-qualification

- (1) WVDOH may 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.
- (2) Pre-qualification 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.

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- (3) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number of designated in the RFQ.

Request for Proposals (RFP)

- (1) The RFP shall include the information required by WV Code 17-2D-3.
- (2) The pre-qualified proposers shall be invited to submit proposals on the designated Design-Build project pursuant to an RFP. WVDOH may elect to ask for initial proposals followed by discussions and best and final offers, or may elect to award the contract without discussions and best final offers. The RFP may ask for proposals based on a stipend.
- (3) WVDOH may award a stipend to the proposers who submit responsive proposals but who are not selected for contract award. The amount of the stipend (if any) shall be identified in the RFP.
- (4) The RFP shall require separate technical and cost 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.
- (5) 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.

Required Contract Clauses

- (1) The Design-Build contract documents shall include the contract clauses set forth in West Virginia 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 and Contract

- (1) The basis for award shall be stated in the RFP. Award may be based on any of the following approaches (all of which shall be deemed to constitute award to lowest responsible bidder as such term is used in West Virginia Code 17-2D-4 and 17-4-19):
 - (a) Award to the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, a proposal shall not be considered responsive unless it meets that level.
 - (b) Award to the responsible proposer whose proposal is evaluated as providing the best value to WVDOH.
 - (c) If the RFP provides for a stipend, award shall be to the responsible proposer whose proposal is evaluated as providing the best value to WVDOH, or best meets or exceeds a time constraint.

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

Annual Report

- (1) In accordance with 17-2D-5, on or before January 15th of each year, the commissioner shall prepare and submit to the Joint Committee on Government and Finance a written report evaluating the experience of the Division of Highways with each Design-Build project completed during the prior calendar year, including whether the division realized any cost or time saving, the number and cost of change orders, the quality or work performed, the number of bids received and other issues the commissioner considers appropriate.

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 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 of Highways.
- (6) "Construction" means the process of building, renovating, altering, improving, or repairing of any public highway.
 - (a) "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

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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 designbuilder, 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 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).