

DESIGN-BUILD (D/B) PROCEDURES AS ADOPTED BY THE SECRETARY OF ADMINISTRATION

In accordance with the provisions of § 2.2-4306 of the *Code of Virginia*, I hereby adopt the following procedures for the procurement of Design-Build ("D/B") contracts, as defined in § 2.2-4301, which shall be followed by all departments, agencies, and institutions of the Commonwealth (each of which is hereinafter referred to as an "Agency"). These procedures shall be effective March 28, 2012.

- A. **LEGISLATIVE AUTHORITY:** Under authority of § 2.2-4306 of the *Code of Virginia*, the Commonwealth may contract to secure D/B projects on a fixed price basis in accordance with these procedures and the regulations adopted pursuant to § 2.2-1502 of the *Code of Virginia*. Under the authority of § 2.2-4303 (D)(1) of the *Code of Virginia*, an Agency is authorized to use competitive negotiations to procure D/B contracts when it determines in advance, and sets forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.
- B. **CRITERIA FOR USE OF D/B CONTRACTS:** D/B contracts are intended to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.
- C. **PROCEDURE FOR APPROVAL TO USE D/B:** Prior to taking any action, the Agency shall request authority, in writing and receive approval from the Director of the Division of Engineering and Buildings ("Director"), to use a D/B contract.

The request shall justify and substantiate that D/B is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the Commonwealth will benefit from using D/B. The request shall also include a written justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for the use of D/B shall be stated in the Request for Qualifications. Approval of or exceptions to this procedure may be granted by the Director, who is the approving authority for requests to use D/B procedures.

- D. **D/B SELECTION PROCEDURES:** On projects approved for D/B, procurement of the contract shall be a two step competitive negotiation process. The following procedures shall be used in selecting a Design-Builder and awarding a contract:
 - 1. The Agency shall appoint an Evaluation Committee ("Committee") which shall consist of at least three members from the Agency, including a licensed design professional, if possible. In addition to the Agency members, the Committee shall include a licensed professional engineer or architect from the Division of Engineering and Buildings. The Agency shall contact the Section in the Office of the Attorney General representing the Division of Engineering and Buildings (currently the Real Estate and Land Use Section) to determine whether a representative from the OAG should be involved.

2. The basis of the award of the contract shall be in accordance with § 2.2-4301(3)(b) and the criteria for the award shall be submitted to the Director of the Division of Engineering and Buildings, in advance, for approval. It is noted that cost is a critical component of the selection process. Guidance on methods for award can be found in the Construction and Professional Services Manual (2012 Edition, as amended) Section 7.30.1.
3. Selection of Qualified Offerors (STEP I): On projects approved for D/B, the Agency shall conduct a prequalification process as follows to determine which offerors are qualified to receive Request for Proposals (RFPs).
 - a) The Agency shall prepare a Request for Qualifications (“RFQ”) containing the Agency's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class “A” contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.
 - b) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Virginia Code and in accordance with the latest edition of the Construction and Professional Services Manual.
 - c) The Committee shall evaluate each offeror's RFQ responses and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
 - d) The RFQ evaluation shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied prequalification only as specified under the Code of Virginia § 2.2-4317, but the short list shall also be based upon the RFQ criteria.
 - e) At least 30 days prior to the date established for the submission of proposals, the Agency shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.
4. Selection of Design-Build Contractor (STEP II):
 - a) The Agency shall send an RFP to the D/B offerors on the short list for the project and request formal proposals from them. The criteria for award shall be included in the RFP.
 - b) Sealed Technical Proposals as described in the RFP shall be submitted to the Committee. Separately-sealed Cost Proposals shall be submitted to the Agency's Virginia Construction Contracting Officer (“VCCO”), and shall be secured by and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed.

- c) The Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. It will inform each D/B offeror of any adjustments necessary to make its Technical Proposal fully comply with the requirements of the RFP. In addition, the Agency may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Committee during design development.
 - d) Based on the adjustments made to the Technical Proposals, the offeror may amend its Cost Proposal. In addition, an offeror may submit cost modifications to its original sealed Cost Proposal which are not based upon revisions to the Technical Proposals.
 - e) The Committee shall evaluate (and rank if technical rankings are to be considered as a criteria for award) the technical proposals. Should the Agency determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror after approval of the Director. Otherwise, the Agency shall open the cost proposals and apply the criteria for award as specified in the RFP and approved by the Director.
 - f) The Committee shall make its recommendation for the selection of a design builder to the Agency head based on its evaluations of the technical and cost proposals and all amendments thereto. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the Request for Proposal.
 - g) The Agency shall notify the Division of Engineering and Buildings of its selection of the Design-Builder and shall request authority to award a contract by processing the CO-8, *Approval to Award Construction Contract* and providing supporting documents, to the Bureau of Capital Outlay Management via e-mail to coforms@dgs.virginia.gov.
 - h) The Agency will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the Agency may notify all offerors who submitted proposals of the Agency's intent to award the contract to a particular offeror at any time after the Agency head has selected the Design-Builder. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
 - i) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.
- E. Any institution of higher education with authority for capital projects pursuant to the Restructured Higher Education Financial and Administrative Operations Act, may utilize these procedures or such other procedures as they may have adopted pursuant to any signed memorandum of agreement.

- F. The Code of Virginia requires other public bodies planning to use D/B to adopt guidelines consistent with the above procedures. A key difference is that steps requiring the approval or involvement of the Director of the Division of Engineering and Buildings will instead seek the approval or involvement of the appropriate authority, as directed by the governing body of the public body. Before implementing D/B, such public body must have the required professional staff and meet the material requirements of Code of Virginia § 2.2-4308. It should also be noted that certain procedures incorporated above are mandated by Code for state agencies. Other public bodies may not be required to adopt identical standards, but their procedures are required to be consistent with these.
- G. Guidance for the use of these procedures can be found in Section 7.30.1 of the Construction and Professional Services Manual (2012 Edition, as amended) and all of its subsections.

 3-28-12

Lisa Hicks-Thomas
Secretary of Administration

Date