

**NO. 50      DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTING**

**50-1.0**      **Scope.** This Policy and Procedure applies to all City construction contracts using the design-build or construction management methods of contracting. This Policy and Procedure does not apply to construction contracts procured by competitive negotiation pursuant to City Code § 74-71(a)(3) or by competitive sealed bidding or to comprehensive agreements procured pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002.

**50-2.0**      **Purpose.** The purpose of this Policy and Procedure is to implement the authority granted by City Code § 74-48 to engage in design-build and construction management contracting.

**50-3.0**      **References.**

- (a)      City Code § 74-5.
- (b)      City Code § 74-48.
- (c)      City Code § 74-50.
- (d)      City Code § 74-71.
- (e)      Va. Code § 2.2-4303.
- (f)      Purchasing Policy and Procedure No. 46.

**50-4.0**      **Definitions.** For purposes of this Policy and Procedure, the words and phrases set forth in this section have the meanings ascribed to them by this section unless the context clearly indicates that a different meaning is intended.

**50-4.1**      *"Construction management contract"* means a contract in which a party is retained by the City to coordinate and administer contracts for construction services for the benefit of the City, and may also include, if provided in the contract, the furnishing of construction services to the City. City Code § 74-4.

**50-4.1.1**      *"Construction management agency"* means a construction project delivery method in which the City enters into contracts for the delivery of a construction project and the construction manager administers those contracts on the City's behalf.

**50-4.1.2**      *"Construction management at-risk"* means a construction project delivery method in which (i) the construction manager is required to deliver the project within a Guaranteed Maximum Price and (ii) provides or is at-risk for all or a portion of the construction to be provided.

- 50-4.2** *"Design-build contract"* means a contract between the City and another party in which the party contracting with the City agrees to both design and build the structure, roadway or other item specified in the contract. City Code § 74-4.
- 50-4.3** *"Guaranteed Maximum Price"* means a pricing arrangement in a construction management contract in which the construction manager is compensated for actual costs incurred plus a fixed fee subject to a ceiling price, the construction manager is responsible for cost overruns, and cost savings are returned to the City.
- 50-5.0** **Background.** Pursuant to Va. Code § 2.2-4303(D)(4), the City Council adopted the current wording of City Code § 74-48 in order to authorize the use of construction management and design-build contracting for the delivery of construction projects.
- 50-6.0** **Policy.**
- 50-6.1** **General.** The process of competitive sealed bidding remains the preferred method of construction procurement for the City. However, under certain circumstances, the City may use design-build contracting or construction management contracting or both for the delivery of specific construction contracts in accordance with the requirements of City Code § 74-48 and this Policy and Procedure.
- 50-6.2** **Process To Be Followed.** In general, the procurement procedure for these types of contracts will consist of a combination of the procedure for prequalification of construction contractors set forth in City Code § 74-50 and the procedure for the procurement of goods and non-professional services set forth in City Code § 74-71, as modified by this Policy and Procedure. All procurement and contracting procedures for design-build and construction management contracts shall be as set forth in this Policy and Procedure.
- 50-6.3** **Professional Advisor.** Prior to making a determination as to the use of a design-build contract or a construction management contract for a specific construction project, the using agency shall have an architect or professional engineer with professional competence appropriate to the project who will advise the City regarding the use of design-build or construction management contracting for that project and who will assist the City with the preparation of the Request for Proposals and the evaluation of proposals submitted by interested offerors in response to the Request for Proposals for that project. The using agency shall have (i) an architect or professional engineer meeting the requirements of this section in its employ, (ii) made arrangements with another City agency for the use of an architect or professional engineer meeting the requirements of this section employed with that other City agency or (iii) an architect or professional engineer meeting the requirements of this section

under contract.

**50-7.0 Procedures.**

**50-7.1 Procedures for Design-Build Contracting.**

**50-7.1.1 Criteria for Use of Design-Build Contracting.** The use of design-build contracts usually should be limited to construction projects in the following general categories:

- (a) Warehouses and storage buildings;
- (b) Garages and maintenance shops;
- (c) General mercantile buildings;
- (d) Single-story administrative buildings;
- (e) Recreational and concession buildings;
- (f) Exhibition and agricultural buildings;
- (g) Housing; and
- (h) Utility facilities and infrastructure.

However, the appropriateness of the use of a design-build contract must be made on a case-by-case basis.

**50-7.1.2 Approval for Procurement of Design-Build Contract.** In order for a design-build contract to be procured for a particular construction project:

- (a) The using agency must submit a memorandum to the Director of Procurement Services requesting the use of a design-build contract.
- (b) The memorandum requesting the use of a design-build contract must:
  - (1) Justify and substantiate that the use of a design-build contract is more advantageous than a competitive sealed bid construction contract with a general contractor;
  - (2) Indicate how the City will benefit from using a design-build contract;
  - (3) Identify the architect or professional engineer meeting the requirements of section 50-6.3 for the project for which the

design-build contract is sought and set forth the competency of that architect or professional engineer in the following categories:

- a. Education, training and general experience;
  - b. Prior experience with projects of similar size, scope and complexity; and
  - c. Prior experience with design-build contracts or substantially similar experience; and
- (4) Include a written justification that competitive sealed bidding is not practical or not fiscally advantageous or both.
- (c) The Director of Procurement Services must determine and set forth in writing in advance of the commencement of any procurement of a design-build contract that competitive sealed bidding either not practicable or not fiscally advantageous to the public.

**50-7.1.3 Evaluation Committee.** The Director of Procurement Services shall appoint an evaluation committee of not less than three voting members. If the architect or professional engineer identified pursuant to section 50-7.1.2(b)(3) is a City employee, that architect or professional engineer shall be a voting member of the evaluation committee. If that architect or professional engineer is not a City employee, the architect or professional engineer shall participate on the evaluation committee to the extent allowed for independent consultants by section 46-5.8 of Policy and Procedure No. 46.

**50-7.1.4 Two-Step Selection Process.** On projects approved for design-build contracting, procurement of the contract shall be a two-step competitive negotiation process. The first step shall consist of a prequalification based on an advertised Request for Qualifications, and the second step shall consist of a competitive negotiation based on a Request for Proposal issued to the prequalified offerors.

**50-7.1.5 Step 1—Prequalification.**

**50-7.1.5.1 Request for Qualifications.**

- (a) The using agency shall prepare a Request for Qualifications for approval by the Director of Procurement Services. The Request for Qualifications shall indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the potential offeror's qualifications, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the offeror. The Request for Qualifications shall request of

potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The Request for Qualifications shall include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Qualifications can be received and considered prior to the time set for receipt of qualifications.

- (b) Once the Director of Procurement Services has approved the Request for Qualifications, the Department of Procurement Services shall publish notice of the Request for Qualifications from potential offerors at least ten days prior to the date set for receipt of qualifications by posting in a public area normally used for posting of public notices and in a newspaper or newspapers of general circulation in the city so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit qualifications in response to the particular request. In addition, qualifications may be solicited directly from potential offerors.

**50-7.1.5.2 Selection of Qualified Offerors.** The evaluation committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information and shall select a minimum of two offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the Request for Qualifications. An offeror may be denied prequalification only upon those grounds specified in City Code § 74-50(g). At least 30 days prior to the date established for the submission of proposal, the City shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. 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.

**50-7.1.6 Step 2—Competitive Negotiation.**

**50-7.1.6.1 Request for Proposals.**

- (a) The using agency shall prepare a Request for Proposals for approval by the Director of Procurement Services. The Request for Proposals shall:
  - (1) Include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (I-IVAC), and electrical systems; and special telecommunications;
  - (2) Define the criteria to be used by the evaluation committee to evaluate each proposal;

- (3) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Proposals can be received and considered prior to the time set for receipt of proposals; and
  - (4) Define such other requirements, if any, as the Director of Procurement Services determines appropriate for that particular construction project.
- (b) At least ten days prior to the date set for receipt of proposals, the City shall invite those potential offerors selected under section 50-7.1.5.2 to submit sealed technical and cost proposals. An offeror's cost proposal shall be sealed separately from its technical proposal. Upon receipt of an offeror's technical and cost proposals, the City shall secure and keep sealed the offeror's cost proposal until evaluation of all technical proposals is completed.

**50-7.1.6.2 Selection of Design-Build Contractor.**

- (a) The evaluation committee shall evaluate each of the technical proposals based on the criteria set forth in the Request for Proposals. As a part of the evaluation process, the evaluation committee may require presentations or discussions with offerors, as necessary, to clarify material in the offeror's proposal. In its conversations with offerors, the evaluation committee shall exercise care to discuss the same City information with all offerors. In addition, the evaluation committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to City Code § 74-5(f).
- (b) Based upon its review of each offeror's technical proposal, the evaluation committee shall determine whether any changes to the offeror's technical proposal should be made to clarify the proposal. If such changes are required, the Department of Procurement Services shall require each such offeror to provide the necessary revisions to its technical proposal within an appropriate period of time determined by the Department of Procurement Services.
- (c) Based on any revisions to the technical proposals, the evaluation committee and an offeror may negotiate additive or deductive modifications, or both, to the offeror's cost proposal. In addition, an offeror may submit sealed additive or deductive modifications, or both, to its original sealed cost proposal which are not based upon revisions to the technical proposals.

- (d) At the conclusion of this process, the evaluation committee shall publicly open, read aloud, and tabulate the cost proposals. The evaluation committee shall add to or deduct from the appropriate cost proposal any cost adjustments contained in amendments submitted by an offeror.
- (e) The evaluation committee shall make its recommendation on the selection of the design-build contractor to the Director of Procurement Services based on its evaluation and negotiations. Unless otherwise specified in the Request for Proposals, award of the design-build contract shall be made to the offeror which submits an acceptable technical proposal at the lowest cost.

**50-7.2 Procedures for Construction Management Contracting.**

**50-7.2.1 Criteria for Use of Construction Management Contracting.** The use of construction management contracts usually should be limited to construction projects with an estimated cost in excess of \$10,000,000 for which (i) fast tracking of construction is needed to meet using agency program requirements or (ii) value engineering or constructability analyses concurrent with design are required. However, the appropriateness of the use of a construction management contract must be made on a case-by-case basis.

**50-7.2.2 Approval for Procurement of Construction Management Contract.** In order for a construction management contract to be procured for a particular construction project:

- (a) The using agency must submit a memorandum to the Director of Procurement Services requesting the use of a construction management contract.
- (b) The memorandum requesting the use of a construction management contract must:
  - (1) Justify and substantiate that the use of a construction management contract is more advantageous than a competitive sealed bid construction contract with a general contractor;
  - (2) Indicate how the City will benefit from using a construction management contract;
  - (3) Identify the architect or professional engineer meeting the requirements of section 50-6.3 for the project for which the construction management contract is sought and set forth the competency of that architect or professional engineer in the following categories:

- a. Education, training and general experience;
  - b. Prior experience with projects of similar size, scope and complexity; and
  - c. Prior experience with construction management contracts or substantially similar experience;
- (4) Identify the specific type of construction management contract that the using agency desires to procure (i.e., construction management agency or construction management at-risk) and the reasons for selecting that specific type of construction management contract; and
  - (5) Include a written justification that competitive sealed bidding is not practical or not fiscally advantageous or both.
- (c) The Director of Procurement Services must determine and set forth in writing in advance of the commencement of any procurement of a construction management contract that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

**50-7.2.3 Evaluation Committee.** The Director of Procurement Services shall appoint an evaluation committee of not less than three voting members. If the architect or professional engineer identified pursuant to section 50-7.1.2(b)(3) is a City employee, that architect or professional engineer shall be a voting member of the evaluation committee. If that architect or professional engineer is not a City employee, the architect or professional engineer shall participate on the evaluation committee to the extent allowed for independent consultants by section 46-5.8 of Policy and Procedure No. 46.

**50-7.2.4 Two-Step Selection Process.** On projects approved for construction management contracting, procurement of the contract shall be a two-step competitive negotiation process. The first step shall consist of a prequalification based on an advertised Request for Qualifications, and the second step shall consist of a competitive negotiation based on a Request for Proposal issued to the prequalified offerors.

**50-7.2.5 Step 1—Prequalification.**

**50-7.2.5.1 Request for Qualifications.**

- (a) The using agency shall prepare a Request for Qualifications for approval by the Director of Procurement Services. The Request for Qualifications shall indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the

potential offeror's qualifications, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the offeror. The Request for Qualifications shall request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The Request for Qualifications shall include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Qualifications can be received and considered prior to the time set for receipt of qualifications.

- (b) Once the Director of Procurement Services has approved the Request for Qualifications, the Department of Procurement Services shall publish notice of the Request for Qualifications from potential offerors at least ten days prior to the date set for receipt of qualifications by posting in a public area normally used for posting of public notices and in a newspaper or newspapers of general circulation in the city so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit qualifications in response to the particular request. In addition, qualifications may be solicited directly from potential offerors.

**50-7.1.5.2 Selection of Qualified Offerors.** The evaluation committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information and shall select a minimum of two offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the Request for Qualifications. An offeror may be denied prequalification only upon those grounds specified in City Code § 74-50(g). At least 30 days prior to the date established for the submission of proposal, the City shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. 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.

**50-7.2.6 Step 2—Competitive Negotiation.**

**50-7.2.6.1 Request for Proposals.**

- (a) The using agency shall prepare a Request for Proposals for approval by the Director of Procurement Services. The Request for Proposals shall:
  - (1) Include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical

- systems; and special telecommunications;
- (2) Define the pre-design phase, design phase, bid phase, and construction phase services to be provided by the construction manager;
  - (3) Require the offeror's cost proposal to include the offeror's lump sum price for all requested pre-construction phase (e.g., the pre-design phase, design phase and bid phase) services;
  - (4) Provide for the establishment of a lump sum price or a Guaranteed Maximum Price for all requested construction services;
  - (5) Define the criteria to be used by the evaluation committee to evaluate each proposal;
  - (6) Include, for any Guaranteed Maximum Price construction management contract, contract terms providing that:
    - a. Not more than ten percent of the construction work (measured by cost of the work) shall be performed by the construction manager with its own forces; and
    - b. The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by competitive sealed bidding or competitive negotiation.
  - (7) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Proposals can be received and considered prior to the time set for receipt of proposals; and
  - (8) Define such other requirements, if any, as the Director of Procurement Services determines appropriate for that particular construction project.
- (b) At least ten days prior to the date set for receipt of proposals, the City shall invite those potential offerors selected under section 50-7.2.5.2 to submit sealed technical and cost proposals. An offeror's cost proposal shall be sealed separately from its technical proposal. Upon receipt of an offeror's technical and cost proposals, the City shall secure and keep sealed the offeror's cost proposal until evaluation of all technical proposals is completed.

**50-7.2.6.2 Selection of Construction Management Contractor.**

- (a) The evaluation committee shall evaluate each of the technical proposals based on the criteria set forth in the Request for Proposals. As a part of the evaluation process, the evaluation committee may require presentations or discussions with offerors, as necessary, to clarify material in the offeror's proposal. In its conversations with offerors, the evaluation committee shall exercise care to discuss the same City information with all offerors. In addition, the evaluation committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to City Code 74-5(f).
- (b) Based upon its review of each offeror's technical proposal, the evaluation committee shall determine whether any changes to the offeror's technical proposal should be made to clarify the proposal. If such changes are required, the Department of Procurement Services shall require each such offeror to provide the necessary revisions to its technical proposal within an appropriate period of time determined by the Department of Procurement Services.
- (c) Based on any revisions to the technical proposals, the evaluation committee shall conduct negotiations with each offeror. Price shall be considered but need not be the sole determining factor. After negotiations have been conducted with each offeror, the evaluation committee shall make its recommendation on the selection of the construction manager to the Director of Procurement Services based on its evaluation and negotiations.
- (d) Should the Director determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the other offerors under consideration, a contract may be negotiated and awarded to that offeror.
- (e) The Director of Procurement Services shall select the offeror which, in its opinion, has made the best proposal and shall award the contract to that offeror.

**50-8.0 Solicitation Language, Contract Language and Forms.**

**50-8.1 General.** The Office of the City Attorney will develop and, from time to time, modify all language for solicitations of design-build contracts and construction management contracts pursuant to this Policy and Procedure. Each design-build contract and construction management contract must be approved as to form by the City Attorney or the designee thereof prior to its signature by the Director of Procurement Services.

- 50-8.2**      **Guaranteed Maximum Price Contracts.** Each Guaranteed Maximum Price construction management contract shall include contract terms providing that:
- (a)      Not more than ten percent of the construction work (measured by cost of the work) shall be performed by the construction manager with its own forces; and
  - (b)      The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by competitive sealed bidding or competitive negotiation.
- 50-8.3**      **Forms.** The Director of Procurement Services may produce and require the use by Department of Procurement Services personnel, using agency personnel, potential offerors and contractors of such forms and checklists related to the solicitation and administration of design-build contracts and construction management contracts pursuant to this Policy and Procedure as the Director deems appropriate.
- 50-9.0**      **Responsibilities.**
- 50-9.1**      **Using Agency.** The using agency is responsible for:
- (a)      Identifying the architect or professional engineer to serve as professional advisor pursuant to section 50-6.3.
  - (b)      Preparing and submitting to the Director of Procurement Services the memorandum requesting and justifying the use of a design-build contract or a construction management contract.
  - (c)      Preparing and submitting to the Director of Procurement Services Requests for Qualifications and Requests for Proposals.
  - (d)      Administering any resulting design-build contract or construction management contract.
- 50-9.2**      **Director of Procurement Services.** The Director of Procurement Services is responsible for:
- (a)      Making the written determination that competitive sealed bidding either not practicable or not fiscally advantageous to the public and approving the use of a design-build contract or a construction management contract.
  - (b)      Appointing the evaluation committee for the procurement of each design-build contract and construction management contract.

- (c) Reviewing and approving Requests for Qualifications and Requests for Proposals prior to their issuance.
- (d) Reviewing and approving the selection of a design-build contractor or a construction management contractor based on the recommendations of the evaluation committee.

**50-9.3 Contract Specialist.** The Contract Specialist shall perform those responsibilities delegated by the Director of Procurement Services to the Contract Specialist for a particular procurement and shall ensure that the responsibilities assigned by this Policy and Procedure to the Department of Procurement Services are performed.

**50-9.4 Office of the City Attorney.** The Office of the City Attorney is responsible for developing and modifying all language for solicitations of design-build contracts and construction management contracts pursuant to this Policy and Procedure and for approving as to form each design-build contract and construction management contract prior to its signature by the Director of Procurement Services.

**50-10.0 Modification.** The Director of Procurement Services shall be responsible for modifications to this Policy and Procedure.