

PROCEDURES FOR PROCUREMENT OF DESIGN-BUILD CONSTRUCTION AND CONSTRUCTION MANAGEMENT CONTRACTS PURSUANT TO CODE OF VIRGINIA CHAPTER 43.1§2.2-4382

In accordance with the Code of Virginia chapter 43 §2.2-4306 and chapter 43.1§2.2-4382 and the provisions of chapter 2, article XIV section 2-336.1 of the city code, the following procedures are adopted and shall govern the procurement of design-build and construction management contracts that have been approved by City Council.

A. DESIGN-BUILD CONTRACTS

- (1) On projects approved for design-build, the City's Procurement Office shall establish an evaluation committee ("Committee") which shall consist of at least three members from the department requesting design-build construction (the "Agency") including a licensed design professional, if possible, to be responsible for evaluating the qualifications of potential offerors of design-build and reviewing proposals submitted for such services. The members of the Committee shall have expertise relevant to the project, with backgrounds in such areas as project design, construction, finance, contract review, and project management. The Committee shall include the architect or professional engineer advising the City on the use of design-build. The Director of Finance ("Director") or designee shall contact the City Attorney to determine whether a representative from the City Attorney's Office should be involved. The membership of the Committee shall be determined by the Public Works Director or his designee.
- (2) The basis of the award of the contract shall be in accordance with Code of Virginia Chapter 43 §2.2-4301(3)(b) and the criteria for the award shall be submitted to the Director or his designee, in advance for approval. Further guidance on methods for award can be found in the Virginia Construction and Professional Services Manual (2017 Edition, as amended) Section 7.3.
- (3) On projects approved for design-build, the Procurement Office shall conduct a prequalification process as follows to determine which offerors are qualified to receive Requests for Proposals ("RFPs").
 - a. The Procurement Office shall prepare a Request for Qualification ("RFQ") containing the Agency's facility requirement, building and site criteria, site and survey data (if available), the criteria to be used to evaluate the RFQ Responses and other relevant information, including any

unique capabilities and qualifications that will be required of the contractor. The RFQ shall contain or incorporate by reference other applicable contractual terms and conditions. All offerors shall have a Class "A" contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of its team (the "Project Team"). The RFQ shall request of potential offerors only information as is appropriate for an objective evaluation of all offerors pursuant to such criteria. Prior to the issuance of the RFQ, the Procurement Office shall establish procedures whereby comments concerning specifications or other provisions in the RFQ can be received and considered prior to the time set for receipt of qualifications.

- b. The Procurement Office shall publish a notice of the RFQ at least 30 days prior to the date set for receipt of qualifications by posting on the Virginia Department of General Service's central electronic procurement website, known as eVA; in the purchasing agent's office; in a local newspaper 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; and in accordance with the latest edition of the Virginia Construction and Professional services Manual. Additionally, qualifications may be solicited directly from vendors. If practicable, the notice shall also be published in appropriate national trade publications.
- c. The Committee shall evaluate each offeror's RFQ responses, and any other relevant information, and shall determine those deemed most qualified with respect to the criteria established for the project in the RFQ. Prior design – build experience or experience with the Virginia Department's Bureau of Capital Outlay Management shall not be a prerequisite for an award of a contract but the Committee may consider the experience of each contractor on comparable projects. The Committee shall select a minimum of two offerors deemed to be fully qualified and best suited to receive an RFP. An offeror may be denied prequalification only upon the grounds set forth in Code of Virginia § 2.2-4317 but the short list of selected offerors shall also be based upon the RFQ criteria.

- d. At least 30 days prior to the date established for the submission of proposals, the Procurement Office shall advise each offeror in writing as to whether that offeror has been prequalified. In the event that an offeror is denied prequalification, the written notice shall state the reasons for the denial of prequalification and the factual basis for such reasons.

(4) Request for Proposal.

- a. The Procurement Office shall prepare a request for proposal ("RFP") that includes and defines 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. The RFP may also define such other requirements as the City determines appropriate for a particular project. The RFP shall also include the criteria used to evaluate each proposal. Prior design-build experience or previous experience with the Virginia Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the Committee may consider the experience of each contractor on comparable projects. Price is a critical basis for award of the contract.
- b. The Procurement Office shall establish procedures whereby comments concerning specifications or provisions contained in the RFP can be received and considered prior to the time set for receipt of proposals.
- c. The RFP shall be posted for a minimum of 30 days on the Virginia Department of General Service's central electronic procurement website, known as eVA; in the purchasing agent's office; and in a local newspaper 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 responses to the RFP.
- d. At least 30 days prior to the date set for the receipt of proposals, the Procurement Office shall invite those potential offerors identified by the qualification process described above 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, an offeror's cost proposal shall be secured and kept sealed until evaluation of all technical proposals and the design adjustments are completed.

(5) Evaluation and selection of design-builder.

- a. Based on the criteria established in the RFP, the Committee shall evaluate each of the technical proposals. As a part of the evaluation process, the Committee shall grant each of the offerors an equal opportunity for direct and private communication with the Committee. Each offeror shall be allotted the same fixed amount of time. In its conversation with offerors, the Committee shall exercise care to discuss the same owner information with all offerors. In addition, the Committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to Code of Virginia § 2.2-4342.
- b. Based upon its review of each offeror's technical proposal, the Committee will inform each design –build offeror of any adjustments necessary to make the technical proposal fully comply with the requirements of the RFP. In addition, the Committee may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Committee during design development. If such adjustments are required, an addendum shall be provided to each offeror.
- c. Based upon the adjustments 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 adjustments to the technical proposals.
- d. The Committee shall evaluate (and rank if technical rankings are to be considered as a criteria for award) the offerors' technical proposals. After evaluation and ranking, the Committee shall conduct negotiations with two or more offerors submitting the highest ranked proposals. Should the Committee 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 or his designee. Otherwise the

Committee shall open the cost proposals and apply the criteria for award as specified in the RFP. The Committee shall add or deduct from the appropriate cost proposal any cost adjustments contained in amendments submitted by an offeror.

- e. The Committee shall make its recommendation on the selection of the design-builder to the Agency based on its evaluations of the technical and cost proposals and all amendments thereto and negotiations. Unless otherwise specified in the RFP, award of the design-build contract shall be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the RFP.
- (6) The Procurement Office, on behalf of the City, shall not be required to award a contract and reserves the right to reject any and all proposals.
- (7) The Procurement Office shall notify all offerors who submitted proposals, which offeror was selected for the project. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- (8) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.
- (9) Further guidance for the use of these procedures can be found in Section 7.3 of the Virginia Construction and Professional Services Manual (2017 Edition, as amended).

B. CONSTRUCTION MANAGEMENT CONTRACTS

- (1) In addition to the requirements set forth in the Code of Virginia Chapter 43.1§2.2-4382 and the provisions of Chapter 2, Article XIV § 2-336.1 of the City Code, on projects approved for construction management, the City's Procurement Office shall establish an evaluation committee ("Committee") which shall consist of at least three members from the department requesting a construction management contracts (the "Agency") including a licensed design professional, if possible, to be responsible for evaluating the qualifications of potential offerors of construction management and reviewing proposals submitted for such services. The members of the Committee shall have expertise relevant to the project, with backgrounds in such areas as project design,

construction, finance, contract review, and project management. The Committee shall include the architect or professional engineer advising the City on the use of construction management. The Director of Finance ("Director") or designee shall contact the City Attorney to determine whether a representative from the City Attorney's Office should be involved. The membership of the Committee shall be determined by the Public Works Director or his designee.

(2) The basis of the award of the contract shall be in accordance with Code of Virginia Chapter 43 §2.2-4301(3)(b) and the criteria for the award shall be submitted to the Director or his designee, in advance for approval. It is noted that cost is a critical component of the selection process. Further guidance on methods for award can be found in the Virginia Construction and Professional Services Manual (2017 Edition, as amended) Section 7.2.

(3) On projects approved for construction management, the Procurement Office shall conduct a prequalification process as follows to determine which offerors are qualified to receive Requests for Proposals ("RFPs").

a. The Procurement Office shall prepare a Request for Qualification ("RFQ") containing the Agency's facility requirement, building and site criteria, site and survey data (if available), the criteria to be used to evaluate the RFQ Responses and other relevant information, including any unique capabilities and qualifications that will be required of the contractor. The RFQ shall contain or incorporate by reference other applicable contractual terms and conditions. All offerors shall have a Class "A" contractor registered in the Commonwealth of Virginia as part of its team (the "Project Team"). The RFQ shall request of potential offerors only information as is appropriate for an objective evaluation of all offerors pursuant to such criteria. Prior to the issuance of the RFQ, the Procurement Office shall establish procedures whereby comments concerning specifications or other provisions in the RFQ can be received and considered prior to the time set for receipt of qualifications.

b. The Procurement Office shall publish a notice of the RFQ at least 30 days prior to the date set for receipt of qualifications by posting on the Virginia Department of General Service's central electronic procurement website, known as eVA; in the purchasing agent's office; in a local newspaper 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; and in accordance with the latest edition of the Virginia Construction and Professional services Manual. Additionally, qualifications may be solicited directly from vendors. If practicable, the notice shall also be published in appropriate national trade publications.

- c. The Committee shall evaluate each offeror's RFQ responses, and any other relevant information, and shall determine those deemed most qualified with respect to the criteria established for the project in the RFQ. Prior construction management experience or experience with the Virginia Department's Bureau of Capital Outlay Management shall not be a prerequisite for an award of a contract but the Committee may consider the experience of each offeror on comparable projects. The Committee shall select a minimum of two offerors deemed to be fully qualified and best suited to receive an RFP. An offeror may be denied prequalification only upon the grounds set forth in Code of Virginia § 2.2-4317 but the short list of selected offerors shall also be based upon the RFQ criteria.
- d. At least 30 days prior to the date established for the submission of proposals, the Procurement Office shall advise each offeror in writing as to whether that offeror has been prequalified. In the event that an offeror is denied prequalification, the written notice shall state the reasons for the denial of prequalification and the factual basis for such reasons.

(4) Request for Proposal.

- a. The Procurement Office shall prepare a request for proposal ("RFP") that includes the criteria used to evaluate each proposal. The RFP shall define the pre-design, design phase, bid phase, and/or construction phase services, as appropriate, to be provided by the construction manager. The RFP may also define such other requirements as the City determines appropriate for a particular project. Prior construction management experience or previous experience with the Virginia Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a construction manager, the Committee may consider the

experience of each offeror on comparable projects. Price is a critical basis for award of the contract.

- b. The Procurement Office shall establish procedures whereby comments concerning specifications or provisions contained in the RFP can be received and considered prior to the time set for receipt of proposals.
- c. The RFP shall be posted for a minimum of 30 days on the Virginia Department of General Service's central electronic procurement website, known as eVA; in the purchasing agent's office; and in a local newspaper 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 responses to the RFP.

(5) Evaluation and selection of construction manager.

- a. Based on criteria established in the RFP, the Committee shall evaluate each of the proposals. As a part of the evaluation process, the Committee shall grant each of the offerors an equal opportunity for direct and private communication with the Committee. Each offeror shall be allotted the same fixed amount of time. In its conversations with offerors, the Committee shall exercise care to discuss the same owner information with all offerors. In addition, the Committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to Code of Virginia § 2.2-4342.
- b. The Committee shall rank the proposals. After evaluation and ranking of the proposals the Committee shall conduct negotiations with at least two of the offerors submitting the highest ranked proposals, or should the Committee determine, in writing and at 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.
- c. The Committee shall make its recommendation on the selection of the construction manager to the Agency based on its evaluation and negotiations.
- d. Price is a critical basis for award of the contract.

- e. Unless otherwise specified in the RFP, award of the construction management contract shall be awarded to the offeror who is deemed fully qualified and has been determined to have provided the best value in response to the RFP.
- (6) The Procurement Office, on behalf of the City, shall not be required to award a contract; the Procurement, Office on behalf of the City, reserves the right to reject any and all proposals.
 - (7) The Procurement Office shall notify all offerors who submitted proposals, which offeror was selected for the project. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
 - (8) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.
 - (9) Required Construction Management Contract Terms.
 - a. Preconstruction services shall be contracted as a Non-Professional Service and shall include the offeror's lump sum price for all requested preconstruction phase services.
 - b. The Guaranteed Maximum Price ("GMP") shall be established for all construction services using information provided in the RFP. The GMP shall be established at the completion of the working drawings unless a waiver has been granted by the Director or his designee. If the Agency and the construction manager cannot agree on a GMP, the Procurement Office may competitively bid the project with the other prequalified construction management offerors or enter into competitive negotiations with the other prequalified construction management offerors in accordance with the requirements of the Code of Virginia.
 - c. Interim GMPs for early release packages are permitted.
 - d. Any GMP construction management contract entered into shall contain provisions requiring that (i) not more than 10% of the construction work (measured by the cost of the work) will be performed by the construction manager with its own forces; and (ii) that remaining 90% of the construction work will be performed by subcontractors of the construction manager which the construction manager must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable.

Documentation shall be placed in the file dealing with the reasons any work is not procured by publicly advertised competitive sealed bidding. The Director or his designee may modify these contractual requirements in whole or in part for projects where it would be fiscally advantageous to the public to increase the amount of work performed by the construction manager.

- e. Further guidance on the use of these procedures can be found in Section 7.2 of the Virginia Construction and Professional Services Manual (2017 Edition, as amended).

C. Miscellaneous Provisions.

(1). The City reserves the right and shall be entitled to cancel any RFQ and/or RFP solicitation, and/or reject any proposals or responses at any time, before a final contract is signed by the City for a particular project. Such right shall be in the sole discretion of the City Manager.

(2). The City shall not be required to issue an RFQ and/or RFP at the request of any potential Offeror. Such decision shall be in the sole discretion of the City Manager.

(3). The City shall not be responsible for any expenses or costs of any type incurred by any Offeror or potential Offeror at any stage of any solicitation, RFQ, or RFP process. Any Offeror participating, or any potential Offeror anticipating to participate, in a solicitation contemplated by the City, by submitting any documents or taking any actions in response to any solicitation shall be deemed to have agreed that such Offeror or potential Offeror is solely responsible for any and all of its costs and expenses of any type connected in any way with any such solicitation, even if such solicitation is cancelled and/or the proposals are rejected and no award is made.

Approved for Adoption:

Director of Finance

Date: _____

Approved as to form and legal sufficiency:

City Attorney

Date: _____

DRAFT