

ALTERNATIVE DELIVERY

Section 1. PURPOSE

In accordance with the provisions of § 2.2-4308 of the Code of Virginia, 1950, as amended (the “Code”), the Bedford Regional Water Authority (“Authority”) has determined to adopt the procedures contained herein for the procurement of contracts including Design-Build, Construction Management, or Progressive Design-Build as defined in § 2.2-4301 of the Code (“Alternative Delivery”). The Authority may contract to secure Alternative Delivery projects on a fixed price or not-to-exceed price design-build or construction management basis in accordance with these procedures.

Section 2. INTRODUCTION:

- A. Alternative Delivery contracts are intended to minimize the project risk for the Authority and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.
- B. Fixed price Design-Build (“DB”), Progressive Design-Build (“PDB”), and Construction Management at-risk (“CMAR”) are all alternative or innovative forms of project delivery. The primary differences between DB projects, PDB projects, and CMAR projects are:
 - 1. the involvement of construction personnel early in the project design phase;
 - 2. the single point accountability for both design and construction;
 - 3. the selection of the alternative delivery contractor (“Design-Builder”) on overall best value, including the qualifications of the design and construction firms and the key personnel assigned to the project, where realization of best value involves balancing capital cost, life-cycle cost, risk, schedule, sustainability, quality, ease of commissioning and the qualifications of service providers;
 - 4. the procurement and construction of major equipment before the design is completed.
- C. CMAR: The Authority contracts separately with an engineering firm and a construction contractor, where the contractor works with the engineer during the design of the project.
- D. DB: The Design-Builder agrees at the beginning of the project to both design and construct the project for a fixed price with the service provider’s price based on the owner’s description.
- E. PDB: The Authority selects the Design-Builder based on qualifications, works with the Design-Builder to produce a preliminary design, and then requires the Design-Builder to submit a firm price for completing the design and the construction; upon receiving the firm price, the Authority will have an opportunity to terminate the project. The basic components of Progressive Design-Build procurement are as follows:
 - 1. Initial Conceptual Stage (Phase 1)

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- a. Two Step Selection Process:
- b. Best Value Selection
- c. Execution of Interim Agreement
2. Detailed Stage (Phase 2)
 - a. Preparation of Bridging Documents
 - b. Development of Construction Cost Limitation (CCL)
 - c. Development of Guaranteed Maximum Price (GMP): this will typically be submitted to the Authority between 30% and 90% of completion of design process
 - d. Exit Ramp (“Off Ramp”): Authority may decide to not proceed with the successful Responder.
 - e. Execution of Comprehensive Agreement

Section 3. APPROVAL TO USE ALTERNATIVE DELIVERY.

- A. Prior to soliciting for qualifications or requesting proposals from the Design-Builder or contractors, the Authority staff shall request and receive authority and approval in writing from the Executive Director of the Authority (“Executive Director”), to use Alternative Delivery.
 1. The request shall justify and substantiate that Alternative Delivery is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the Authority will benefit from using Alternative Delivery.
 2. The request shall also include a written justification explaining that sealed bidding is not practicable and/or fiscally advantageous.
- B. The justification for the use of Alternative Delivery shall be stated in the Request for Qualifications.
- C. The Executive Director is the approving authority for requests to use Alternative Delivery procedures, and the Executive Director may grant approval of or exceptions to this procedure.

Section 4. SELECTION PROCEDURES

- A. Committee: The Authority shall appoint a Selection and/or Evaluation Committee (“Committee”), which shall consist of at least three members from the Authority, including a licensed design professional if possible. In addition, the Authority may choose to have in its employ or under contract an architect or engineer licensed in the Commonwealth of Virginia, with professional competence appropriate to the project who shall advise the Authority regarding the use of Alternative Delivery for the project and

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who may assist the Authority with the preparation of the Request for Qualifications (“RFQ”), Request for Proposals (“RFP”), and/or the evaluation of the Statement of Qualifications (“SOQ”) and proposals that are submitted.

- B. Two Step Process: procurement of the contract shall be a two-step competitive negotiation process as established in Va. Code §2.2-4301; this includes:
1. RFQ:
 - a. The RFQ shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The RFQ shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria.
 - b. The RFQ shall allow the responders to request, by proper notation, that certain information voluntarily submitted by the contractor shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342 of the Code.
 - c. Qualification Based Selection through the evaluation of submitted SOQ as requested in the RFQ; this process should narrow the number of responders being considered (“shortlisting”) to proceed to the next step. The SOQ may be required to contain:
 - i. Transmittal Letter
 - ii. Executive Summary
 - iii. Profile of Responder (General info about Responder’s capabilities)
 - iv. Project Team (details on personnel’s capabilities)
 - v. Experience (information on relevant related projects)
 2. RFP: Project Based Selection through the evaluation of submitted Proposals.
 - a. The Authority shall send a RFP to the Responders that are on the short list for the project, as was determined through the RFQ step, requesting to receive formal proposals from them.
 - b. The Proposals may be required to contain:
 - i. Transmittal Letter
 - ii. Executive Summary
 - iii. Project Approach
 - iv. Draft of Interim Contract
 - v. Updated / Expanded SOQ
 - vi. Fee and Rate (“Cost”) Proposal
 - c. Proposals shall be submitted as instructed in the RFP. Sealed Technical proposals shall be submitted separately from the sealed Cost Proposals where applicable; the Authority shall secure and keep sealed the Cost Proposals until the Technical Proposals have been evaluated.
 - d. The Committee shall evaluate the Technical Proposals based on the criteria contained in the RFP. If technical rankings are to be considered as a criterion for

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award, the Committee shall also rank the technical proposals. Should the Authority 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 by the Executive Director. Otherwise, the Authority shall open the cost proposals and apply the criteria for award as specified in the RFP and approved by the Executive Director.

- e. The Committee shall make its recommendation for the selection of a Design-Builder to the Authority based on the Committee's evaluations of the technical and cost proposals.
 - f. The contract shall be awarded to the offeror who is fully qualified and has been determined to provide the best value in response to the Request for Proposal.
 - g. The Authority shall notify all offerors that have submitted proposals of which offeror was selected for the project. In the alternative, the Authority may notify all offerors that submitted proposals of the Authority's intent to award the contract to a particular offeror at any time after the Authority 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.
 - h. Upon request, documentation of the process used to determine the final selection of Design-Builder shall be made available to unsuccessful proposers.
- C. Contract Award: The basis of the award of the contract shall be in accordance with §2.2-4301(3)(b) of the Code, and the criteria for the award shall be submitted to the Executive Director, in advance, for approval. The criteria should be stated in the RFQ and RFP and may include, but are not limited to, any or all of the following:
1. Qualifications and Experience:
 - a. General reputation
 - b. Experience with similar projects
 - c. Demonstration of ability to perform work
 - d. Leadership structure
 - e. Project Managers' experience
 - f. Management approach
 - g. Financial capacity
 - h. Project ownership
 2. Understanding of Project Characteristics:
 - a. Project definition
 - b. Proposed project schedule
 - c. Technology; technical feasibility
 - d. Conformity to laws, regulations, and standards
 - e. Environmental impacts
 - f. Condemnation impacts

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- g. State and local permits
- h. Operation requirements for the project
- i. Maintenance requirements for the project
- 3. Project Financing - Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project and to fund the operation of the project after the construction include:
 - a. Financial benefit to the Authority
 - b. Financing and the impact on the debt or debt burden of the Authority
 - c. Financial plan
 - d. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable
 - e. Life-cycle cost analysis
- 4. Cost elements shall be included as a component of the selection process; these elements may include, but are not limited to, any or all of the following:
 - a. Design Fees
 - b. Preconstruction Fees
 - c. Design-Builder Fee
 - d. Construction Costs
 - e. General Conditions Fees
 - f. Subcontractor Markup
 - g. Labor Rate with Markup
 - i. Raw Hourly
 - ii. Lump Sum
 - h. Total Project Costs
 - i. Guaranteed Maximum Price ("GMP")
- 5. Project Benefit and Compatibility - Factors to be considered in determining the proposed projects compatibility with the appropriate local or regional comprehensive or development plans include:
 - a. Community benefits;
 - b. Community support or opposition, or both;
 - c. Public involvement strategy;
 - d. Compatibility with existing and planned facilities; and
 - e. Compatibility with local, regional, and states economic development efforts.
- 6. Other Factors:
 - a. Eligibility of the facility for accelerated selection, review, and documentation of capability to comply with schedules
 - b. Understanding of local citizen and government concerns
 - c. Demonstrating the benefits to the public
 - d. Plans to employ local contractors and residents or to self-perform
 - e. Other criteria that the Authority deems appropriate.

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Section 5. AGREEMENTS

- A. Prior to constructing the project, the selected Design-Builder contractor shall enter into a Comprehensive Agreement with the Authority. Prior to entering a Comprehensive Agreement an Interim Agreement may be entered into that permits the Design-Builder contractor to perform compensable activities related to the project. The Authority may choose to utilize the Committee for negotiating any Interim or Comprehensive Agreement. Any Interim or Comprehensive Agreement shall define the rights and obligations of the Authority and the selected proposer with regard to the project.
1. Interim Agreement Terms: The scope of an Interim Agreement may include, but not limited to:
 - a. Project planning and Development
 - b. Design and engineering
 - c. Environmental analysis and mitigation
 - d. Survey
 - e. Property and easement acquisition
 - f. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis
 - g. Establish a process and timing of the negotiation of the Comprehensive Agreement
 - h. Any other provisions related to any aspect of the Development or Operation of a Qualifying Project that the parties may deem appropriate prior to the execution of a Comprehensive Agreement
 - i. The establishment of an Off-Ramp, whereby the Authority would take ownership of the deliverables prepared under the Interim Agreement prior to the execution of the Comprehensive Agreement
 2. Comprehensive Agreement Terms: The scope of the Comprehensive Agreement shall include, but not be limited to:
 - a. The delivery of maintenance, performance, and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the project
 - b. The review of plans and specifications for the project by the Authority
 - c. The rights of the Authority to inspect the project to ensure compliance with the Comprehensive Agreement
 - d. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the project
 - e. The monitoring of the practices of the Design-Builder by the Authority to ensure proper maintenance of the project

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- f. The terms under which the Design-Builder will reimburse the Authority for services provided by the Authority
 - g. The definition of any financial allowances on the project, and how these allowances are used and funds distributed
 - h. The policy and procedures that will govern the rights and responsibilities of the Authority and the Design-Builder in the event that the Comprehensive Agreement is terminated or there is a Material Default by the Design-Builder including the conditions governing assumption of the duties and responsibilities of the Design-Builder by the Authority and the transfer or purchase of property or other interests of the Design-Builder by the Authority;
 - i. The terms under which the Design-Builder will file appropriate financial statements on a periodic basis;
 - j. The terms and conditions under which the Authority may contribute resources, if any, for the project;
 - k. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action
 - l. The terms and conditions under which the Authority will be required to make payment to the Design-Builder and the amount of any such payments for the project
- B. Any changes in the terms of the Interim or Comprehensive Agreement as may be agreed upon by the parties from time to time shall be added to the interim or Comprehensive Agreement by written amendment.
- C. Notice and Posting requirements:
1. Once the negotiation phase for the Development of an Interim or a Comprehensive Agreement is complete and a decision to award has been made by the Authority, the Authority shall post the proposed agreement(s) on the Authority's website.
 2. At least one hard copy of the proposals and agreements shall be made available for public inspection. Trade secrets, financial records or other records of the Design-Builder excluded from disclosure under the provisions of the Code shall not be required to be posted, except as otherwise agreed to by the Authority and the Design-Builder.
 3. Any such studies and analyses considered by the Authority in its review of a proposal shall be posted prior to the execution of the Comprehensive Agreement.

Section 6. REVISIONS

- A. This policy was approved and adopted by the Authority's Board of Directors on July 23, 2013