

Resolution Establishing Procedures for Use of the Construction Management and Design-Build Methods of Construction Contracting

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, September 12, 2017, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Virginia Public Procurement Act requires that a public body using the construction management or design-build method of construction contracting comply with Virginia Code Ann. § 2.2-4382 (2017); and

WHEREAS, the Board of Supervisors adopted the requirements of Virginia Code Ann. § 2.2-4382, on June 20, 2017, as reflected in Article 3, Section 5, of the Fairfax County Purchasing Resolution (effective July 1, 2017); and

WHEREAS, Virginia Code Ann. § 2.2-4382 and the Fairfax County Purchasing Resolution require that prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall have adopted by resolution written procedures, which include the specifications set out in the Code and the Fairfax County Purchasing Resolution, governing the selection, evaluation, and award of design-build and construction management; and

WHEREAS, Virginia Code Ann. § 2.2-4382 further requires that design-build construction projects include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies and that construction management projects include selection procedures and required construction management contract terms consistent with the procedures as adopted by the Secretary of Administration; and

WHEREAS, the Construction Management Procurement Manual (Attachment 2) and Design Build Construction Manual (Attachment 3) establish procedures consistent with Virginia Code Ann. § 2.2-4382 and the Fairfax County Purchasing Resolution for use of the construction management and design-build method of construction contracting.

NOW, THEREFORE, BE IT RESOLVED that the Fairfax County Board of Supervisors adopts the Construction Management Procurement Manual and the Design Build Construction Manual.

Given under my hand on this 12th day of September 2017.

A handwritten signature in black ink, appearing to read "Catherine A. Chianese". The signature is written in a cursive style with a horizontal line underneath the name.

Catherine A. Chianese
Clerk to the Board of Supervisors



**FAIRFAX COUNTY, VIRGINIA
CONSTRUCTION MANAGEMENT
PROCUREMENT MANUAL
SEPTEMBER 2017**

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**CONSTRUCTION MANAGEMENT (CM) PROCEDURES
AS ADOPTED BY THE FAIRFAX COUNTY BOARD OF SUPERVISORS**

In accordance with Article 3, Section 5.B of the Fairfax County Purchasing Resolution, the following procedures for the procurement of Construction Management (CM) contracts shall be followed by all departments, agencies, and authorities of the County of Fairfax. These procedures shall be effective September 12, 2017.

1. **LEGISLATIVE AUTHORITY:** Under authority of § 2.2-4382 of the *Code of Virginia* and the Fairfax County Purchasing Resolution, the County may enter into a contract with a Construction Manager in accordance with these procedures.

2. **AUTHORITY:** The County is authorized to use competitive negotiations to procure CM contracts when it determines in advance that competitive sealed bidding is not practicable or fiscally advantageous pursuant to Article 3, Section 5 of the Fairfax County Purchasing Resolution. This determination shall be included in the Request for Qualifications and maintained in the procurement file. The written determination shall include the basis of the determination which shall include one or more of the following:
 - a. Construction cost
 - b. Project complexity
 - c. Building use
 - d. Project timeline
 - e. Project phasing
 - f. Necessity of value engineering and/or constructability analysis concurrent with design
 - g. Cost/design control needs

Prior to making a determination to use construction management, a licensed architect or engineer shall be employed or under contract to (i) advise in use of construction management; and (ii) assist in the preparation of the Request for Proposal and evaluation of such proposals. Authorization to contract with a Construction Manager may be granted by the Purchasing Agent or those organizations cited in the Fairfax County Purchasing Resolution, Article 1, Section 3. The term Authorized Purchasing Agent shall apply to all such entities in this procedure.

3. **CRITERIA FOR USE OF CM:** CM contracts may be utilized on projects where the project cost is expected to be more than \$10 million. CM may be utilized on projects where the project cost is expected to be less than \$10 million, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the Board of Supervisors. The written approval of the Board of Supervisors shall be maintained in the procurement file.

4. **PROCEDURE FOR APPROVAL TO USE CM:** Prior to issuing an RFQ or RFP for a CM contract, the Authorized Purchasing Agent must provide written approval for use of this

delivery method. The request from the using agency to the Authorized Purchasing Agent shall justify and substantiate that the CM contract meets the criteria found in section 2. The contract must be entered into no later than the Schematic Design Phase unless prohibited by funding authorization restrictions.

5. **CM SELECTION PROCEDURES:** On projects approved for CM, the procurement shall be conducted as a two-step Request for Qualifications/Request for Proposals process. The following procedures shall be used in selecting a CM and awarding a contract:
 - a. The Authorized Purchasing Agent shall appoint a Selection Advisory Committee (SAC) which shall consist of at least three or more principal staff personnel, including a at least one licensed design professional engineer or architect, if possible.
 - b. The basis of the award of the contract shall be in accordance with Article 2, Section 2, B.5 (Non-Professional Services) of the Fairfax County Purchasing Resolution. The criteria for the award shall be approved in advance by the Authorized Purchasing Agent. Cost is a critical component of the selection process. Guidance on methods for evaluation is identified in Procurement Technical Bulletin 12-1002, as approved by the County Purchasing Agent.
 - c. Selection of Qualified Offerors (**STEP I**): On projects approved for CM, the County shall conduct a prequalification process as follows to determine which offerors are qualified to receive a Request for Proposals (RFP).
 1. The County shall prepare a Request for Qualifications (RFQ) setting forth the criteria upon which the qualifications of prospective contractors will be evaluated and containing the County's facility requirements, building and site criteria, project criteria, site and survey data (if available), and other relevant information. All offerors shall have a licensed Class "A" contractor registered in the Commonwealth of Virginia as part of the project team. The County's justification for the use of DB shall be included in the RFQ.
 2. Advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of offers for such construction so as to allow the procedures set forth in this subsection to be accomplished.
 3. The criteria for evaluation must be included in the RFQ, including any unique capabilities and qualifications. The RFQ shall be posted on the Commonwealth's e-procurement portal, eVA, at least 30 days prior to the date set for receipt of qualification proposals.

4. Prospective offerors may be prequalified for participation in the RFQ. The prequalification application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information pursuant to Article 2, Section 4, Paragraph D of the Fairfax County Purchasing Resolution.
 5. The SAC shall evaluate each Statement of Qualifications (SOQ) and any other relevant information and shall determine which offerors are fully qualified and suitable for the project, based upon the RFQ criteria. Prior construction management or Fairfax County experience is not a prerequisite for award.
 6. The SOQ 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 Fairfax County Purchasing Resolution, Article 3, Section 6, but the short list shall also be those deemed best qualified.
 7. At least 30 days prior to the date established for the submission of proposals, the County shall in writing advise each offeror that 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 for such reasons.
- d. Selection of a Construction Manager (**STEP II**):
1. The County shall send a Request for Proposal (RFP) to the offerors on the short list and request submission of proposals. The RFP shall be posted for a minimum of 30 days and include the criteria for award. Offerors shall be required to submit separate sealed technical and cost proposals. The solicitation shall include the following minimum information for preconstruction services:
 - a. Scope of services
 - b. List of evaluation factors (including weighing factors)
 - c. List of required deliverables
 - d. Indication of whether interviews will be conducted before establishing the final rank
 - e. General contract terms and conditions
 2. Proposals as described in the RFP shall be submitted to the SAC.

3. The SAC will evaluate and rank the technical proposals based on the criteria contained in the RFP. Prior CM experience shall not be a prerequisite for award. The SAC may inform each CM offeror of any adjustments necessary to make its technical proposal fully comply with the requirements of the RFP. In addition, the County may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the SAC during development of the design.
4. The SAC shall select two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the criteria included in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror.
5. Price is a critical basis for award of the contract. Prior construction management experience or previous experience shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable projects.
6. The County shall offer the opportunity for an interview to all short-listed firms if the County intends to interview any contractor during the procurement process.
7. Should the County 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.
8. The SAC shall make its recommendation for the selection of a construction manager to the Authorized Purchasing Agent based on its evaluations of the technical and cost proposals and all modifications. 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.
9. All proposed contracts for CM construction services shall be approved by the Authorized Purchasing Agent. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.
10. The County will publicly announce the contract award on the eVA electronic procurement website or other appropriate website. All offerors will be directly notified of the contract award.

6. **REQUIRED CONSTRUCTION MANAGEMENT CONTRACT TERMS:** Any Guaranteed Maximum Price construction management contract entered into by the County will contain provisions requiring that:
 - a. Not more than 10% of the construction work, as measured by cost of the work, will be performed by the CM with its own forces and;
 - b. The remaining 90% of the construction work, as measured by the cost of the work, will be performed by subcontractors of the CM which the CM must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work exceeding \$100,000 is not procured by publicly advertised competitive sealed bidding. The Authorized Purchasing Agent 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 construction work performed by the Construction Manager.
7. **GUARANTEED MAXIMUM PRICE:** The Guaranteed Maximum Price shall be established no later than completion of working drawings. If the County and the CM offeror cannot agree on a GMP, the County may competitively bid the project with the other prequalified CM offerors or enter into competitive negotiations with the other prequalified CM offerors in accordance with the requirements of the Fairfax County Purchasing Resolution. Interim GMP's for early release packages are permitted.
8. **DISCLOSURE OF INFORMATION:** As provided in the Fairfax County Purchasing Resolution, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful offerors.



FAIRFAX COUNTY, VIRGINIA
DESIGN-BUILD PROCUREMENT MANUAL
SEPTEMBER 2017

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**DESIGN-BUILD (DB) PROCEDURES
AS ADOPTED BY THE FAIRFAX COUNTY BOARD OF SUPERVISORS**

In accordance with Article 3, Section 5.B of the Fairfax County Purchasing Resolution, the following procedures for the procurement of Design-Build (DB) contracts shall be followed by all departments, agencies, and authorities of the County of Fairfax. These procedures shall be effective September 12, 2017.

1. **LEGISLATIVE AUTHORITY:** Under authority of § 2.2-4382 of the *Code of Virginia* and the Fairfax County Purchasing Resolution, the County may contract to secure DB projects on a fixed price basis in accordance with these procedures.

2. **AUTHORITY:** The County may enter into a contract for design-build construction services in accordance with these procedures. Pursuant to Article 3, Section 5 of the Fairfax County Purchasing Resolution, the County is authorized to use competitive negotiations to procure design-build services when it determines in advance, and sets forth in writing, that competitive sealed bidding is not practical or fiscally advantageous. The determination shall be included in the Request for Qualifications and be maintained in the procurement file. The written determination shall include the basis of the determination which shall include one or more of the following:
 - a. Construction Cost
 - b. Project Complexity
 - c. Building Use
 - d. Project Timeline
 - e. Need for Single Point of Contact

Prior to making a determination to use design-build for a specific construction project, a licensed architect or engineer shall be employed or under contract (i) advise in use of design build; and (ii) assist in the preparation of the Request for Proposal and evaluation of such proposals. Authorization to use of the design-build alternative delivery method may be granted by the County Purchasing Agent or organizations cited in the Fairfax County Purchasing Resolution, Article 1, Section 3. The term Authorized Purchasing Agent shall apply to all such entities in this procedure.

3. **BENEFIT OF USE OF DB:** DB contracts are intended to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design, land acquisition, and construction phases of a project.

4. **DB SELECTION PROCEDURES:** On projects approved for DB, the procurement shall be a two-step RFQ/RFP process. The following procedures shall be used in selecting a Design-Builder and awarding a contract:

- a. The Authorized Purchasing Agent shall appoint a Selection Advisory Committee (SAC) which shall consist of at least three or more principal staff personnel, including at least one licensed design professional, if possible.
- b. The basis of the award of the contract shall be in accordance with Article 2, Section 2, B.5 (Non-Professional Services) of the Fairfax County Purchasing Resolution. The criteria for the award shall be approved in advance by the Authorized Purchasing Agent.
- c. Selection of Qualified Offerors **(STEP I)**: On approved DB projects, the County shall conduct a prequalification process to determine the offerors qualified to receive a Request for Proposal (RFP).
 1. The County shall prepare a Request for Qualifications (RFQ) setting forth the scope of the project, the County's facility requirements, criteria upon which the qualifications of prospective contractors will be evaluated, site criteria, and survey data (if available), and other relevant information. All offerors shall have a licensed Class "A" contractor registered in the Commonwealth of Virginia and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.
 2. The criteria for evaluation shall be included in the RFQ, including any unique capabilities and qualifications.
 3. Advance notice shall be given of the deadline for the submission of prequalification applications. The RFQ shall be posted in accordance with the current standards of the Fairfax County Purchasing Resolution for a minimum of 30 days.
 4. Prospective offerors may be prequalified for participation in the RFQ. The prequalification application form shall include any unique capabilities or qualifications that will be required of the contractor. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information pursuant to Article 2, Section 4, Paragraph D of the Fairfax County Purchasing Resolution.
 5. The Selection Advisory Committee shall evaluate each SOQ and any other relevant information and shall determine which offerors are fully qualified and suitable for the project, based upon the RFQ criteria. Prior DB or Fairfax County experience shall not be a prerequisite for award.
 6. The SOQ 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

Fairfax County Purchasing Resolution, Article 3, Section 6, but the short list shall consist of those deemed best qualified.

7. At least thirty days prior to the date established for submission of proposals, the County shall advise in writing each offeror that 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.

d. Selection of Design-Build Contractor **(STEP II)**:

1. The County shall send a Request for Proposal (RFP) to the offerors on the short list and request submission of proposals. The RFP shall define submittal requirements that must be included in the proposal and criteria for award. Cost shall be a critical component of the selection process. Offerors shall be required to submit separate sealed technical and cost proposals.
2. Technical proposals as described in the RFP shall be submitted to the SAC. Separately sealed cost proposals shall be secured and kept sealed until evaluation of the technical proposals and the design adjustments are completed.
3. The SAC will evaluate the technical proposals based on the criteria contained in the RFP. It shall inform each DB offeror of any adjustments necessary to make its technical proposal fully comply with the requirements of the RFP. In addition, the County may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the SAC during development of the design.
4. Cost proposals shall be considered after evaluation of the technical proposals and the design adjustments are completed. The SAC shall negotiate with two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
5. Based on the adjustments requested by the SAC, the offeror shall provide a revised technical proposal and cost proposal, as necessary. An offeror may submit cost modifications to the original sealed cost proposal which are not based upon revisions to the technical proposals.
6. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall

award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror.

7. The County shall offer the opportunity for an interview to all short-listed firms if the County intends to interview any contractor during the procurement process.
 8. Based on the adjustments made to the technical proposals, offerors may be asked to amend the cost proposal. In addition, an offeror may be asked to submit cost modifications to its original sealed cost proposal which are not based upon revisions to the technical proposals.
 9. Should the County 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.
 10. The SAC shall make its recommendation for the selection of a design builder to the Authorized Purchasing Agent based on its evaluations of the technical and cost proposals and all modifications. 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.
 11. All proposed contracts for DB construction services shall be approved by the Authorized Purchasing Agent. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.
 12. The County will publicly announce the contract award on the eVA electronic procurement website or other appropriate website. The County shall notify all offerors who submitted proposals, which offeror was selected for the project.
 13. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
5. **DISCLOSURE OF INFORMATION:** As provided in the Fairfax County Purchasing Resolution, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful offerors.