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, October 6, 2015, 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. § 2.2-4308 (2014); and

WHEREAS, the Board of Supervisors adopted the requirements of Virginia Code Ann. § 2.2-4308, on June 23, 2015, as reflected in Article 3, Section 5, of the Fairfax County Purchasing Resolution (effective July 1, 2015); and

WHEREAS, Virginia Code Ann. § 2.2-4308 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. § 2.2-4308 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 1) and Design Build Construction Manual (Attachment 2) establish procedures consistent with Virginia Code Ann. § 2.2-4308 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 this 6th day of October 2015.

Catherine A. Chianese
Clerk to the Board of Supervisors
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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 October 6, 2015.

1. LEGISLATIVE AUTHORITY: Under authority of § 2.2-4306 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 (i) design-build is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous. 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. CRITERIA FOR 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 phase and construction phase of a project.

4. PROCEDURE FOR APPROVAL TO USE DB: Prior to issuing an RFQ or RFP for a Design Build (DB) 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 DB method is more advantageous than a design-bid-build construction contract with a general contractor and shall indicate how the County will benefit from using the DB method. The justification for the use of DB shall be stated in the Request for Qualifications form. Any exceptions to this procedure must be approved by the Authorized Purchasing Agent.

5. DB SELECTION PROCEDURES: On projects approved for DB, the procurement shall be a two-step competitive negotiation 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 professional engineer or architect.
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 of the Request for Quotation and Request for Proposal are provided in Procurement Technical Bulletin 12-1003, as approved by the County Purchasing Agent.

c. Selection of Qualified Offerors (STEP 1): 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, 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 and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.

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 so as to allow the procedures set forth in this subsection to be accomplished.

3. The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Fairfax County Purchasing Resolution (Article 2, Section 2.A).

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 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.

6. The SOQ evaluation shall result in a short list of two or more 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 based upon the RFQ criteria.

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. Offerors shall be required to submit separate sealed technical and cost proposals.

2. Proposals as described in the RFP shall be submitted to the SAC.

3. The SAC will evaluate the technical proposals based on the criteria contained in the RFP. It may 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. 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 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Cost proposals shall be considered after evaluation of the technical proposals and the design adjustments are completed. 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. 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.

6. Based on the adjustments made to the technical proposals, offerors may be asked to amend the cost proposal. In addition, an offeror may submit cost modifications
to its original sealed cost proposal which are not based upon revisions to the technical proposals.

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 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.

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.

11. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.

6. **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.
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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 October 6, 2015.

1. LEGISLATIVE AUTHORITY: Under authority of § 2.2-4308 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 may enter into a contract with a Construction Manager (CM) 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 CM contracts when it determines in advance, and sets forth in writing, that (i) a CM contract is more advantageous than a competitive sealed bid; (ii) there is a benefit to the public body by using a CM contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous. 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 approved for use on projects where 1) fast tracking of construction is needed to meet project requirements, or 2) value engineering and/or constructability analyses concurrent with design are required. The use of CM shall be limited to projects with a construction value that is estimated to be in excess of $10,000,000. With proper justification for small complex projects, the Authorized Purchasing Agent may grant a waiver of this requirement.

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 3. The request must also include the stipulation that the CM contract will be initiated at 35% design completion. The justification for the use of a CM contract shall be stated in the Request for Qualifications. Any exceptions to this procedure must be approved by the Authorized Purchasing Agent.

5. CM SELECTION PROCEDURES: On projects approved for CM, the procurement shall be conducted as a two-step process unless a one-step process is approved pursuant to section 8. 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 at least one licensed design professional engineer or architect.

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, 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.

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 RFQ shall be posted in accordance with the current standards for the posting of public bids in the Fairfax County Purchasing Resolution (Article 2, Section 2A).

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.
6. The SOQ evaluation shall result in a short list of two or more 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 based upon the RFQ criteria.

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 criteria for award shall be included in the RFP. 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 the technical proposals based on the criteria contained in the RFP. It 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. 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.

6. 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.

7. 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.

8. 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.

9. The County will publicly announce the contract award on the eVA electronic procurement website or other appropriate website.

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 (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 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 construction documents unless a waiver has been granted to this requirement by the Authorized Purchasing Agent.
8. **ONE-STEP WAIVER:** The Authorized Purchasing Agent may approve use of a one-step solicitation for its project. If adequate justification is provided, in writing, the Authorized Purchasing Agent may approve the request.

9. **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.