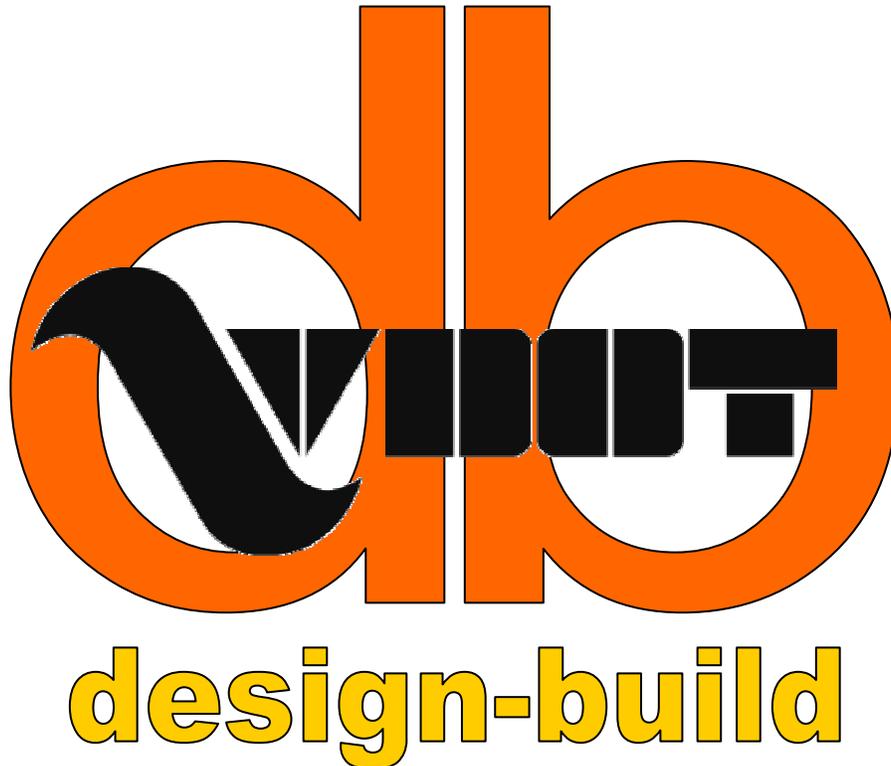


*Commonwealth of Virginia*



**Alternative Project Delivery Division**

**Design-Build Procurement Manual**

**April 2017**

*Virginia Department of Transportation*

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## **INTRODUCTION**

During the 2001 Virginia Legislative Session, the General Assembly of Virginia amended and reenacted § 33.1-12 of the Code of Virginia (since revised to § 33.2-209(B)) as it relates to the powers and duties of the Commonwealth Transportation Board (CTB) authorizing the award of design-build contracts. The Code was further amended during the 2006 Virginia Legislative Session to eliminate the restrictions on the number of transportation projects the Commonwealth Transportation Board may award on a Design-Build basis. In 2016, the Code was further amended to allow for the submission of alternative technical concepts (ATCs) on design-build projects.

The code requires the CTB to adopt Objective Criteria for project selection. On October 17, 2001, the CTB adopted and approved Objective Criteria for the selection of Design-Build projects. The Objective Criteria require a finding that a proposed Design-Build project has one or more of following: Expedited Schedule, Established Budget, Well-defined Scope, Risk Analysis, Prequalification of Design-Build Firms, and Competitive Bidding Processes. The Objective Criteria adopted by the CTB are attached to this manual in Appendix C.

A Design-Build contract combines engineering design services, construction services, and/or maintenance services into a single contract. The Virginia Department of Transportation (VDOT) may procure Design-Build contracts when it is not in the public interest to follow the normal design and contracting procedures (Competitive Sealed Bidding).

This manual provides an overview of the process that VDOT will follow for the procurement of Design-Build contracts for transportation projects. This manual also provides information and guidelines for developing a project scope, assessing risk, advertising and evaluating Proposals, managing information exchange and awarding contracts on transportation projects using the Design-Build contracting method. This information is valid for projects that are the sole responsibility of VDOT and does not cover projects involving the Department of General Services (DGS). All inquiries related to this manual should be forwarded via email to the Alternative Project Delivery Division.

## 1.0 DEFINITIONS

The words defined herewith shall have the meaning set forth below throughout this document.

- a) **Alternative Technical Concept (ATC):** Proposed changes to agency-supplied base design configurations, project scope, design, or construction criteria that provide a solution that is equal to or better than the requirements in the Request for Proposal. The purpose of the ATC process is to allow for technical innovation, creativity and flexibility to achieve the project's goals and objectives at equal to or higher quality and performance, and which will provide an equal or greater value to the public as determined by the Department.
- b) **“Best and Final Offer (BAFO)”** means the final offer provided by an Offeror at the conclusion of discussions in response to a Request for Proposal. Thus, regardless of the length or number of discussions, there will be only one request for a revised Proposal. The decision to award will be based on the score of the BAFOs.
- c) **“Best Value”** means the overall combination of quality, price and various elements of the required services that, in total, are optimal relative to VDOT's needs, as predetermined in the solicitation.
- d) **“Board” or “CTB”** means The Commonwealth Transportation Board.
- e) **“Clarifications”** means a written or oral exchange of information which takes place after the receipt of Proposals when award without discussions is contemplated. The purpose of the clarifications is to address minor or clerical revisions in a Proposal.
- f) **“Commissioner”** means The Commissioner of Highways.
- g) **“Communications”** are exchanges between VDOT and Offerors after receipt of Design-Build Proposals that lead to the establishment of a competitive range. Communications are used to address issues that might prevent a Proposal from being placed in the competitive range.
- h) **“Competitive Range”** means a list of the most highly rated Design-Build Proposals based on the initial Proposal rankings. It is based on the rating of each Design-Build Proposal against all evaluation criteria.
- i) **“Contractor”** means the team member of the Design-Builder that is responsible for the building/ construction of a project. VDOT, through its Construction Division, requires all contractors to be pre-qualified in accordance with the Rules Governing Prequalification Privileges in order to participate in bidding any type of construction work.
- j) **“Design-Build (DB) Contract”** means a written agreement executed between VDOT and a Design-Builder that sets forth the obligations of the Design-Builder, including, but not limited to, the performance of work, furnishing of materials and labor, and basis of payment to both design and construct all work specified to be performed in the Contract. Oral representations or promises shall not be considered a part of the Contract.

- k) **“Design-Builder”** means any company, firm, partnership, corporation, association, joint venture, or other entity permitted by law to practice engineering, architecture and construction contracting in the Commonwealth of Virginia. The Design-Builder shall have the capability, in all respects, to perform fully the contract requirements and has the business integrity and reliability which will assure good faith performance. The Design-Builder shall be pre-qualified by VDOT Construction Division in accordance with the Rules Governing Prequalification Privileges unless otherwise noted in the solicitation. Typically, the term “Design-Builder” refers to the Successful Offeror upon award of the contract.
- l) **“Discussions”** means written or oral exchanges that take place after the establishment of the competitive range with the intent of allowing the Offerors to revise their Proposals.
- m) **“Evaluation Team”** means the team approved by the Deputy Chief Engineer to review and evaluate the Request for Qualifications/Request for Proposals. The Evaluation Team members will be limited to VDOT staff, unless otherwise approved by the Chief Engineer. The team members may include the PM-D and two or more qualified personnel from the key disciplines involved with the project. The Evaluation Team shall consist of three team members unless Deputy Chief Engineer approves additional members based on the scope of the RFP. At least one member shall be from the Central Office key discipline; however, no more than two members of the Evaluation Team shall be from the same key discipline. The PM-APD will serve as Team Leader and is responsible for coordinating with Administrative Services Division and/or Construction Division to ensure conformance with procurement laws. In addition, the Evaluation Team may use non-voting Technical Advisors who can provide expertise in areas including, but not limited to: Contract Management, Engineering, Construction, or any other area that requires specialized knowledge and expertise.
- n) **“FHWA”** means Federal Highway Administration.
- o) **“Finding of Public Interest” (FOPI)** means the Commissioner’s determination to use Design-Build contracting, based on Objective Criteria previously adopted by the CTB. The finding shall include a description of the nature and scope of the project and the reasons for the Commissioner’s determination that awarding a Design-Build contract will best serve the public interest. The finding may also include anticipated savings such as time, cost, or reduced administrative burdens through expedited delivery; benefits derived from warranties such as improved service life, safety, or quality; preservation of VDOT’s capital assets; or reduction in the risks associated with transportation projects.
- p) **“Offeror” (also referred to as Bidder)** means any individual, partnership, corporation, or joint venture that formally submits a Statement of Qualification and/or Proposal in response to the solicitation for the work contemplated, or for any portion thereof, acting directly or through a duly authorized representative. Typically, the term “Offeror” is used prior to the award of a contract.
- q) **“Project” or “Transportation Project”** means work specified to be performed in the Contract that VDOT is authorized by law to undertake including, but not limited to, a highway, toll way, bridge, mass transit, intelligent transportation system, traffic management, traveler information services, or any other facility for transportation purposes.

- r) **“Project Manager - Alternative Project Delivery Division” (PM-APD)** means VDOT’s designee for supervising procurement of a Design-Build contract. This individual will be responsible for contract development, solicitation, and award.
- s) **“Project Manager - District” (PM-D)** means VDOT’s designee for managing all phases of project development and administering the Design-Build contract. The PM-D is responsible for the scope, schedule and budget of the project.
- t) **“Project Team”** means the team responsible for the development of Design-Build solicitations for the project from the conception through award of a contract. A Project Team member may also be a technical resource who provides expertise in their discipline. The PM-D will provide each pertinent Division and District Administrator with a preliminary scope and request him or her (through memo from the Division Administrator of APD) to designate an appropriate individual to serve on the Project Team. The primary district representative should be the pertinent Engineer in responsible charge or the anticipated PM-D.
- u) **“Proposal” (also referred to as Bid)** means the offer of a Bidder, submitted in response to a Request for Proposal (RFP), to perform the work and furnish the materials and labor at the price set forth therein; valid only when properly signed and guaranteed. This documentation may include a Letter of Submittal (LOS), Technical and Price Proposals as required by the RFP. The Offer’s Proposal shall be considered a “Bid” in reference to Division I of VDOT Road and Bridge Specifications.
- v) **“Request for Proposal” (RFP)** means all documents, whether attached or incorporated by reference, utilized for soliciting Proposals. The RFP is the only solicitation in a single-phase selection process. The RFP is the second phase of a two-phase selection process in which VDOT issues a written request to those Offerors on the Short-List to submit Technical and/or Price Proposals.
- w) **“Request for Qualifications” (RFQ)** means all documents, whether attached or incorporated by reference, utilized for soliciting interested Offerors for consideration for Short-list. The RFQ is the first phase of a two-phase selection process for the purpose of inviting interested Offerors to submit qualifications for a project.
- x) **“Statement of Qualifications” (SOQ)** means the documents submitted by an Offeror in response to an RFQ.
- y) **“Short-List”** used in a two-phase selection process, means the narrowing of the field of Offerors through ranking of the most highly qualified Offerors who have responded to an RFQ with the intent to advance to the next stage. Only short-listed firms will be invited to submit a proposal in response to an RFP.
- z) **“SYIP”** means the Virginia Department of Transportation Six-Year Improvement Program.
- aa) **“VDOT” or “Department”** means the Virginia Department of Transportation or any duly authorized representative thereof.

## **2.0 PRELIMINARY PROJECT SELECTION**

### **2.1 Potential Design-Build Projects**

The Alternative Project Delivery (APD) Division, in conjunction with the Districts, and the Planning, Programming, and the Preliminary Engineering Divisions, will review each annual update of the SYIP to identify candidate Design-Build projects. APD will rank the projects based on the Objective Criteria, discussions with the pertinent District, available funding levels within the SYIP, and compliance with the Law. The Division Administrator of APD will assign an APD staff member as PM-APD for the contract development and solicitation of the Design-Build contract. The pertinent District Administrator will assign a District staff member as PM-D.

The following categories are types of projects that generally may be suited for Design-Build contracts:

- Emergency and repair projects
- Projects directly impacting public safety
- Projects directly supporting economic development/enhancement
- Projects using specialty or innovative designs and construction methods or techniques
- Projects to maximize the use of available funding (i.e. Federal, Bonds, FRANS, etc.)
- Projects deemed by VDOT to have expedited scheduling requirements
- Projects that do not lend themselves to normal Design-Bid-Build procedures
- ITS projects involving software development or integration and/or rapidly changing technologies having one or more of the following advantages:
  - Provides increased flexibility to modify the design approach and equipment used based on changes in technology
  - Allows VDOT to place increased emphasis on contractor qualifications and their technical approach in conjunction with cost considerations
  - Provides a mechanism to “jump-start” ITS design activities in Districts that have limited technical staff able to perform much of the up-front design work
  - Permits greater input on project design from ITS vendors and systems developers

### **2.2 VDOT Authorization and Funding**

The project(s) must be identified and included in VDOT’s SYIP, which indicates local and regional support for a project. Adequate funding for design, right-of-way and construction of the entire project must be identified and programmed before initiating procurement of a Design-Build contract.

## **3.0 COMMISSIONER’S APPROVAL – FINDING OF PUBLIC INTEREST (FOPI)**

The PM-APD in conjunction with the PM-D will review the information such as funding, schedule, estimate, preliminary risks, and Objective Criteria. If such review meets the Objective Criteria for Design-Build, the PM-D will draft a FOPI for review by the Division Administrator of APD and the Office of the Attorney General (OAG). The FOPI will note the nature and scope of the project and the reasons for the Commissioner's written determination that the proposed project meets the Objective Criteria for a Design-Build project. Upon concurrence of the

completed FOPI by the OAG, the Division Administrator of APD will recommend the Project to the Deputy Chief Engineer for approval by the Commissioner. The FOPI will be retained for public inspection in VDOT's official records. The FOPI will authorize the procurement of the Design-Build contracting for the development of the project.

#### **4.0 FHWA APPROVAL AND AUTHORIZATION**

All Federal-Aid Design-Build highway projects shall comply with procedures set forth by Federal Register 23 CFR Part 627, 635, 636, 637 and 710 et al. The Division Administrator of APD or designee will coordinate approval by the FHWA to use Design-Build contracts.

Necessary approvals, certifications, and authorization must be obtained from FHWA in accordance with the requirements described in Federal Regulations Part 635.309 prior to advertisement and award of the project.

#### **5.0 CONFLICT OF INTEREST**

Implementation guidelines for VDOT's policy on organizational conflicts of interest relating to Design-Build procurement are documented in the Alternative Project Delivery Division Instructional and Informational Memorandum IIM-APD-2 dated October 8, 2015.

([http://www.virginiadot.org/business/resources/APD\\_Docs/APD\\_Office\\_Page/IIM-APD-2.1.pdf](http://www.virginiadot.org/business/resources/APD_Docs/APD_Office_Page/IIM-APD-2.1.pdf))

Each Offeror shall require its proposed team members to identify potential conflicts of interest or a real or perceived competitive advantage relative to the procurement. Prior or existing contractual obligations between a company and a federal, state or local agency relative to the project or VDOT's Design-Build program may present a conflict of interest or a competitive advantage. If a potential conflict of interest or competitive advantage is identified, the Offeror shall submit in writing the pertinent information to VDOT's POC as identified in the solicitation.

VDOT, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization determined to have a conflict of interest or competitive advantage relative to the procurement that cannot be mitigated, shall not be allowed to participate as a Design-Build team member for the project. Failure to abide by VDOT's determination in this matter may result in a Proposal being declared non-responsive.

Conflicts of interest and a real or perceived competitive advantage are described in state and federal law, and, for example, may include, but are not limited to the following situations:

1. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria for the Project.
2. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria as part of the programmatic guidance or procurement documents for VDOT's Design-Build program, and as a result has a unique competitive advantage relative to the project.

3. An organization or individual with a present or former contract with VDOT to prepare planning, environmental, engineering, or technical work product for the Project, and has a potential competitive advantage because such work product is not available to all potential Offerors in a timely manner prior to the procurement process.

4. An organization or individual with a present or former contract with VDOT to provide assistance in Design-Build contract administration for the project.

VDOT reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a project specific basis.

VDOT may, in its sole discretion, determine that a conflict of interest or a real or perceived competitive advantage may be mitigated by disclosing all or a portion of the work product produced by the organization or individual subject to review under this section. If documents have been designated as proprietary by Virginia law, the Offeror will be given the opportunity to waive this protection from disclosure. If Offeror elects not to disclose, Offeror may be declared non-responsive.

## **6.0 PROJECT ADVERTISEMENT**

The solicitation will be published on the public internet procurement web site designated by VDOT as well as on the eVA web site. The project advertisement will state a general description of the work and any technical qualifications desired, and the time frames for submitting a response to the solicitation. The duration of the Proposal development period will be based on the project deadlines and level of complexity of the Project (when allowed by the project schedule). VDOT may waive or alter a contractor's pre-qualification requirements based on any specialized nature of the Project.

## **7.0 SELECTION PROCESS**

The type of selection process determines the solicitation used. VDOT may use a single-phase selection process, a two-phase selection process, or any other appropriate type of process that is based on individual needs and merits of the Project.

VDOT will issue an RFQ and/or RFP, soliciting SOQs and/or Design-Build Proposals from Offerors. The single-phase selection process consists of an RFP only. The single-phase selection process may be used for any project with a relatively straightforward scope and short delivery time.

The two-phase selection process consists of an RFQ and RFP. The SOQ is used to create a Short-List of the three (3) highest-ranked Offerors. Only the Offerors on the Short-List will be invited to submit a Proposal in response to the RFP. The two-phase selection process is used for complex or relatively large projects so the number of Offerors submitting an RFP can be narrowed down to those most highly qualified Offerors. Upon a written determination, and in VDOT's 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.

## 7.1 Request for Qualifications (RFQ)

### 7.1.1 Statement of Qualifications (SOQ) Evaluation

The evaluation criteria for a Project will be published in the RFQ. The criteria should be consistent with the qualifications requested and may include the Offeror's team and organizational structure, demonstration of applicable experience, and identification of critical project risks.

The Evaluation Team will evaluate the SOQs in accordance with the Design-Build Evaluation Guidelines, dated May 2014.

### 7.1.2 Short-List (Selection)

A Short-List will be developed based on the results of the evaluation of the SOQs. VDOT will only issue the Request for Proposals to short-listed Offerors. In the event the SOQs of three or less Offerors are determined to be responsive then those Offerors could be considered short-listed without the SOQs being evaluated and scored by the VDOT Evaluation Team. A Pre-Proposal Meeting will be held with the short-listed Offerors and representatives of utility companies to address issues and questions related to the RFP. Procurement meetings related to short-list and selection are not open to the general public.

## 7.2 Request for Proposal (RFP)

### 7.2.1 Basis of Award

The basis of award will be clearly defined in the RFP. VDOT will determine which basis of award is best suited for the unique requirements of the Project. The Objective Criteria adopted by the CTB explicitly allows for several basis of award, such as Best Value, Low Bid, and Fixed Price, each having its own benefit. The Alternative Project Delivery Division carefully determines what basis will best serve the interests of the Commonwealth.

- a) **Best Value** - The contract is awarded to the Offeror whose responsive Proposal is evaluated as providing the Best Value to VDOT. The Project Team will determine a formula by which to establish the Best Value and will publish the formula in the RFP.
- b) **Low Bid** - The contract is awarded to the Offeror with the lowest priced responsive bid. The RFP may require the Proposal to meet a minimum technical score and/ or minimum qualifications in order to be deemed responsive. A Proposal shall not be considered responsive unless it meets or exceeds the published requirements.
- c) **Fixed Price** - In lieu of requiring qualitative Technical Proposals and Price Proposals, VDOT may establish a fixed dollar budget for the project in the RFP, and require submission of only qualitative Technical Proposals. The fixed price will be the same for all Offerors, and in this approach, award is made to the Technical Proposal receiving the highest score.

### *7.2.2 Technical Proposals*

The RFP shall define Technical Proposal requirements and evaluation criteria. Technical Proposals should address the technical elements of the design and construction of the project. The Evaluation Team will review and evaluate Offerors's Technical Proposals based on the evaluation criteria stipulated in the RFP. The Evaluation Team will evaluate Technical Proposals in accordance with the Design-Build Evaluation Guidelines, dated May 2014.

### *7.2.3 Price Proposals*

The RFP shall define Price Proposal requirements. Design-Build projects will typically require lump sum Proposals. Payments will be based on work packages, or major items or tasks. Therefore, the Offeror's Price Proposal shall include the lump sum price, a breakdown for major items or tasks and other standard contract documents. This breakdown of major items or tasks should be consistent with the payout schedule. The Design-Build Proposal may require the Offeror to submit further documentation prior to the execution of the contract.

### *7.2.4 Proposal Payment*

VDOT may consider paying those Offerors who submit a responsive Proposal, but are not awarded the Design-Build Contract, a Proposal Payment. The Proposal Payment amount, if any, will be identified in the RFP and the Proposal Payment Agreement Form included in the RFP. The Proposal Payment is only paid to unsuccessful Offerors on the Short-List that submit a responsive Proposal. When a Proposal Payment is accepted, VDOT shall retain the right to use technical solutions, design concepts, or any other proprietary information contained in Design-Build Proposals from unsuccessful Offerors.

Under no circumstances will the Commonwealth, the Commissioner, CTB, or VDOT be liable for or reimburse any costs incurred by Offeror in developing a Proposal unless otherwise noted in the RFP.

In the event the Design-Build procurement process is terminated for any reason prior to the Proposal submission date, the Commonwealth, the Commissioner, CTB or VDOT shall not be responsible for any Proposal Payments, partial or in full, or for any costs incurred by the Offerors in developing Proposals.

### *7.2.5 DBE and SWAM Goals and Requirements*

All Design-Build projects funded with Title 23 funds shall conform to the requirements of 49 CFR Part 26 and the State's approved DBE plan. The RFP shall state VDOT's goals for DBE utilization on the Project. If DBE goals are set, DBE commitments above the goal may not be used as an evaluation factor in determining the successful Offeror. The RFP may include VDOT's requirements for SWAM participation on the Project.

### *7.2.6 Issue Resolution for Contract Administration*

The reference document for issue resolution is "Special Provision for Project Communication and Decision Making for Design-Build Projects." While some of the topics do not apply to Fixed

Price / Fixed Date contracts, the PM-D should follow the philosophy and guidelines as deemed appropriate to each Design-Build contract.

#### *7.2.7 Payment and Performance Bond*

The successful Offeror shall provide a performance and payment bond for the contract that complies with the requirements of the contract, pursuant to the Virginia General Statutes. Typically, bonds will be required in the approximate amount of the contract price.

### **8.0 INFORMATION EXCHANGES**

Verbal or written information exchanges may be desirable at different points after the release of the RFQ and/or RFP. The Federal Regulation allows information exchanges in the form of Clarifications, Communications, and Discussion. VDOT will conduct information exchanges in accordance with the 23 CFR Parts 636 – Subpart D.

### **9.0 PROPOSAL EVALUATION**

VDOT may use various types of evaluation processes to match the Basis of Award for the Project.

#### **9.1 Best Value**

The selection of a Design-Builder for a Best Value Basis of Award will be based on the evaluation of the Technical Proposals and Price Proposals. At the location, time and date indicated in the RFP, the Technical Proposals will be presented to the Evaluation Team for evaluation. The Evaluation Team will rate and score the technical proposals in accordance with the Design-Build Evaluation Guidelines. The Technical Proposal will have a weighting of thirty percent (30%) and the Price Proposal will have a weighting of seventy percent (70%).

##### *9.1.1 Price Proposal Evaluation Factors*

Price Proposals shall remain sealed and stored in a secure location until the Technical Proposals have been evaluated. Unless stated otherwise in the RFP, Price Proposals will be scored and ranked as follows:

.1 The Offeror submitting the lowest Price Proposal will be awarded the maximum number of points, seventy (70).

.2 The next-lowest Price Proposal will be awarded points based on the product of: (a) the ratio of the lowest Price Proposal divided by the next-lowest Price Proposal; and (b) seventy (70) points (i.e., the points awarded for the lowest Price Proposal), with such product rounded to the nearest one hundredth of a point.

.3 The process will continue for each of the remaining Price Proposals, with points being awarded based on the product of: (a) the ratio of the lowest Price Proposal divided by the respective Offeror's Price Proposal; and (b) seventy (70) points (i.e., the points awarded for the lowest Price Proposal), with such product rounded to the nearest one hundredth of a point.

### 9.1.2 Combining Technical and Price Proposal Scores

The weighted technical score will be added to the weighted price score to obtain a combined score for each Offeror's Proposals. The Proposal with the highest combined score will be considered the highest-scored Offeror. A sample combined Technical and Price Proposal score sheet is provided below.

SAMPLE FINAL RFP SCORES						
	Technical 30%		Price 70%			
Offerors	Raw Score	Weighted score	Price	Raw Score	Weighted score	Combined Score
1	71.00	21.30	\$40,000,000	97.50	68.25	89.55
2	69.00	20.70	\$42,000,000	92.86	65.00	85.70
3	65.00	19.50	\$39,000,000	100.00	70.00	89.50

### 9.2 Low Bid

VDOT may use Low Bid to evaluate Proposals for both a single-phase selection process and a two-phase selection process. The selection of a Design-Builder for a Single-Phase Low Bid selection process will be based on the lowest priced responsive Proposal from all Offerors; whereas, the selection of a Design-Builder for a Two-Phase Low Bid selection process will be based on the lowest priced responsive Proposal from Offerors on the Short-List. The RFP may require the Proposal to meet a minimum technical score and/ or minimum qualifications in order to be deemed responsive. The responsible Offeror with the lowest priced responsive Proposal will be awarded the contract.

### 9.3 Fixed Price

The selection of a Design-Builder for a Fixed Price Basis of Award will be based on a fixed dollar budget for the project in the solicitation, and require submission of only Technical Proposals. The fixed price will be the same for all Offerors and award will be made to the Offeror with a Technical Proposal that receives the highest score.

## 10.0 NEGOTIATION AND AWARD OF CONTRACT

After all evaluations are concluded, the PM-APD will total the scores in accordance with the RFP. The Successful Offeror shall be determined to be the Offeror with the highest score. Once the Successful Offeror has been identified, the PM-APD will perform any appropriate follow up as required by either ASD or Construction Division. After the follow up, the PM-APD will notify the Successful Offeror. The PM-APD will be responsible for placing the project on the CTB schedule for award of the contract for all two-phase selection processes.

Should VDOT determine in writing, and at its sole discretion, that only one Offeror is fully qualified, and has submitted qualifying Technical and Price Proposals, a contract may be

awarded to that Offeror without discussions or BAFO's. This option is best suited to Fixed Price contracts; however, VDOT will have the option of recommending such cases in which the Price Proposal is less than 10% over VDOT's estimate of construction cost. VDOT's estimate is the basis for Federal participation. If VDOT is going to award a contract over the estimate, VDOT must take steps to assess why the Design-Build Proposal is over their estimate, adjust their estimate to compensate for factors not previously addressed or addressed incorrectly, and receive FHWA concurrence to justify awarding a negotiated contract over the estimate.

Negotiation and Award of Contract will be made in the following manner:

- a) VDOT will review the Proposal submitted by the highest-scored Offeror. If the Proposal is responsive and the Price Proposal is within VDOT's budget for design and construction services, then VDOT will issue a Notice of Intent to Award to the Selected Design-Builder.
- b) Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the selected Design-Builder to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Selected Design-Builder.
- c) Pursuant to 23CFR 636.404, if the Proposal Price submitted by the highest-scored Offeror is not within VDOT's budget for design and construction, VDOT may establish a competitive range among the Offerors who have submitted a responsive Proposal.
- d) Pursuant to 23 CFR 636.402, 636.404, and 636.406, prior to VDOT establishing a competitive range, VDOT may hold communications with only those Offeror's whose exclusion from or inclusion in, the competitive range is uncertain. Communications will (a) enhance VDOT's understanding of Proposals; (b) allow reasonable interpretation of the Proposal; or (c) facilitate VDOT's evaluation process.
- e) Pursuant to 23 CFR 636.404, after VDOT establishes the competitive range, VDOT will notify any Offeror whose Proposal is no longer considered to be included in the competitive range.
- f) Pursuant to 23 CFR 636.506, 636.507, and 636.508, VDOT will hold discussions with all Offerors in the competitive range. Offerors are advised that VDOT may, in its reasonable discretion, determine that only one Offeror is in the competitive range.
- g) Pursuant to 23 CFR 636.510, VDOT may determine to further narrow the competitive range once Discussions have begun. At which point, VDOT will notify any Offeror whose Proposal is no longer considered in the competitive range.
- h) Pursuant to 23 CFR 636.509, at the conclusion of discussions, VDOT, will request all Offeror(s) in the competitive range to submit a final Proposal revision, also called Best and Final Offer (BAFO). Thus, regardless of the length or number of discussions, there will be only one request for a revised Proposal (*i.e.*, only one BAFO).
- i) Pursuant to 23 CFR 636.512, VDOT will review the final Proposals in accordance with the review and selection criteria and complete a final ranking of the Offerors in the competitive range, then VDOT will issue a Notice of Intent to Award to the Selected Design-Builder.

- j) Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the Selected Design-Builder to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Selected Design-Builder.

## **11.0 RIGHTS AND OBLIGATIONS OF VDOT**

### **11.1 Reservation of Rights**

For each project, VDOT reserves to itself all rights (which rights shall be exercisable by VDOT in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:

- .1 The right to cancel, withdraw, postpone or extend an RFQ/ RFP in whole or in part at any time prior to the execution by VDOT of the Design-Build Contract, without incurring any obligations or liabilities.
- .2 The right to issue a new RFQ/ RFP.
- .3 The right to reject any and all submittals, responses and Proposals received at any time.
- .4 The right to modify all dates set or projected in an RFQ/ RFP.
- .5 The right to terminate evaluations of responses received at any time.
- .6 The right to suspend and terminate the procurement process for the project, at any time.
- .7 The right to revise and modify, at any time prior to the SOQ/ Proposal Submittal Dates, factors it will consider in evaluating responses to an RFQ/ RFP and to otherwise revise its evaluation methodology.
- .8 The right to waive or permit corrections to data submitted with any response to an RFQ/ RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFQ/ RFP has been completed and closed.
- .9 The right to issue addenda, supplements, and modifications to an RFQ/ RFP, including but not limited to modifications of evaluation criteria or methodology and weighting of evaluation criteria.
- .10 The right to permit submittal of addenda and supplements to data previously provided with any response to an RFQ/ RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFQ/ RFP has been completed and closed.
- .11 The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to an RFQ/ RFP to seek an improved understanding and evaluation of their responses to the RFQ/ RFP.

- .12 The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to an RFQ/ RFP, including the right to seek clarifications from Offerors.
- .13 The right to permit Offerors to add or delete firms and/or key personnel until such time as VDOT declares in writing that a particular stage or phase of its review has been completed and closed.
- .14 The right to add or delete Offeror responsibilities from the information contained in an RFQ/ RFP.
- .15 The right to appoint and change appointees of the Evaluation Team.
- .16 The right to use assistance of outside technical and legal experts and consultants in the evaluation process.
- .17 The right to waive deficiencies, informalities and irregularities in an SOQ/ Proposal, accept and review a non-conforming SOQ/ Proposal or seek clarifications or supplements to an SOQ/ Proposal.
- .18 The right to disqualify any Offeror that changes its submittal without VDOT approval.
- .19 The right to change the method of award or the evaluation criteria and scoring at any time prior to submission of the SOQs/ Proposals.
- .20 The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFQ/ RFP.
- .21 The right to use all or part of a Proposal submitted by an Offeror that accepts a Proposal Payment.
- .22 The right to negotiate the allocation of prices identified for specific portions of the work depicted within a Price Proposal.
- .23 The right to disqualify and/or cease negotiations with an Offeror if VDOT, in its sole discretion, determines that the Offeror's Price Proposal contains unbalanced pricing among the specific portions of work identified therein.

## **11.2 No Assumption of Liability**

VDOT assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to an RFQ/ RFP. All such costs shall be borne solely by each Offeror and its team members.

In no event shall VDOT be bound by, or liable for, any obligations with respect to the project until such time (if at all) a contract, in form and substance satisfactory to VDOT, has been executed and authorized by VDOT and, then, only to the extent set forth therein.

## **12.0 PROTEST**

This section simply summarizes protest remedies available with respect to the provisions of the Code of Virginia that are relevant to protests of awards or decisions to award Design-Build Contracts by VDOT. This section does not purport to be a complete statement of those provisions and is qualified in its entirety by reference to the actual provisions themselves.

In accordance with §2.2-4360, of the *Code of Virginia*, if an unsuccessful Offeror wishes to protest the award or decision to award a contract, such Offeror must submit a protest in writing to VDOT no later than ten (10) calendar days after the award or the announcement posting the decision to award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. No protest shall lie for a claim that the selected Offeror is not a responsible bidder.

Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. However, if the protest of any Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, of the *Code of Virginia*, then the time within which the protest must be submitted shall expire ten (10) calendar days after those records are available for inspection by such Offeror under § 2.2-4342, of the *Code of Virginia*.

VDOT shall issue a decision in writing within ten (10) calendar days of the receipt of any protest stating the reasons for the action taken. This decision shall be final unless the Offeror appeals within ten (10) calendar days of receipt of the written decision, by instituting legal action in accordance with § 2.2-4364, of the *Code of Virginia*.

Pursuant to § 2.2-4362, of the *Code of Virginia*, an award need not be delayed for the period allowed a bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination by the Commissioner, or his designee, that proceeding without delay is necessary to protect the public interest or unless the Design-Build Proposal would expire. Further, pursuant to §2.2-4361, of the *Code of Virginia*, pending a final determination of a protest or appeal, the validity of the contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal has been filed.

## **13.0 CONTRACT AWARD**

Upon selection of the Successful Offeror through the RFP evaluation process, the PM-APD will prepare and forward a recommendation to the Chief Engineer for an award of contract by the CTB. The PM-APD will prepare a contract agreement incorporating by reference all the requirements, terms and conditions of the RFP and the Offeror's Proposal as submitted. The award process shall follow the pertinent portions of Construction Division's Advertisement and Award Process available at [www.virginiadot.org/business/const/internalprocesses.asp](http://www.virginiadot.org/business/const/internalprocesses.asp).

VDOT will notify all Offerors who submitted Proposals of the decision to award. VDOT is not required to award a Contract as a result of an RFP. If VDOT does award a Contract, a Contract

shall be executed and a Notice to Proceed shall be given to the Successful Offeror by VDOT. Upon award of the contract, the Successful Offeror is considered the Design-Builder.

#### **14.0 DESIGN AND CONSTRUCTION**

The PM-D will serve as primary contact for contract related issues and will be responsible for ensuring that the Design-Builder complies with all contract requirements. The PM-D may establish such mechanisms as he or she sees fit to effectively manage the project. The PM-D will be the contract administrator and will be the sole party to approve payment for the Contractor. The PM-D will be responsible for supervising all Departmental oversight, approvals and RFIs (Request for Information) in accordance with the Contract. The PM-D will be responsible for obtaining all appropriate input/information from the Divisions during the life of the Contract. The PM-D will be responsible for conducting performance evaluations of the Contractor.

#### **15.0 PROJECT ACCEPTANCE**

The PM-D will determine when the project is acceptable to VDOT and will close out the project using the same procedures as those for Design-Bid-Build projects.

## **APPENDIX A – VA LAW**

### **Article 2 Commonwealth Transportation Board; Powers and Duties**

#### **§ 33.2-209 (A) thru (C) - Construction and maintenance contracts and activities related to passenger and freight rail and public transportation**

*A. The Board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million. The Commissioner of Highways has authority to let all Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to \$5 million in value. The Director of the Department of Rail and Public Transportation has the authority to let contracts for passenger and freight rail and public transportation improvements up to \$5 million in value. The Commissioner of Highways is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value and without prior concurrence of the Commissioner of Highways or the Board for highway construction, maintenance, and improvements within their jurisdictions, in accordance with those provisions of this Code providing those localities, authorities, and transportation districts the ability to let such contracts. The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value and without prior concurrence of the Director of the Department of Rail and Public Transportation or the Board for passenger and freight rail and public transportation activities within their jurisdictions, in accordance with those provisions of this Code providing those localities, authorities, and transportation districts the ability to let such contracts. The Commissioner of Highways and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.*

*B. The Board may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the Commissioner of Highways or the Director of the Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. Such objective criteria shall include requirements for prequalification of contractors and competitive bidding processes. These contracts shall be of such size and scope to encourage maximum competition and participation by agency prequalified and otherwise qualified contractors. Such determination shall be retained for public inspection in the official records of the Department of Transportation or the Department of Rail and Public Transportation, as the case may be, and shall include a description of the nature and scope of the project and the reasons for the Commissioner's or the Director's determination that awarding a design-build contract will best serve the public interest. A Request for Proposal for transportation projects to be delivered on a*

## **APPENDIX B – CTB RESOLUTION**

*design-build basis pursuant to this section may allow for the submission and consideration of alternative technical concepts in accordance with the procedures set forth in such Request for Proposal. The provisions of this section shall supersede contrary provisions of subsection D of § [2.2-4303](#) and § [2.2-4306](#).*

*For the purposes of this subsection, “alternative technical concepts” means proposed changes to agency-supplied base design configurations, project scope, design, or construction criteria that provide a solution that is equal to or better than the requirements in the Request for Proposal.*

*C. The Board may award contracts for the provision of equipment, materials, and supplies to be used in construction of transportation projects on a fixed-price basis. Any such contract may provide that the price to be paid for the provision of equipment, materials, and supplies to be furnished in connection with the projects shall not be increased but shall remain fixed until completion of the projects specified in the contracts. Material components of any such contract for annual and multiyear programs, including maintenance, may be fixed at the outset of the projects and until completion based on best achievable prices.*

### **§ 33.2-269 – Localities may use design-build contracts**

*Localities may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the chief executive officer of the locality that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. These contracts shall be of such size and scope to encourage maximum competition and participation by qualified contractors. Such determination shall be retained for public inspection in the official records of the locality and shall include a description of the nature and scope of the project and the reasons for the determination that awarding a design-build contract will best serve the public interest. If state or federal transportation funds are used for the contract, then the locality shall comply with the provisions of §§ [33.2-209](#) and [33.2-214](#) and shall request from the Department the authority to administer the project in accordance with pertinent state or federal requirements.*

**RESOLUTION  
OF THE  
COMMONWEALTH TRANSPORTATION BOARD**

**July 20, 2006**

**Title: Revision to “Establishment of Objective Criteria for the Selection of Design-Build  
Projects”  
Policy**

**WHEREAS**, in 2001 the General Assembly of Virginia amended and reenacted § 33.1-12 of the *Code of Virginia* to authorize the Commonwealth Transportation Board (CTB) to award design-build contracts; and,

**WHEREAS**, the reenacted legislation required the CTB to adopt objective criteria regarding the use of design-build; and,

**WHEREAS**, the CTB approved the current Design-Build Objective Criteria Policy on October 17, 2001; and,

**WHEREAS**, during the 2006 Virginia Legislative Session, the General Assembly of Virginia amended and reenacted § 33.1-12 of the *Code of Virginia* to eliminate the limit on the number of transportation projects the CTB may award on a design-build basis; and,

**WHEREAS**, this legislative change makes it necessary to revise the CTB’s policy concerning Design-Build Objective Criteria; and,

**NOW, THEREFORE, BE IT RESOLVED**, that the policy set forth in the attached revised “Establishment of Objective Criteria for the Selection of Design-Build Projects” is hereby approved, and that the Design-Build Objective Criteria Policy approved on October 17, 2001 is hereby revised; and,

**BE IT FURTHER RESOLVED**, that the Commonwealth Transportation Commissioner is authorized to use the revised “Establishment of Objective Criteria for the Selection of Design-Build Projects” in identifying and procuring contracts using the design-build process.

## **APPENDIX C – OBJECTIVE CRITERIA**

### **VIRGINIA DEPARTMENT OF TRANSPORTATION**

#### **ESTABLISHMENT OF OBJECTIVE CRITERIA FOR THE SELECTION OF DESIGN-BUILD PROJECTS**

#### **BACKGROUND**

During the 2001 Virginia Legislative Session, the General Assembly of Virginia amended and reenacted § 33.2-209(B) of the Code of Virginia, relating to powers and duties of the Commonwealth Transportation Board authorizing the award of design-build contracts. The Code was further amended during the 2006 Virginia Legislative Session, to eliminate the limit on the number of transportation projects the Commonwealth Transportation Board may award on a design-build basis.

#### **POLICY**

The Commonwealth Transportation Board may award contracts for the construction of transportation projects on a design-build basis subsequent to the Commissioner making a written determination, pursuant to objective criteria previously adopted by the Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed.

#### **DEFINITIONS**

The words defined herewith shall have the meaning set forth below throughout this document.

- a) "Best Value" means the overall combination of quality, price and various elements of the required services that in total are optimal relative to VDOT's needs, as predetermined in the solicitation.
- b) "Board" means The Commonwealth Transportation Board.
- c) "Design-Build Contract" means a contract between VDOT and a design-build firm in which the design-build firm agrees to both design and build the structure, roadway, or other item in the contract.
- d) "Design-Build Firm" means any company, firm, partnership, corporation, association, joint venture, or other entity permitted by law to practice engineering, architecture and construction contracting in the Commonwealth of Virginia which has the capability, in all respects, to perform fully the contract requirements and business integrity and reliability which will assure good faith performance, and which has been pre-qualified, if required.
- e) "Fixed Price" means the price of services provided by the design-build firm is fixed before bidding by VDOT. The bids are judged on the overall combination of quality and various other elements of the required services which in total are optimal relative to VDOT's needs, as predetermined in the solicitation.

## **APPENDIX C – OBJECTIVE CRITERIA**

- f) "Low Bid" means the contract will be awarded to the design-build firm with the lowest priced responsive bid.
- g) "Project" or "Transportation Project" means any project that VDOT is authorized by law to undertake including, but not limited to, a highway, tollway, bridge, mass transit, intelligent transportation system, traffic management, traveler information services, or any other project for transportation purposes.
- h) "Request for Proposal (RFP)" means all documents whether attached or incorporated by reference utilized for soliciting proposals. The RFP is the second step of a two step competitive negotiation process in which VDOT issues a written request to those design-build firms which have been pre-qualified to submit both technical and price proposals.
- i) "Request for Qualifications (RFQ)" means all documents whether attached or incorporated by reference utilized for soliciting interested persons to apply for prequalification. The RFQ is the first step of a two step competitive negotiation process for the purpose of inviting interested qualified design-build firms to apply for prequalification.
- j) "VDOT" means the Virginia Department of Transportation, or any duly authorized representative thereof.

## **PROCEDURE**

VDOT will prepare a finding of public interest and shall include the appropriate justification showing why the design-build process is in the best interest of the Commonwealth of Virginia. The finding shall indicate how the Commonwealth of Virginia will benefit from the design-build procurement process. The finding may include anticipated savings such as time, cost, or reduced administrative burdens through expedited delivery; benefits derived from warranties such as improved service life, safety, or quality; preservation of VDOT's capital assets; or reduction in the risks associated with transportation projects.

Upon the Commissioner's determination that the proposed project meets the Objective Criteria approved by the Board, the Commissioner will authorize the use of the design-build procurement process for the development of the project. The Board may award the design-build contract upon completion of the VDOT's successful invitations for bids and negotiations of the contract.

## **OBJECTIVE CRITERIA**

The objective criteria for selecting projects for design-build procurement process contracts shall include one or more criteria items listed below. The criteria include expedited schedule, established budget, well defined scope, favorable risk analysis, prequalification of design-build firms and use of a competitive bidding process.

**Expedited Schedule** - The project has an expedited schedule or fixed completion date. Using the design-build procurement method will reduce the overall project completion time compared to the design-bid-build method.

## **APPENDIX C – OBJECTIVE CRITERIA**

**Established Budget** - The project has an established budget. VDOT requires that the project be completed at or near the established cost without significant overruns. The design-build procurement method will reduce the overall project cost compared to design-bid-build method.

**Well-defined scope** - The project has a well-defined scope and performance requirements. VDOT has clear understanding of the project scope and the final project. The scope is defined to achieve desired results with room for innovation in the design and construction efforts.

**Risk Analysis** - The project imposes limited risk to VDOT with the exception of directed changes. The project has a limited number of issues that must be resolved such as utility conflicts, right-of-way acquisitions, geo-technical conditions, hazardous materials, wetlands and environmental concerns or other such issues. Risk management plans have been fully developed.

**Prequalification of Design-Build Firms** - The project requirements clearly define the necessary qualifications that a design-build firm must have. The prequalification requirements and process shall be established in writing and sufficiently in advance of the filing date to allow potential design-build firms a fair opportunity to complete the process. The design-build firm wishing to submit a proposal on a design-build project shall be pre-qualified under existing process if there is no project RFQ, or must be qualified based on evaluation criteria set forth in the project RFQ.

**Competitive Bidding Processes** - The project affords an opportunity for competition in its procurement. VDOT will review the overall design-build program and select projects of various size and scope to ensure maximum participation and competition among qualified design-build firms. VDOT will facilitate fairness by incorporating appropriate measures for competitive design-build proposals. The RFPs for the projects selected for the design-build program will clearly state the selection criteria and evaluation method in determining the successful design-build firm. VDOT may include, but is not limited to, the following types of projects for the design-build contracts:

- Emergency and repair projects;
- Projects directly impacting public safety;
- Projects directly supporting economic development/enhancement;
- Projects using specialty or innovative designs and construction methods or techniques;
- Projects to maximize the use of available funding (i.e. Federal, Bonds, FRANS, etc.); and
- Projects deemed by VDOT to have expedited scheduling requirements.

VDOT may also use various bases for awarding a design-build contract as appropriate. The bases of awarding such contracts shall be adequately described in the RFP for the transportation projects. Such bases may include, but are not limited to, the following:

- Best Value,
- Low Bid,
- Fixed Price.