



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda item # 2

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

February 20, 2019

MOTION

Made By: Mr. Johnsen, Seconded By: Mr. Kasprowicz
Action: Motion Carried, Unanimously

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 § 33.1-12 required the CTB to adopt objective criteria regarding the use of design-build; and,

WHEREAS, in 2006 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, the CTB amended and approved the current Design-Build Objective Criteria Policy on July 20, 2006; and,

WHEREAS, in 2014 the General Assembly of Virginia re-codified § 33.1-12 of the *Code of Virginia* as § 33.2-209 (B); and,

WHEREAS, the Virginia Department of Transportation has requested the addition of Guaranteed Maximum Price (GMP) as a basis of an award for Design-Build projects, which would make it necessary to revise the CTB’s policy concerning Design-Build Objective Criteria.

Resolution of the Board

Revision to “Establishment of Objective Criteria for the Selection of Design-Build Projects”

February 20, 2019

Page 2

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” (Attachment A) is hereby approved and shall supersede and replace the Design-Build Objective Criteria Policy approved on July 20, 2006; and,

BE IT FURTHER RESOLVED, that the Commissioner of Highways 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 on projects that are to be advertised on or after February 21, 2019.

CTB Decision Brief

Revision to "Establishment of Objective Criteria for the Selection of Design-Build Projects" Policy

Issue: § 33.1-12 of the *Code of Virginia*, relating to powers and duties of the Commonwealth Transportation Board (CTB), authorizes the award of design-build contracts. In order to take advantage of innovative design-build contracting methods, such as progressive design-build, the use of Guaranteed Maximum Price (GMP) as a basis of award must be adopted and will require modification of the “Establishment of Objective Criteria for the Selection of Design-Build Projects,” which was last amended in 2006.

Facts: During the 2001 Virginia Legislative Session, the General Assembly of Virginia amended and reenacted § 33.1-12 of the *Code of Virginia*, relating to powers and duties of the CTB to authorize the award of design-build contracts. The *Code* was last amended during the 2006 Virginia Legislative Session, to eliminate the limit on the number of transportation projects the CTB may award on a design-build basis. The use of Guaranteed Maximum Price as a basis for award will benefit VDOT’s existing design-build program by helping us better manage complex high risk projects in the future.

Recommendations: VDOT recommends that the CTB approve the revised "Establishment of Objective Criteria for the Selection of Design-Build Projects" to allow the use of Guaranteed Maximum Price as a basis for awarding design-build contracts.

Action Required by CTB: The *Code of Virginia* requires a majority vote of the CTB before the revised "Establishment of Objective Criteria for the Selection of Design-Build Projects" policy can be approved. The CTB will be presented with a resolution for a formal vote.

Options: Should the CTB not approve the attached, revised "Establishment of Objective Criteria for the Selection of Design-Build Projects", the use of Guaranteed Maximum Price as a basis for awarding design-build contracts would be prohibited.

Public Comments/Reactions: None

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 § 33.1-12 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. In 2014 the General Assembly of Virginia re-codified § 33.1-12 of the Code of Virginia as § 33.2-209(B).

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.

- f) "Guaranteed Maximum Price" means the budget approved for the design-build contract which the design-build firm's lump sum price will not exceed.
- g) "Low Bid" means the contract will be awarded to the design-build firm with the lowest priced responsive bid.
- h) "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.
- i) "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.
- j) "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.
- k) "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.

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,
- Guaranteed Maximum Price.

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 § 33.1-12 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. In 2014 the General Assembly of Virginia re-codified § 33.1-12 of the Code of Virginia as § 33.2-209(B).

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.

- f) "Guaranteed Maximum Price" means the budget approved for the design-build contract which the design-build firm's lump sum price will not exceed.
- g) "Low Bid" means the contract will be awarded to the design-build firm with the lowest priced responsive bid.
- h) "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.
- i) "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.
- j) "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.
- k) "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.

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,
- Guaranteed Maximum Price.