

04. PROCUREMENT POLICIES AND PROCEDURES

4.7. Design-Build Procedures

BOS Approved – May 2, 2018

In accordance with the provisions of Chapter 43.1 Construction Management and Design-Build Contracting, being § 2.2-4378 et seq. (the “D-B Code Requirements”), of the Code of Virginia (1950, as amended) (“Code”), and consistent with the procedures adopted by the Secretary of Administration utilizing Design-Build, the Fluvanna County Board of Supervisors hereby adopts the following procedures for the procurement of Design-Build (“D/B”) contracts, as defined in § 2.2-4379, which shall be followed by the County of Fluvanna, Virginia (“County”).

4.7.1. Legislative Authority

A. Generally: Section 2.2-4300 et seq. the Virginia Public Procurement Act and Section 2.2-4378 et seq. Construction Management and Design-Build Contracting, and specifically:

Section 2.2-4301 and 2.2-4379: Definitions of design-build contract and other key terms;
Section 2.2-4303(D)(4): Exceptions to competitive sealed bidding;
Section 2.2-4378 Purpose; applicability;
Section 2.2-4382 Design-Build Procedures for local public bodies; and
Section 2.2-4383 Reporting Requirements for all Public Bodies relating to design build contracting

B. Any reference in these D-B Procedures to the Code of Virginia or other relevant Federal, State or local law is incorporated in whole herein by reference as in effect at the time of the Solicitation or Contract as such statutory provisions may be amended or replaced by any statute dealing with the same or similar subject matter.

4.7.2. General. A design-build contract is a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract. The County may contract to secure D-B projects on a fixed price or not-to-exceed price basis in accordance with *Virginia Code* § 2.2-4382(A), the requirements of that section and the D-B Code Requirements, and the procedures adopted by the Virginia Secretary of Administration for utilizing design-build or construction management contracts. The County is authorized to use competitive negotiations to procure D-B contracts when it determines in advance, and sets forth in writing, that competitive sealed bidding is not practicable or fiscally advantageous to the public, which writing shall document the basis for this determination.

4.7.3. Procedure for Approval

B. Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project

who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

B. Prior to taking any action, the County shall request authority, in writing and receive approval from the Board of Supervisors, to use a D-B contract. The request shall justify and substantiate that D-B is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the County will benefit from using D-B. The request shall also include a written justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for the use of D-B shall be stated in the Request for Proposals.

4.7.4. General Procedures

A. The D-B procurement shall be consistent with the procurement of nonprofessional services through competitive negotiation and shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the County determines appropriate for that particular construction project. Design-build construction projects shall 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.

B. The County shall appoint an Evaluation Committee (“Committee”) which shall consist of at least three members from the County, including a licensed design professional, if possible. In addition to the County members, the Committee shall include a licensed professional engineer or architect. The County shall contact the County Attorney’s Office (CAO) to determine whether a representative from the CAO should be involved.

4.7.5. Selection Procedures. On projects approved for D-B, procurement of the contract shall be a two-step competitive negotiation process. The following procedures shall be used in selecting a design build contractor and awarding a contract:

A. **Selection of Qualified Offerors (STEP I):** On projects approved for D-B, the County shall conduct a prequalification process as follows to determine which offerors are qualified to receive Request for Proposals (RFPs).

1. The County shall prepare a Request for Proposals (“RFP”) containing the County's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFP Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class “A” contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.

2. The RFP shall be posted in accordance with the current standards for the posting of public bids in the Virginia Code and in accordance with the latest edition of the Construction and Professional Services Manual.

3. The Committee shall evaluate each offeror's RFP responses and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.

4. The RFP evaluation shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied prequalification only as specified under Virginia Code § 2.2-4317, but the short list shall also be based upon the RFP criteria.

5. At least 30 days prior to the date established for the submission of proposals, the County shall advise in writing each offeror which 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.

B. Selection of Design Build Contractor (STEP II):

1. The County shall send an RFP to the design build offerors on the short list for the project and request formal proposals from them. The criteria for award shall be included in the RFP.

2. Sealed Technical Proposals as described in the RFP shall be submitted to the Committee. Separately-sealed Cost Proposals shall be submitted to the County's Purchasing Agent, and shall be secured by and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed.

3. The Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. It will inform each D-B 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 Committee during design development.

4. Based on the adjustments made to the Technical Proposals, the offeror may amend its 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.

5. The Committee shall evaluate (and rank if technical rankings are to be considered as a criteria for award) the technical proposals. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror after approval of the purchasing agent. Otherwise, the County shall open the cost

proposals and apply the criteria for award as specified in the RFP and approved by the purchasing agent.

6. The Committee shall make its recommendation for the selection of a design build contractor to the County head based on its evaluations of the technical and cost proposals and all amendments thereto. 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.

7. The County shall notify the Board of Supervisors and the County's Purchasing Agent of its selection of the Design build contractor and shall request authority to award a contract by processing the notice of award and providing supporting documents, to the purchasing division via e-mail.

8. The County will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the County may notify all offerors who submitted proposals of the County's intent to award the contract to a particular offeror at any time after the County head has selected the Design build contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.

9. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

4.7.6. Basis of Award. The basis of the award of the contract shall be in accordance with applicable law including without limitation the D-B Code Requirements and the criteria for the award shall be submitted to the Purchasing Agent, in advance, for approval. It is noted that cost is a critical component of the selection process. Guidance on methods for award can be found in the Construction and Professional Services Manual (2012 Edition, as amended) Section 7.30.1.