Arkansas State Highway and Transportation Department

RULES FOR DESIGN-BUILD CONTRACTS

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SECTION 1

Regulatory Authority

1.1 The Arkansas State Highway Commission's authority for promulgating these rules is pursuant to Ark. Code Ann. §27-65-107 and §27-67-206.

1.2 These rules shall be known as the Arkansas State Highway and Transportation Department Rules for Design-Build Contracts.

SECTION 2

Purpose

2.1 These rules describe the Arkansas State Highway Commission's procedures and regulations for the procurement of:

2.1.1 Qualification-based, design-build services and for administering design-build project contracts;

2.1.2 Qualification-based, design-build-finance services and for administering a design-build finance project contract; and

2.1.3 An agreement for concession.

SECTION 3

Definitions

3.1 Authorized entity - means a company, firm, partnership, corporation, association, joint venture, or other legal entity, including a combination of any of these entities, that has submitted a Statement of Qualifications (SOQ) and has been selected to provide a response to the Request for Proposal (RFP).

3.2 Best Value (BV) - is defined as the best Adjusted Price represented by the submitted Design-Build Proposals, as determined by the Department, at the completion of the proposal evaluation period.

3.3 Commission - means the Arkansas State Highway Commission.

3.4 Concession - means a lease, franchise, easement, permit, or other binding agreement transferring rights for the use or control of a transportation facility by the Commission to a private partner under this subsection.

3.5 Department - refers to the Arkansas State Highway and Transportation Department.

3.6 Design-Build - is a qualification-based project delivery method in which design, construction, and other related services are contracted to a single entity known as the Design-Builder through a Design-Build Contract. Design-build-finance has been recognized in Ark. Code Ann. §27-67-206 as a type of Design-Build that includes a financial services component and encompasses design-build-maintain, design-build-operate and other contracts that include financial services in addition to design and construction, including project financing, at-risk equity investment, operations, and/or maintenance of the project.

3.7 Design-Build Contract - means an agreement that provides for design and construction of improvements by a contractor or developer. The term refers to the entirety of the agreement between the Department and the Design-Builder to deliver the project, including the signed and executed agreement, all exhibits, appendices, completed forms, and general and technical provisions, along with the Design-Build Proposal provided by the Design-Builder prior to selection which cumulatively represent the complete agreement between the parties. Concession agreements are included in the term if it provides for a concessionaire to develop the project which is the subject of the agreement.

3.8 Design-Builder - refers to the Short-List Proposer selected at the completion of the RFP phase of the Procurement Process which

will be offered the opportunity to enter into the Design-Build Contract with the Department for the project. The Design-Builder may be comprised of any company, firm, partnership, corporation, association, joint-venture, or other legal entity as appropriate, pursuant to the laws of the State of Arkansas.

3.9 Design-Build Proposal - means the document submitted by the Proposer to the Department in response to the RFP.

3.10 Proposer - refers to an organization that completes all the requirements of the Request for Qualifications (RFQ) and submits a Statement of Qualifications (SOQ) to the Department in response to the Request for Qualifications. The Proposer may consist of a single firm but normally consists of a collection of firms which have organized together to pursue the project.

3.11 Request for Proposals (RFP) - means the document issued by the owner in Phase I of the two-phased qualifications-based selection process. It forms the basis for the Design-Build Proposal and may potentially become an element in the contract.

3.12 Request for Qualification (RFQ) - means the document issued by the owner in Phase I of the two-phased qualifications-based selection process. It typically describes the project in enough detail to let potential offerors determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.

3.13 Short-List Proposer - refers to a proposer who has been selected at the end of the Statement of Qualifications evaluation process as among the most highly qualified respondents to the RFQ. A Short-List Proposer will subsequently be invited to submit a Design-Build Proposal in response to the RFP released by the Department.

3.14 Solicitation - means a public notification of an owner's need for information, qualifications, or proposals related to identified services.

3.15 State highway revenues - means highway revenues as defined under §27-70-202.

3.16 Statement of Qualifications - (SOQ) –refers to the document(s) prepared by the Proposer and submitted to the Department in response to the Request for Qualifications. It provides the Proposer qualifications and experience relative to performing the Project Work as presented in the Request for Qualifications.

SECTION 4

Federal Aid

4.1 All Federal-aid Design-Build projects within the highway right- of-way or linked to a Federal-aid highway project (i.e., the project would not exist without another Federal-aid highway project) are also subject to Title 23 of the Code of Federal Regulations, section 636, regulations which are incorporated herein by reference.

4.2 If the project is not connected in any way to a Federal-aid highway project or is not receiving federal-aid funds, these provisions may not apply.

SECTION 5

Optional Use of Design-Build

5.1 The use of the Design-Build method is solely at the discretion of the Commission and the final determination of whether a project is selected by the Department for utilization of Design-Build methodology is the responsibility of the Commission.

5.2 Potential Design-Build projects may be proposed by Department staff for consideration by the Director.

SECTION 6

Guidelines and Procedures

6.1 The Commission authorizes the Department to develop Design-Build guidelines and procedures which outline the technical details and requirements of the Design-Build procurement process.

SECTION 7

Design-Build Project Procurement Process

7.1 The Department is authorized to utilize a two-step process during the procurement phase of a Design-Build Project. The Department is not required to follow a two-step process. If the two-step process is utilized the Department shall:

7.1.1 Solicit potential proposers by releasing a RFQ leading to submission of a SOQ by the Proposer and the selection of Short-List Proposers.

7.1.2 Release a detailed RFP to allow Short-List Proposers to respond with a Design-Build Proposal in accordance with the RFP.

7.1.3 Make a final selection of the Design-Builder which offers the Best Value solution for the Project based upon the criteria for each individual project.

7.2 Confidentiality

7.2.1 The Procurement process, requisite evaluations and selection is a very competitive process.

7.2.2 The Department has the obligation to keep certain Proposer information confidential through the procurement and selection process.

7.2.3 The information of unsuccessful Proposers should remain confidential unless otherwise required for release pursuant to statute, court order or some other requirement.

7.2.4 Some portions of the selected Design-Builder's information may be proprietary and not subject to release under the Arkansas Freedom of Information Act.

7.3 Request for Qualifications

7.3.1 Requests for Qualifications (RFQ) shall be project specific and shall be developed by the Department.

7.3.2 The RFQ should describe the project and scope of work and may include other requirements and/or criteria to allow a Proposer to determine their interest in the Design-Build Project. At a minimum, the RFQ shall include:

7.3.2.1 Well-defined requirements that will ensure an equitable and fair comparison.

7.3.2.2 Clearly defined requirements for technical expertise and/or values that are important for the Project.

7.3.2.3 The Evaluation Scoring Criteria for the SOQ including well defined requirements for obtaining the maximum score.

7.3.3 Additional requirements for the RFQ may be included in the Design-Build Guidelines and Procedures.

7.4 Statement of Qualifications

7.4.1 The requirements for the SOQ are project specific and will be developed by the Department on an individual project basis.

7.4.2 The SOQ is the document submitted by a Proposer that will provide the qualifications and experience of the Proposer relative to the Project Scope as presented in the RFQ.

7.4.3 Additional requirements for the SOQ may be included in the Design-Build Guidelines and Procedures.

7.5 Request for Proposals

7.5.1 Requests for Proposals (RFP) shall be project specific and shall be developed by the Department.

7.5.2 The RFP will be comprised of a compilation of documents which define the project components including Project Design Criteria (PDC).

7.5.3 The RFP describes the Project, the requirements for submitting a proposal, the selection process, the evaluation criteria, the technical requirements for designing and constructing the Project, and the various documents required to establish the Proposer's plans and abilities to perform and manage the Project. At a minimum the RFP shall include:

7.5.3.1 Instructions to Proposers containing well- defined requirements of the Proposal.

7.5.3.2 Technical Provisions clearly defining the project's scope, technical requirements, and specifications.

7.5.3.3 Reference material that may be necessary to prepare a complete response to the RFP.

7.5.3.4 The Evaluation Criteria for the Proposal including well defined requirements for obtaining the maximum score.

7.5.4 Additional requirements for the RFP may be included in the Design-Build Guidelines and Procedures.

7.6 Selection

7.6.1 The goal of the procurement process is to select the proposal that represents the best value for the project.

7.6.1.1 The Best Value approach to contract award selects the proposal in which the combination of technical, quality, operating and pricing factors most closely meet or exceed the Department's requirements.

7.6.1.2 The criteria for determining the Best Value for a project will be detailed in the project specific RFP as criteria will vary from project to project.

7.7 Design-Build Project Administration

7.7.1 After selection of a Design-Builder and execution of the Design-Build Contract, the Department takes on the responsibilities as set out and described in the Design-Build Contract.

7.7.2 The administration process of a Design-Build Contract may be pursuant to the guidelines developed by the Department or as directed on a project by project basis.

SECTION 8

Exclusive Jurisdiction

8.0 The Commission has exclusive authority to determine those projects that will use the Design-Build method.