

§4244. Design-build contracting

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Best value" means the highest overall value to the State, considering quality and cost. [PL 2009, c. 648, Pt. B, §2 (NEW).]

B. "Design-build contracting" means a method of project delivery whereby a single firm is contractually responsible for performing design, construction and related services. [PL 2009, c. 648, Pt. B, §2 (NEW).]

C. "Major participant" means a firm that would have a major role in the design or construction of a project as specified by the department in its procurement documents. [PL 2009, c. 648, Pt. B, §2 (NEW).]

D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel, building or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties and incidentals needed for a complete and functioning product. [PL 2009, c. 648, Pt. B, §2 (NEW).]

E. "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions. [PL 2009, c. 648, Pt. B, §2 (NEW).]

F. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal. [PL 2009, c. 648, Pt. B, §2 (NEW).]

G. "Public notice" means notice given electronically through the department's publicly accessible website or through advertisements in newspapers. If notice is to be given exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed project is located if any such newspaper is circulated in that county. [PL 2009, c. 648, Pt. B, §2 (NEW).]

H. "Quality" means those features that the department determines are most important to the project. Quality criteria include design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct and other factors that the department considers to be in the best interest of the State. [PL 2009, c. 648, Pt. B, §2 (NEW).]
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2. Authorization. Notwithstanding section 4243 or any other provision of law, the department may use design-build contracting to deliver projects. The department may evaluate and select proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly, as determined by the department, then the basis of award must be the best value.

The department retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities or to solicit new proposals if the department determines that doing so is in the best interest of the State.

[PL 2009, c. 648, Pt. B, §2 (NEW).]

3. Prequalification. A proposer must be prequalified to be eligible to submit a proposal. A proposer must be prequalified by a project-specific request-for-qualifications process described in this subsection, or a proposer may be a team formed of contractors and designers that are each prequalified separately for design-build contracting in accordance with ongoing prequalification procedures established by the department. The department shall specify the method of prequalification in its

discretion, except that if the basis of award is the best value, then prequalification must be through a project-specific request-for-qualifications process.

The department shall give public notice of a project-specific request-for-qualifications process. The department shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. Interested firms shall supply, for themselves and all major participants, all information required by the department. The department may investigate and verify all information received. All financial information, trade secrets or other information customarily regarded as confidential business information submitted to the department is confidential. The department shall evaluate and rate all firms submitting a conforming statement of qualifications and select the most qualified firms to receive a request for proposals. The department may select any number of firms, except that, if the department fails to prequalify at least 2 firms, the department shall repeat the request-for-qualifications process or select a different project delivery method.

[PL 2009, c. 648, Pt. B, §2 (NEW).]

4. Request for proposals. If prequalification is through project-specific prequalification, the department shall issue a request for proposals to those firms prequalified. If prequalification is through ongoing prequalification procedures established by the department, the department shall give public notice of the request for proposals. The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the department. The request for proposals must include the criteria for acceptable proposals and must include a request-for-information process that allows for clarification of such criteria. For projects to be awarded on a best-value basis, the scoring process and quality criteria must also be contained in the request for proposals. The request for proposals may also provide for a process for the department to meet with each proposer individually to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying design or other technical elements that are unacceptable to the department or that obviously would cause rejection of the proposal as nonresponsive. All such conceptual technical meetings, including submittals and responses, are confidential until award of the contract, but the department may issue addenda to all proposers to clarify design or other technical elements that will or will not be allowed. Upon award of the contract and after resolution of any procurement disputes, the department shall return documents submitted by unsuccessful proposers upon request. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all material request-for-proposals requirements as determined by the department.

[PL 2009, c. 648, Pt. B, §2 (NEW).]

5. Low-bid award. If the basis of the award is lowest cost, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The department shall first review technical proposals for responsiveness. The department shall award the contract to the proposer that submits a responsive proposal with the lowest price, if the proposal meets all material request-for-proposals requirements as determined by the department.

[PL 2009, c. 648, Pt. B, §2 (NEW).]

6. Best-value award. If the basis of the award is best value, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously.

The department shall open first each technical proposal and evaluate and score it based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality score of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential.

After completion of the review for responsiveness, the department shall publicly open and read each price proposal associated with each responsive technical proposal. The department shall calculate the overall value rating for each proposal, which is the total price divided by the quality score. The department shall award the contract to the proposer with the lowest price per quality score point, if the proposal meets all material request-for-proposals requirements as determined by the department.

[PL 2009, c. 648, Pt. B, §2 (NEW).]

7. Procurement disputes. The request for proposals must provide for resolution of disputes that may arise before award of the contract by including a dispute review board procedure in accordance with the department's standard specifications. Except in extraordinary circumstances as determined by the department, including emergency work or situations in which delay could result in the loss of funding, the request for proposals must include a provision that requires that the procurement process be suspended pending final resolution of such disputes. In cases involving such extraordinary circumstances when suspension of the procurement process does not occur, proposers that are not selected may seek monetary damages directly related to such nonselection.

[PL 2009, c. 648, Pt. B, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 648, Pt. B, §2 (NEW).

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