

CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE

POLICY MEMORANDUM NO. 114

March 23, 2009

To: All Departments, Boards, Agencies, Commissions and Corporations

From: Brenda G. Hatfield, Ph.D., Chief Administrative Officer

Subject: PUBLIC WORKS PROJECTS BY DESIGN-BUILD PROCESS

I. PURPOSE AND USE:

- A. Act 373 of the 2007 Regular Session of the Louisiana Legislature enacted Louisiana Revised Statute 38:2225.2.1 to permit “design-build” procurement and construction practices for repair and reconstruction needs occasioned by the 2005 hurricanes. The law required authorized parishes and municipalities to adopt related procedures established by the Louisiana Division of Administration. The Division issued the procedures by Emergency Rule published in the Louisiana Register, Vol. 34, No. 04, p. 590 (April 20, 2008). The City of New Orleans adopted the procedures by Ordinance No. 23168 M.C.S., approved July 18, 2008, shown as Attachment (a) hereto.
- B. As provided in the Emergency Rule (“Rule”), “design-build” is “a construction practice in which the design and construction phases are combined and the design-builder is selected by a qualifications-based process with an established schedule and price.” It follows a sequence by which the owner announces the need, identifies interested design-builders, receives and reviews qualifications, selects likely design-builders, details and reports service scope, receives and evaluates technical proposals, and selects a design-builder and proposal.
- C. This guidance supplements La. R.S. 38:2225.2.1 and the adopted Emergency Rule practical City application. It develops City policies and procedures implementing design-build procedures for eligible City repair and reconstruction projects. It issues pursuant to City Charter Section 4-302(5) and applies to eligible initiatives by Executive Branch Departments, Boards and Commissions (“Departments”).
- D. La. R.S. 38:2225.2.1 provides that design-build procurement authority will expire July 10, 2009. Unless legislation extends the expiration date, regular competitive bid and professional services procurement requirements will apply to public works projects contracted after July 10, 2009.¹

City Charter Section 6-308, CAO Policy Memorandum 113, and La. R.S. 38:2212 et seq. state the law and City guidance for regular public works procurements. Executive Order CRN 09-01 and CAO Policy Memorandum 8R direct procurement and contracting practice for City professional services contracts, including contracts for professional engineering, design, and architect services.

II. POLICY:

- A. City design-build initiatives will comply with all applicable laws, regulations, and guidance. They will advance under direct City authority and control and obtain needed approvals from authorized City officials.
- B. Public procurement is an Inherently Governmental Function. All City procurements will issue, progress, select, and contract under direct City control and authority. The City may apply consultants to develop specifications for City review and approval.
- C. Subject to regular City authority, and except as otherwise provided, the sponsoring Department is responsible for overall design-build project and procurement development management, and administration. The sponsoring Department will maintain complete records documenting project developments, specification, and approvals.
- D. The City Purchasing Bureau will manage, track and document design-build procurements. The Bureau will publicize announcements and notices, issue invitations and requests, receive Letters of Interest, qualification packages, and technical proposals, and report selections.
- E. The City Disadvantaged Business Enterprise program will apply to design-build projects. (See CAO Policy Memorandum 46R)

Committed Funding: Pursuant to City Code §70-421, DEPARTMENTS WILL NOT ORDER REQUEST, OR RECEIVE ANY PUBLICWORK WITHOUT FUNDING COMMITTED IN ADVANCE BY SIGNED PURCHASE ORDER ISSUED BY THE PURCHASING BUREAU. Such unfunded transactions are unlawful, and the City Code prohibits the City to issue related payment.

III. PROCEDURE:

- A. **Advance Approval:** Design-build projects require advance planning, development and approval.
 - 1. Application: Departments proposing a design build project will apply to the Chief Administrative Officer (“CAO”) for advance project approval. Applications will explain the proposal, request approval, and contain the following:
 - a) The Announcement and Notice of Intent intended for publication to interested design-builders according to Rule §175. As provided, the Announcement and Notice of Intent will generally describe the work and purpose, project a cost and budget, state the DBE participation requirement, and otherwise state information useful to potential design-builders to determine interest in the project.
 - b) A statement whether the project is a “more complex” project or a project “... with [a scope] which permit[s] flexibility and innovation in the design approach” requiring the City to compensate unsuccessful “short lived” entities for the expense of preparing the technical proposal. (See Rule §§177 and 191). If statement reports the project suited for compensation, the statement will estimate the preparation cost of a single technical proposal.

- c) A projected project schedule, including planned dates for announcements, letters of interest deadline, requests for qualifications, qualification packages deadline, qualification evaluation period, technical proposal request and deadline, technical proposal evaluation period contract, Notice to Proceed, and project completion. Dates are subject to change but will inform the CAO consideration.
 - d) Confirmation that the City Council (governing authority) has adopted the project for design-build procurement. (See La. R.S. 2225.2.1 A.[2]).
 - e) Confirmation that the project will build or repair a public building or structure destroyed by Hurricane Katrina or Hurricane Rita. (See La. R.S. 38:225.2.1A.[2]).
 - f) The Estimated cost and the funding and funding source planned for the project. The Department will dedicate needed project funding when the City selects designer-builder.
 - g) A recommended DBE participation requirement.
 - h) A description of contractor work and related costs incurred or expected to be incurred to procure the project.
 - i) Any other documents or information required or useful in the purpose.
2. **Approval and Notice:** The CAO will report the decision to the sponsoring department. For approved projects, the Department head will select and notify at least three City employees to serve as Qualifications Evaluation Committee. The Department head will select and notify persons, including a chairman, to serve as the Technical Review Committee according to Rule §193. For employees and other persons not subject to his authority, the Department will refer the selection to the Chief Administrative Officer for confirmation or assistance in the purpose. No person may serve on both qualifications Evaluation Committee and the Technical Proposal Evaluation Committee. The sponsoring Department will supply copies of solicitation documents to all committee members.
- B. Publication and Qualifications Review**
- 1. The sponsoring Department will refer approved design-build projects to the Purchasing Bureau for publication of the initial Announcement and Notice of Intent. The submission to the Purchasing Bureau will request publication dates and state any publication needs beyond those required in Rule §175. The Notice of Intent will state a response deadline.
 - 2. The Purchasing Bureau will publish the Announcement and Notice of Intent as required by Rule §175, and also to the City procurement website, and otherwise as requested. The first

publication will appear at least thirty days before the response deadline. The Purchasing Bureau will record and track the matter in regular City procurement systems.

3. The Purchasing Bureau will receive Letters of Interest and report interested potential design-builders to the sponsoring Department. The sponsoring department will prepare a Request for Qualifications package and deliver it to the Purchasing Bureau for distribution. As required by Rule §177, the Request for Qualifications will detail all submission requirements, including information and documents, and specify compensation payable for unsuccessful responsive technical proposals (if any, see Rule §191) and submission deadline. The Request will describe the Scope of Services but need not yet apply the “Scope of Services Package” described in Rule §187. The Request for Qualifications will contain the DBE Notice required by Policy Memorandum 46 and require that qualifications submissions commit participant compliance with the City DBE Program. It will not require participants to report DBE engagements or failed best efforts to obtain them in qualifications submissions. The Purchasing Bureau will send a Request for Qualifications to all design builders who submit letter of interest.
4. The Purchasing Bureau will receive and secure Qualifications Packages, documenting receipt. It will not accept packages received after the submission deadline. The Purchasing Bureau will deliver packages to the sponsoring department, obtaining a receipt therefore. In the City receives fewer than three submissions, the department head will inform the Chief Administrative Officer, who will determine whether the design build procurement will continue. Otherwise, the Department head will deliver qualifications packages to the Qualifications Evaluation Committee and task it to perform the evaluation and selection.
5. The Evaluation Committee will first examine qualifications submissions for responsiveness to requirements. It will detail and report responsiveness failures. As provided by Rule §177, the committee will not consider any response failing to meet all of the requirements contained in the Request for Qualifications. The Committee will evaluate responsive submissions according to Rule §181 and §183. Except as provided in Rule §183, it will select at least three highest-rated entities to a “short list” and report the list to the CAO, sponsoring department, and the Purchasing Bureau.

C. Technical Proposals and Selection

1. The sponsoring department will prepare and “Invitation to Submit a Detailed Technical Proposal” and deliver it to the Purchasing Bureau for distribution. The Invitation will detail the “Scope of Services Package” including any revisions within the project scope of services.
 - a. The Invitation will state related requirements and detail project information according to Rule § 185, 187, and 189.
 - b. The Invitation will require participants to submit DBE engagements or failed best efforts to obtain them in a separate envelope marked “DBE Information” and identified with the project name, participant name, authorized representative signature, and date, contained in the Technical Proposal package.

- c. According to Rule §189, it will require participants to submit lump sum price bids in a separate sealed envelope marked “Price Bid” and identified with the project name, participant name, authorized representative signature, and date, contained in the Technical Proposal package.
- d. Invitations will state a proposal submission deadline.

The Purchasing Bureau will send Invitations, including the “Scope of Services Package” to persons and firms selected to the short list.

- 2. The Purchasing Bureau will receive and secure Technical Proposals, documenting receipt. It will not accept proposals received after the submission deadline. The Purchasing Bureau will separate DBE submissions and send them to the DBE Compliance Officer for review, obtaining a receipt therefore. The Purchasing Bureau will deliver proposal packages without DBE sections but including sealed Price Bids to the sponsoring department, obtaining a receipt therefore.
- 3. The DBE Compliance Officer will review submissions for compliance with DBE Program requirements. He will report his determinations to the CAO and department head. Technical Proposals determined not in compliance with DBE Program requirements are not eligible for selection, and the department head will not refer them to the Technical Review Committee.
- 4. The department head will deliver eligible technical proposal packages (without DBE submissions) to the Technical Review Committee and task it to perform the evaluation and selection. The Price Bids will remain sealed and in the custody of the Technical Review Committee chairman until he opens and applies them to determine the winning proposal to rule §195.
- 5. The Technical Review Committee will first examine technical proposals for responsiveness to requirements. It will detail responsiveness failures. It will not consider or evaluate non-responsive proposals.
- 6. The Technical Review Committee will evaluate responsive technical proposals according to Rule §§193 and 195 and report its selection to the CAO, sponsoring Department, and Purchasing Bureau.
- 7. At direction from the Technical Review Committee chairman, the Purchasing Bureau will report technical scores to design-builders submitting technical proposals. The Purchasing Bureau will manage appeals submitted according to Rule §197.
- 8. After the appeals period has passed and the department head has decided any appeals, the Technical Review Committee chairman will adjust technical scores, open and apply price proposals, and determine the winning proposal according to Rule §195. The Committee chairman will report results to the CAO, sponsoring department, the Purchasing Bureau, and all Technical Review Committee members.

9. The Sponsoring department will negotiate and develop final contractual arrangements with the selected design builder. It will commit required funds. It will compile procurement, funding, and contract documents and submit them to the Law Department for project contracting according to CAO Policy Memorandum 113. It will pay required compensations to unsuccessful and responsive short-listed entities if committed in advance.

IV. INQUIRIES

If you have any questions regarding his policy, please contact Mr. Fred Wild, Law Department at 658-9816.

Attachments

BGH, PH.D. FW/fw