

"Design-Build" means a process involving contracting with a single entity for both the design and construction of a Public Works Project pursuant to a competitive negotiation process. Design-Build also includes projects where in addition to design and construction, other services may be furnished by the Design-Build Entity including, but not limited to, soil/materials testing and soil remediation.

"Design-Build Contract" means a contract between the City and a Design-Build Entity to furnish the architecture, engineering, and related services as required for a given Public Works Project, and to furnish the labor, materials and other construction services for the same project. A Design-Build Contract may be awarded conditioned upon subsequent refinements in scope and price during the development of the design, and may permit the City to make changes in the scope of the Public Works Project without invalidating the Design-Build Contract.

"Design-Build Entity" means the entity (whether, natural person, partnership, joint venture, corporation, business association, or other legal entity) that proposes to enter into a contract with the City to design and construct any Public Works Project under the procedures of this Ordinance.

"Design-Build Entity Member" means any person who provides licensed contracting, architectural or engineering services.

"Performance Criteria" means the requirements for the Public Works Project, including as appropriate, capacity, durability, production standards, ingress and egress requirements, or other criteria for the intended use of the Public Works Project, expressed in conceptual documents, performance-oriented preliminary drawings, outline specifications and other documents provided to Design-Build Entity by the Using Agency establishing the project's basic elements and scale, and their relationship to the work site suitable to allow the Design-Build Entity to make a Proposal.

"Proposal" means an offer to enter into a Design-Build Contract, as further defined in this Ordinance.

"Request for Proposals" means the document or publication whereby a Using Agency solicits proposals for a Design-Build Contract.

"Public Works Project" shall have the same meaning as the term "Construction" as defined in the City's Purchasing Resolution, as amended from time to time.

"Using Agency" shall have the meaning defined in the City's Purchasing Resolution, as amended from time to time. (Ord. 6830 § 1, 2005)

Section 1.07.030 Request for Proposals

For purposes of this Chapter only, prior to procuring a Design-Build Contract, the Using Agency shall prepare a Request for Proposals containing, at minimum, the following elements:

(a) The procedures to be followed for submitting Proposals, the criteria for evaluation of the Proposals and their relative weight, the procedure for selection of a Design-Build Entity and the timing for making awards.

(b) The proposed terms and conditions for the Design-Build Contract.

(c) The Performance Criteria.

(d) A description of the project approach, work plan or other submittals to be submitted with the Proposal, with guidance as to the form and level of completeness required.

(e) A schedule for planned commencement and completion of the Design-Build Public Works Project.

(f) Any Disadvantaged Business Enterprise or HUD requirements.

(g) The minimum qualifications that the Design-Build Entity will be required to possess to be deemed responsive.

(h) Requirements for performance bonds, payment bonds and insurance (including professional liability insurance) as determined by the Risk Manager and City Attorney.

(i) The required bidding process for subcontractors not listed at the time of submission of the Proposal, in accordance with Section 1.07.180 (b) (2).

(j) Any other information that the Using Agency in its discretion chooses to supply, including without limitation, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records. (Ord. 6830 § 1, 2005)

Section 1.07.040 Performance Criteria

Performance criteria shall be prepared by the Using Agency or a design professional duly licensed by the State of California who shall be referred to as the "performance criteria developer". The performance criteria developer shall be disqualified from submitting a Proposal to enter into the Design-Build Contract as a Design-Build Entity or as a subcontractor or team member of a Design-Build Entity. The Design-Build Entity shall not be permitted to delegate services under the Design-Build Contract to the performance criteria developer.

The Using Agency, in consultation with the performance criteria developer, shall determine the scope and level of detail required for the Performance Criteria. The Performance Criteria shall be detailed enough to permit qualified Design-Build Entities to submit Proposals in accordance with the Request for Proposals, given the nature of the Design-Build Public Works Project and the level of design to be provided in the Proposal. (Ord. 6830 § 1, 2005)

Section 1.07.050 Advertisement

Notice of Request for Proposals shall be advertised in the same manner in which formal bids generally are solicited for Public Works Projects for the City. (Ord. 6830 § 1, 2005)

Section 1.07.060 Prequalification

The Using Agency may establish a prequalification process for Design-Build Entities on a project by project basis, that specifies the prequalification criteria, standardized questionnaire and the manner in which the Design-Build Entities will be selected. (Ord. 6830 § 1, 2005)

Section 1.07.070 Prequalification Criteria

Pre-qualification may be limited to consideration of all or any of the following criteria supplied by a Design-Build Entity:

(a) Submission of documentation establishing that Design-Build Entity entering into the Design-Build Contract is a licensed contractor (Class A, B , or C, as specified in the RFP) and holds an architect and engineering license or subcontracts that license.

(b) Submission of documentation establishing that the Design-Build Entity or its Members have completed projects of similar size, scope, structure or building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the Design-Build Public Works Project.

(c) Submission of a proposed project management plan establishing that the Design-Build Entity has the experience, competence, and capacity needed to effectively complete the Design-Build Public Works Project on schedule.

(d) Submission of documentation establishing that the Design-Build Entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the City that the Design-Build Entity has the capacity to complete the Design-Build Public Works Project.

(e) Provision of a declaration that neither the Design-Build Entity, nor any Design-Build Entity Member, under its current or former name, has had a surety company complete any project within the past 5 years.

(f) Provision of a declaration providing detail for the past five years concerning all of the following:

(1) Civil or criminal violations of the Occupational Safety and Health Act against any Design-Build Entity Member.

(2) Civil or criminal violations of the Contractors' State License Law against any Design-Build Entity Member.

(3) Conviction of any Design-Build Entity Member for submitting a false or fraudulent claim to a public agency.

(4) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, state disability insurance withholding requirements, or unemployment insurance payment requirements against any Design-Build Entity Member. For purposes of this subsection, only violations by any Design-Build Entity Member, as an employer, shall be deemed applicable, unless it is shown that the Design-Build Entity Member in his or her capacity as an employer, had knowledge of a subcontractor's violation or failed to comply with the conditions set forth in Section 1775(b) of the State Labor Code.

(5) Civil or criminal violations of federal or state law against any Design-Build Entity Member governing equal opportunity employment, contracting or subcontracting.

(g) Provision of a declaration that the Design-Build Entity will comply with all other provisions of law applicable to the Design-Build Public Works Project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge. (Ord. 6830 § 1, 2005)

Section 1.07.080 False Declaration Unlawful

The information concerning the Design-Build Entity's qualifications and experience shall be verified under oath by the Design-Build Entity and its Members. It is unlawful to submit any declaration under this Chapter containing any material matter that is false. (Ord. 6830 § 1, 2005)

Section 1.07.090 Withdrawal of Proposals

Proposals may be withdrawn by written notice to the Using Agency for any reason at any time prior to the deadline set forth in the RFP and the proposal guarantee for the Proposal shall be returned. Timely withdrawal of a Proposal shall not prejudice the right of a Design-Build Entity to timely file a new Proposal. (Ord. 6830 § 1, 2005)

Section 1.07.100 Proposal Security

All Proposals shall be accompanied by a cashier's check or certified check made payable to the City of Riverside, or a bidder's bond executed by a surety admitted to engage in such business in the State of California, for an amount equal to 10% of the amount of the Proposal and no Proposal shall be considered unless such proposal guarantee is properly enclosed therewith. The proposal guarantee shall be forfeited if the Proposal is withdrawn beyond the deadline set forth in the RFP, or if the Proposal is accepted but the Design-Build Entity fails to execute the Design-Build Contract. (Ord. 6830 § 1, 2005)

Section 1.07.110 Review and Evaluation of Proposals

Once received, Proposals shall be submitted to the performance criteria developer prior to review by the selection committee, as defined below. Clarifications may be required to ensure Proposals are responsive to the RFP. Clarifications may require revised cost and/or technical proposals. No Proposal shall be considered if the performance criteria developer confirms that the Proposal is not consistent with the information required by the Request for Proposals. Proposals will be opened in confidence. Adequate precautions shall be taken to

treat each proposer fairly and to insure that information gleaned from competing proposals is not disclosed to other proposers. Prices and other information concerning the Proposals shall not be disclosed until a recommendation for award is made to the Awarding Authority. All Proposals received shall become a matter of public record and shall be regarded as public, with the exception of those elements of each Proposal which are identified by a proposer as business trade secrets and plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required or permitted under the California Public Records Act or otherwise by law, the City shall in no way be liable or responsible for the disclosure of any such records or any part thereof. (Ord. 6830 § 1, 2005)

Section 1.07.120 Selection Committee

The Using Agency may appoint a selection committee to review and rank the Proposals of the Design-Build Entities. The selection committee shall use the evaluation criteria set forth in this Chapter and the applicable Request for Proposals in its review of the Proposals. The composition of the committee shall be within the discretion of the Using Agency and may include, but not be limited to: members of the City Council, members of department administration or staff, the performance criteria developer, any person having special expertise relevant to selection of a Design-Build Entity (design or construction experience) and residents of the community. (Ord. 6830 § 1, 2005)

Section 1.07.130 Selection Method

The following method shall be utilized in selecting a Design-Build Entity for award of a Design-Build Contract:

- (a) Criteria utilized may include, but not be limited to:
 - (1) An evaluation of overall quality, capability, resource availability and financial stability of the Design-Build Entity.
 - (2) An evaluation of references provided with respect to responsiveness, quality of work, timeliness and overall performance.
 - (3) An evaluation of the Design-Build Entity Members' experience, training and qualifications.
 - (4) Consideration of items such as proposed design approach, initial and/or life cycle costs, project features, quality, capacity, schedule, and operational and functional performance of the facility.
 - (5) The extent to which the Design-Build Entity's Proposal meets the Performance Criteria and other requirements set forth in the Request for Proposals.
 - (6) Analysis of the cost relative to the Design-Build Entity's ability to meet the Performance Criteria and other requirements set forth in the Request for Proposals.
 - (7) Whether the cost as provided in the Proposal is guaranteed firm, evidenced in writing and signed by an authorized representative of the Design-Build Entity.
- (b) Depending on the number of Proposals received, the Using Agency or the Selection Committee may develop a "short list" of top ranked Design-Build Entities.
- (c) The Using Agency or Selection Committee may require "short listed" Design-Build Entities to submit to an interview and/or make a presentation to establish a final ranking.
- (d) The Using Agency or Selection Committee will then begin negotiations with the top ranked Design-Build Entity. The negotiations may include but not be limited to project costs, scope, and schedule. If negotiations are unsuccessful, negotiations will cease with the top ranked Design-Build Entity and may begin with the next highest ranked Design-Build Entity.
- (e) Award shall be made by the Awarding Entity to the Design-Build Entity whose Proposal is judged as providing the Best Value to the City while meeting the objectives of the Design-Build Public Works Project. (Ord. 6830 § 1, 2005)

Section 1.07.140 Approval of Design-Build Contracts

All Design-Build Contracts shall be approved as to form by the City Attorney. (Ord. 6830 § 1, 2005)

Section 1.07.150 Change Orders

Change Orders to Design-Build Contracts shall be subject to the limits and requirements set forth in the City's Purchasing Resolution, as amended from time to time. (Ord. 6830 § 1, 2005)

Section 1.07.160 Retention

If the Awarding Entity awards a Design-Build Contract, retention of 10% shall be withheld from progress payments, subject to the City's right, in its sole discretion, to reduce retention to 5% and to permit progress payments for design services to be made without withholding retention. (Ord. 6830 § 1, 2005)

Section 1.07.170 Right to Reject Proposals

Nothing in this Chapter shall require the City to accept any Proposal and the City hereby reserves the right to reject any and all Proposals. City assumes no responsibility for the costs incurred by any Design-Build Entity in preparation of any Proposal. (Ord. 6830 § 1, 2005)

Section 1.07.180 Subcontractor Listing

The City recognizes that the Design-Build Entity is charged with performing both design and construction. Due to the fact that a Design-Build Contract may be awarded prior to completion of the design, it is often impractical for the Design-Build Entity to list all subcontractors at the time of award.

(a) It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Chapter in a manner that retains protection for subcontractors while enabling Design-Build Public Works Projects to be administered in an efficient manner.

(b) All of the following requirements shall apply to subcontractors, licensed by the State of California, that are employed on a Design-Build Public Works Project undertaken pursuant to this Chapter.

(1) The Using Agency in each Request for Proposals shall specify the essential design disciplines, construction trades or types of subcontractors that must be listed by the Design-Build Entity in the Proposal.

(2) Subcontractors not listed in the Proposal shall be awarded subcontracts by the Design-Build Entity in accordance with a bidding process set forth in the Request for Proposals. The Design-Build Entity shall furnish to City documentation verifying that all subcontractors not listed at the time of award were subsequently awarded subcontracts in accordance with the process set forth in the Request for Proposals. All subcontractors that are listed in the Proposal or subsequently awarded subcontracts shall be afforded the protection of all applicable laws. (Ord. 6830 § 1, 2005)

Section 1.07.190 Indemnification

The Design-Build Contract shall include a provision that requires the Design-Build Entity to defend, indemnify and hold harmless the City and its officers, employees and agents from liability arising from the acts of the Design-Build Entity Members in connection with the performance of the Design-Build Contract. (Ord. 6830 § 1, 2005)

Section 1.07.200 Purchasing Resolution

To the extent not inconsistent with this Chapter 1.07, the provisions of the City's Purchasing Resolution, as amended from time to time, shall apply to all Design-Build Public Works Projects. (Ord. 6830 § 1, 2005)

Section 1.07.210 Severability and Effect

The provisions of this Ordinance are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstance is invalid, the remaining provisions and the application of those provisions to other persons or circumstances are not affected by that decision. (Ord. 6830 § 1, 2005)