

3003.3 Design-Build Contracts

The board may enter into design-build contracts in accordance with state law if doing so is in the best interest of the public in order to complete the public improvement.

Requirements to Use Process. This decision will be included on the agenda of a regular meeting and the meeting minutes will describe the rationale for using this process. The project must meet one of the following conditions for Teachwell to utilize it:

- The project requires a design and construction timeline faster than the traditional bid process would allow;
- The complexity of the project requires close coordination of design and construction expertise or an extreme amount of coordination;
- The purchasing agency requires early cost commitments; or
- The project can be defined at an early stage and the purchasing agency is able to specify all requirements.

Definitions. For purposes of this policy:

- Design-Build Contract (DB Contract) means any contract between Teachwell and a design-builder to furnish the architecture, engineering, and related services as required, and the labor, materials, and other construction services for a public improvement. A design-build contract may be conditioned upon future refinements in scope and price, and may permit the purchasing agency to make changes in the scope of the project without invalidating the design-build contract;
- Design-Builder means any person that proposes to design and construct a public improvement under state law;
- Performance-Criteria Developer (PCD) means any person and the person's subcontractors retained by the purchasing agency to develop performance criteria;
- Performance criteria means requirements for the public improvement, including as appropriate, capacity, durability, production standards, ingress and egress requirements, building code requirements, or other criteria for the intended use of the public improvement, expressed in performance-oriented specifications or drawings suitable to allow the design-builder to make a proposal;

- Proposal means any offer to enter into contract in response to a request for proposals;
- Request for Proposals (RFP) means any document, whether attached or incorporated by reference, utilized by Teachwell when soliciting proposals for contracts for the procurement of supplies, services, or construction.
- Request for qualifications (RFQ) means the document or publication whereby a purchasing agency solicits interested design-builders to pre-qualify for a design-build contract;

Qualifications for a PCD. In order to certify an applicant, the Superintendent shall make a finding that a PCD is fully qualified to render the required service. Factors to be considered in making this finding may include:

- capabilities to perform,
- adequacy of personnel,
- past record and performance, and experience; and
- consideration of recent, current, and projected workloads;
- experience;
- equipment and facilities;
- promptness, and the quality of work previously done by applicant;
- suitability to the particular task;
- willingness to meet time and budget requirements;
- and such other qualities as are found necessary to consider in order to determine whether or not, if awarded the contract, the applicant could perform it strictly in accordance with its terms capabilities to perform.

Procedure to select a PCD. Teachwell will employ a licensed engineer or architect as PCD when the project will be over 5,000 square feet. The PCD will not submit a proposal to enter into the DB Contract, and the DB may not delegate or contract services to the PCD.

To apply to be Teachwell's PCD, applicants must submit a current statement of qualifications and performance data to Teachwell. The statement of qualifications must include evidence that the applicant is licensed or certified to practice architecture or engineering pursuant to state law. Applicants must update any information provided to Teachwell to reflect any changed conditions of the applicant.

Rules and Procedures for Selecting and Hiring a PCD. The Board shall evaluate each qualified applicant's current statement of qualifications and

performance data. The Board shall conduct discussions with, and may require public presentations by applicants regarding their qualifications, approach to the project, ability to furnish the required service, and other factors identified above.

The Board shall negotiate a contract with the most qualified applicant for compensation which the Board determines is fair and reasonable. The Board shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.

If the Board is unable to negotiate a satisfactory contract with any applicants, it may select another applicant and continue negotiations until an agreement is reached or review the agreement under negotiation to determine the possible cause for failure to achieve a negotiated agreement.

Prequalification of Design Builders. Teachwell, with the help of the PCD, shall prepare a request for qualifications and advertise it in accordance with state law as it would a public bid. The request for qualifications will include:

- Teachwell's name;
- a description of the project;
- budget limits for the project;
- the requirements the DB must have; and
- the criteria and their relative weight for prequalification.

Letters of qualifications shall be reviewed by Teachwell in consultation with the PCD. Teachwell and the PCD will evaluate prospective Design-Builders based on the information submitted to Teachwell in response to the request for qualifications.

Teachwell shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for qualifications and determine which proposals prequalify. Each prequalifying proposal will receive a request for proposal in accordance with this policy.

Contents of RFPs. Teachwell, with the help of the PCD, shall prepare the RFP, which shall contain:

- Teachwell's name and the identity of the performance criteria developer;
- the procedures to be followed for submitting proposals;
- the criteria for evaluation of a proposal and its relative weight;
- the procedures for making awards;
- the proposed terms and conditions for the design-build contract;

- the performance criteria, which shall include the following:
 - Teachwell's preliminary program of space needs and special requirements;
 - performance standards for materials and equipment; and
 - minimum system requirements and efficiencies;
- a description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that is acceptable;
- a schedule for planned commencement and completion;
- budget limits;
- affirmative action, disadvantaged business, or set-aside goals or requirements for the design-build contract, if any;
- requirements for performance and payment bonds, and insurance;
- the compensation, if any, to be given to design-builders submitting proposals who are not awarded the project;
- whether project financing is in place;
- a schedule for payments to the design-builder;
- site identification and geotechnical information if the site is provided by Teachwell;
- location of existing utilities and their capacity if the site is provided by Teachwell;
- warranty and guarantee requirements; and
- other information Teachwell chooses to require.

Preparing and Submitting Proposals.

Prequalified Design-Builders shall prepare and submit Proposals as required by the RFP. All Proposals shall be sealed. Proposals shall not be opened until expiration of the time established for making Proposals as set forth in the RFP. Proposals may be withdrawn at any time prior to acceptance. Teachwell has the right to reject any and all Proposals except for the purpose of evading the law. Teachwell may thereafter solicit new Proposals using the same or a different Project Performance Criteria.

Evaluation of Proposals.

Teachwell may proceed to enter into a DB contract in accordance with state law. The PCD will review the proposals in accordance with the performance criteria. The PCD will determine whether a proposal is consistent with the performance criteria and issue a written decision to the Board if the proposal conforms to the performance criteria. The Board will evaluate the following factors when evaluating the proposals:

- (1) The financial resources of the design-builder to complete the project;
- (2) The ability of the proposed personnel of the design-builder to perform;
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder;
- (4) The quality of performance on previous projects ;
- (5) The ability of the design-builder to perform within the time specified;
- (6) The previous and existing compliance of the design-builder with laws relating to the contract; and
- (7) Such other information as may be secured having a bearing on the selection.

The Board will assign a relative weight of each of these factors, which must match those as described in the RFP.

Negotiations between Teachwell and Design-Builders Submitting Proposals Prior to Teachwell's Acceptance of a Proposal. The Board may negotiate with those submitting proposals prior to accepting a proposal. These negotiations may encompass any terms provided for in the proposals and may take place amongst multiple offerors simultaneously. Teachwell will make efforts to ensure the negotiation process remains confidential and will not share proprietary information between the offerors.

Awarding DB Contracts. The Board will determine there was adequate competition in the proposal process prior to awarding a contract. After this determination, the Board may accept in writing the proposal it considers most advantageous to Teachwell. The Board will then give written notice to those who submitted rejected proposals of its decision, and will make available to the public the criteria scores for each proposal received. The PCD contract will terminate upon the award of the DB contract.

Awarding Emergency DB Contracts. The Board may award a DB contract without following the terms of this policy in accordance with state law in the event of an emergency.

Protests Relating to the Solicitation or Execution of DB Contracts. As it pertains to protests of Board action under this policy, the following definitions apply:

- Interested party shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by Teachwell to another party or by the failure of Teachwell to award a contract to such actual or prospective bidder.
- Protest shall mean a written objection by an interested party on any phase of the bidding process, including specification, preparation, bid solicitation, and intent to award.

Right to Protest. An interested party may protest to the Superintendent. The protest shall be submitted in writing on company letterhead within five working days after public notice of the bid. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening or the closing date for receipt of proposals. In all other cases, the protest must be filed within five working days following the selection of the design-builder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest". The written protest shall include as a minimum the following:

- The name and address of the interested party;
- Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- A detailed statement of reasons for the protest;
- Supporting, exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated; and a list of all persons who have knowledge of facts relevant to the protest; and
- The action(s) the protestor desires Teachwell to take to resolve the protest.

The Superintendent will immediately decide upon receipt of the protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. Teachwell will proceed with the solicitation or with the award of the contract, unless the Superintendent determines that the protest is clearly meritorious or that delaying award of the contract will not prejudice the interests of Teachwell.

Resolving Protests. Prior to the commencement of an administrative review by the Board concerning any protest, the Superintendent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Superintendent shall create and deliver a Decision to the protestor within a reasonable time after the written protest was received. If not satisfied with the decision of the Superintendent, any interested party protester may appeal to the Board, but the decision shall be final unless the interested party protester files a timely appeal with the Board as allowed by District policy.

Adopted on: 8/15/2023

Revised on:

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