

NUMBER: 1628

TITLE: **Utilization of Fixed Price Design-Build or Construction Management Contracts as Methods of Procurement**

APPROVED: September 9, 2005

I. **Background**

The 2005 General Assembly session passed HB 2866 and SB 1327 to establish the Restructured Higher Education Financial and Administrative Operations Act. This Act allows public institutions of higher education restructured financial and operational authority as described in subdivisions A1 through A13 of Section 23-38.88 of the Act.

Pursuant to § 23-38.88, *Eligibility for Restructured Financial and Administrative Operational Authority*, subdivision A13 states public institutions of higher education may “utilize as methods of procurement a fixed price, design-build or construction management contract...” provided that the Board of Visitors adopts policies and procedures which are consistent with the requirements of the Virginia Public Procurement Act and the procedures adopted by the Secretary of Administration for such methods of procurement.

II. **Board of Visitors Policy**

It is the policy of the Board of Visitors to use fixed-price design build and construction management contracts only as allowed under the Virginia Public Procurement Act. The Board of Visitors shall approve the use of these processes in advance of solicitation on a case-by-case basis. In the case of General Fund projects, their use shall be consistent with the procedures adopted by the Secretary of Administration and published in the Commonwealth’s Construction and Professional Services Manual (CPSM). In the case of Non-General Fund projects under the Pilot Decentralization Program, the use of these methods of procurement will be consistent with the provisions of the Memorandum of Understanding (MOU) Concerning Capital Outlay Projects executed by the University with the Secretary of Administration, as laid out in the Commonwealth’s Bureau of Capital Outlay Management’s (BCOM) Construction and Professional Services Manual (CPSM) and any properly approved amendments to that MOU.

III. **Authority**

The Vice President for Administration and Finance or the Vice President’s designee shall be responsible for interpretation, implementation and compliance of this policy. The Vice President for Administration and Finance may delegate this authority by letter.

IV. **Definitions**

A. **BCOM** - The Commonwealth’s Bureau of Capital Outlay Management, an entity of the DGS reporting to DEB.

- B. Capital Projects - Construction projects in excess of \$500,000 that have been approved by the General Assembly.
- C. Construction - Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.
- D. Construction Management - Services provided under a contract with the Owner, which generally include coordinating and administering construction contracts for the benefit of the Owner, but may also include, if provided in the contract, furnishing construction services to the Owner.
- E. CPSM - The Commonwealth's Construction and Personal Services Manual issued by BCOM
- F. DEB - The Commonwealth's Division of Engineering and Buildings which reports to DGS.
- G. DGS - The Commonwealth's Department of General Services which reports to the Secretary of Administration.
- H. Design-Build - Services in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

V. Procedures

- A. Solicitation
 1. Determine and document the basis for this determination that use of the Fixed-Price Design-Build or Construction Management method of procurement is more advantageous to the University than use of formal sealed bidding that is the traditional design-bid-build process.
 2. Determine whether or not the project meets the criteria set out for use of Fixed-Price Design-Build or Construction Management in the CPSM.
 - a) For Non-General Fund projects document the file with the finding.
 - b) For General Fund projects request permission to use (or if appropriate request a waiver to use) the Design-Build or CM method of procurement from the Director of DEB.
 3. Issue a Request for Qualification (RFQ), and after short-listing 3 to 5 submitters, issue a Request for Proposals (RFP), or
 4. Request authority from the Director of DEB to combine the Request for Qualifications and Request for Proposals in one document.

5. Issue the Solicitation Document(s)
 - a) The Design-Build RFP will contain facility requirements, building and site criteria, site and survey and other relevant technical information. It will also contain the evaluation criteria to be used in awarding the contract. For General Fund projects, proposal cost must be at least 55% of the evaluation weight.
 - b) The CM RFP will contain the scope of services, including pre-construction and CM At-Risk services, and the evaluation criteria to be used in awarding the contract. For General Fund projects, proposal cost must be at least 55% of the evaluation weight.
 6. Post notice of the RFQ and RFP on eVA and advertise in newspapers as required by the VPPA and CPSM.
- B. Evaluation of Proposals
1. Establish an evaluation committee with membership as required by the CPSM.
 2. Evaluate the proposals in accordance with the criteria set out in the RFP.
 - a) If separate RFQ and RFP solicitations were used, the evaluation committee will evaluate the proposals short-listed under the RFQ.
 - b) If the RFQ and RFP are combined in one solicitation document, the evaluation committee will short-list the most qualified proposers for the next step in the process.
 3. Conduct interviews and negotiations in accordance with the process set out in the RFP.
 4. Based on the evaluation criteria scoring system laid out in the RFP, determine the highest-ranked offeror.
 5. Ensure that the highest-ranked offeror is or is partnered with:
 - a) An engineer or architect licensed in Virginia by the Department of Professional and Occupational Regulation.
 - b) A construction contractor licensed in Virginia as a Class A Contractor by the Department of Professional and Occupational Regulation.

C. Recommendations for Award

1. Upon determination of the highest-ranked offeror, recommend contract to the Vice President of Administration and Finance that the contract be awarded to that offeror.
2. The recommendation or contract award shall including the following information:
 - a) A cover letter supporting the award to the selected bidder.
 - b) Scoring results from the evaluation committee.
 - c) Additional attachments and applicable information supporting the recommendation.
 - d) Any necessary information explaining irregularities or informalities.
3. Upon acceptance and approval of the recommendation to award the contract, the Vice President of Administration will recommend award to the President or the President's designee.

D. Award

1. The President or designee shall be authorized to execute the contract.
2. Utilize the procurement forms and standard terms and conditions approved by DEB and the Commonwealth's Attorney General in the contract document.

E. Notification/Posting

1. Upon execution of contracts, the Department of Materiel Management shall:
 - a) Post a Notice of Award on the Department of Materiel Management bulletin board and on eVA.
 - b) Provide copies of awarded contract documents to the contractor, the University Architect, and appropriate University departments.

F. Contract Administration

1. For Non-General Fund projects, administer the construction project in accordance with the Memorandum of Understanding with the Secretary of Administration
 - a) Provide for one formal BCOM review of project drawings, but make as many informal submissions as necessary to assure BCOM's final approval.
 - b) Ensure the State Fire Marshall conducts required project inspections.

2. For General Fund projects administer the contract in accordance with the CPSM, ensuring that the State Fire Marshall conducts required project inspections.
- G. Confidentiality - All correspondence related to the evaluation, negotiation and award of contracts shall remain confidential until after the contract has been awarded. At this time, information regarding the formal RFQ/RFP processes shall be deemed public information.