

153:1-6-01**Best value selection of a construction manager at risk.**(A) Definitions:

- (1) "Best value" means a selection process in which proposals contain both pricing and performance components, and award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the public authority.
 - (2) "Preconstruction fee" means a combination of home office overhead and profit for services provided during the preconstruction phase of the project, as defined in the contract documents.
 - (3) "Construction fee" means a combination of home office overhead and profit for services provided during the construction phase of the project, as defined in the contract documents.
 - (4) "At-risk fee" means the portion of the construction fee attributable to the risk the construction manager at risk assumes by agreeing to be responsible for the performance of the work. The difference between the construction fee and the at-risk fee is the fee the construction manager at risk would charge to provide construction phase services as a construction manager as defined under paragraph (A) of section 9.33 of the Revised Code.
 - (5) "General conditions" means materials, services, and equipment necessary to perform the work but that are not incorporated into the project as defined in the contract documents.
 - (6) "Contingency" means an amount set aside by the construction manager at risk firm to pay for unexpected events, as defined in the contract documents.
- (B) Two-step process: For each construction manager at risk project, a public authority shall engage in a two-step best value selection process consisting of a qualifications phase and a request for proposal phase. For each construction manager at risk project, it shall be the responsibility of a public authority to:
- (1) Identify the qualifications criteria required for the project in accordance with paragraph (C)(1) of this rule and determine how the qualifications criteria shall be evaluated in the qualifications phase of the selection;
 - (2) Identify the performance criteria and pricing criteria required for the project in accordance with paragraphs (D)(1) and (D)(2) of this rule and determine how they shall be evaluated and weighted in the request for proposal phase of the selection;
 - (3) Identify if there are any minimum or mandatory technical requirements for the project; and

(4) Establish a process for maintaining records of decisions made at all stages of the selection process.

(C) Qualifications Phase: Prior to the announcement of the qualifications phase, a public authority shall establish criteria and the scoring method for the evaluation of a firm's qualifications.

(1) A public authority shall include the following as part of its qualifications criteria:

(a) Competence to perform the required management services as indicated by the technical training, education, and experience of the construction manager at risk's personnel, especially the technical training, education, and experience of the construction manager at risk's employees who would be assigned to perform the services;

(b) Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously, and experience working on similar types of projects;

(c) Past performance as reflected by the evaluation of previous clients with respect to factors such as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting of deadlines;

(d) Financial responsibility including evidence of the capability to provide a surety bond in accordance with paragraph (A) of rule 153:1-4-02 of the Administrative Code;

(e) History of performance with meeting goals of any diversity and inclusion programs required by a public authority or by applicable law, and compliance with applicable affirmative action programs. For public improvement projects subject to section 9.47 of the Revised Code, a valid certificate of compliance shall be submitted; and

(f) Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

(2) Evaluation committee: A public authority shall convene an evaluation committee. The composition of the committee is at the discretion of the public authority. A public authority may permit the project's professional design firm or other independent advisors to support the evaluation committee or advise it on technical and pricing issues, but shall not permit participation as a voting member of the committee.

(3) Release of request for qualifications: Once qualifications criteria are established and the evaluation committee has been selected, a public authority shall prepare and release the request for qualifications and any clarifications that may be made to it. A public authority may electronically announce all available construction manager at risk contract opportunities in accordance with rule 153:1-5-01 of the Administrative Code. A public authority shall answer any questions from interested firms in writing and make all questions and answers available to all interested firms.

(4) Short-listed firms: Once the public authority receives responses to the request for qualifications, the evaluation committee shall evaluate those responses and select no fewer than three firms which it considers most qualified to provide the required services, except that the evaluation committee shall select and rank fewer than three firms when it determines in writing that fewer than three qualified construction managers at risk are available. The firms selected and ranked in the qualifications phase shall be referred to as the "short-listed firms" in the request for proposal phase.

(D) Request for proposal phase:

(1) Pricing criteria: As part of its preparation for the pricing component of the request for proposal phase, a public authority shall establish pricing criteria which shall contain the following components:

(a) preconstruction fee;

(b) construction fee;

(c) at-risk fee;

(d) general conditions;

(e) contingency; and

(f) if applicable at the time proposals are requested, a guaranteed maximum price proposal as set forth in paragraph (F) of this rule.

(2) Performance criteria: As part of its preparation for the technical component of the proposal phase, a public authority shall establish performance criteria which may include an evaluation of a firm's proposed:

(a) schedule;

(b) approach to the work, including any anticipated self-performed work;

(c) work sequencing;

- (d) performance history;
- (e) approaches to performance specifications when used;
- (f) plan for anticipated procurement difficulties;
- (g) plan for meeting any goals set as part of any diversity and inclusion program required by the public authority or by applicable law; and
- (h) plan for additional considerations which may include technical design, technical approach, quality of proposed personnel and management plan.

(3) Request for pricing and technical proposal: Once the evaluation committee has selected the short-listed firms, a public authority shall release a request for pricing and technical proposals. A request for pricing and technical proposals shall include:

- (a) a description of the project, including a statement of available design detail;
- (b) a description of any preconstruction services;
- (c) the form of construction management contract;
- (d) A description of how the guaranteed maximum price for the project shall be determined, including the estimated level of design detail upon which the guaranteed maximum price shall be based, if not otherwise set forth in the construction management contract; and
- (e) A request for a pricing proposal, including the estimated cost of construction for the project, for the purpose of calculating the fees proposed by a construction manager at risk.

(4) Pricing proposal: A construction manager at risk shall include at least the following in its pricing proposal:

- (a) A list of key personnel for the project;
- (b) A statement of the general conditions and contingency; and
- (c) A fee proposal, which includes the pricing criteria components set forth in paragraph (D)(1)(a) to (D)(1)(c) and (D)(1)(f) of this rule as established by the public authority.

(5) Technical proposal: A construction manager at risk shall include at least the

following in its technical proposal:

(a) a project-specific plan;

(b) the identity of the proposed team;

(c) the project-specific approach to deliver the expected services; and

(d) the performance criteria components set forth in paragraph (D)(2)(a) to (D)(2)(h) of this rule as established by the public authority.

(6) Pre-proposal submission meetings: Prior to the submission of technical and pricing proposals, a public authority may meet individually with each short-listed firm to permit the firm to ask questions regarding the proposal requirements.

(E) Determination of Best Value:

(1) The evaluation committee shall interview each short-listed firm that submits a pricing and technical proposal. The purpose of the interview is to allow each short-listed firm an opportunity to clarify and respond to questions related to its proposal. The public authority may provide a list of questions to the short-listed firms in advance of each interview. The interview will not be scored or included in the scoring of the proposal. Should a public authority find any major discrepancy or irregularity in a pricing proposal, the public authority shall notify the affected firm in writing to address the concern at the interview and require the firm to provide its response in writing no later than the date of the interview.

(2) The evaluation committee shall evaluate each pricing and technical proposal utilizing the performance criteria and pricing criteria established by the public authority. The committee shall evaluate the performance criteria separately from pricing criteria and then combine the evaluations to reach a final evaluation.

(3) The committee shall rank the short-listed firms based on the final evaluation of each proposal to determine the best value.

(4) The public authority shall announce the firm determined to be the best value and shall enter into negotiations for a construction management contract in accordance with the requirements set forth in divisions (F), (G) and (H) of section 9.334 of the Revised Code.

(F) Guaranteed maximum price: If a public authority intends to seek a guaranteed maximum price ("GMP") proposal from the short-listed firms as part of the pricing criteria, the following procedures shall be followed:

- (1) The public authority shall define the guaranteed maximum price proposal requirements which may include total cost of the work, allowances, unit prices, assumptions and clarifications, project schedule and scope of work to be self-performed.
 - (2) The short-listed firm shall submit its GMP proposal to the public authority in a separate sealed package, identifying the firm's name and consistent with instructions provided by the public authority.
 - (3) The GMP proposal shall be opened after the evaluation committee concludes its interviews under paragraph (E)(1) of this rule and scoring of the performance and pricing criteria.
 - (4) The evaluation committee shall conduct a comparative analysis of, and normalize, the GMP proposals received from the short-listed firms. In performing the analysis, the committee may request the assistance of the project's professional design firm or other independent advisors selected under paragraph (C)(2) of this rule.
 - (5) Each firm's GMP proposal shall be considered with the performance score given by the evaluation committee and the committee shall rank the short-listed firms based on the final evaluation of each short-listed firm's proposal to determine the best value.
 - (6) The public authority shall announce the firm determined to be the best value and shall enter into negotiations for a construction manager at risk contract in accordance with the requirements set forth in divisions (F), (G) and (H) of section 9.334 of the Revised Code.
- (G) Public Records: Records that are maintained by the public authority during the qualifications phase and proposal phase are public, to the extent permitted by sections 149.43 and 149.433 of the Revised Code, and shall be available for inspection only after the announcement of the public authority set forth in paragraphs (E)(4) or (F)(6) of this rule.
- (H) Nothing in this rule affects a public authority's right to accept or reject any or all proposals in whole or in part.

153:1-6-02

Best value selection of a design-build firm.**(A) Definitions:**

- (1) “Best value” a selection process in which proposals contain both pricing and performance components, and award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the public authority.
- (2) “Design services fee” means the compensation for services provided by the architect or engineer of record.
- (3) “Preconstruction fee” means a combination of home office overhead and profit for services provided during the preconstruction phase of the project, as defined in the contract documents.
- (4) “Design-build services fee” means a combination of home office overhead and profit for services provided during the construction phase of the project, as defined in the contract documents.
- (5) “General conditions” means materials, services, and equipment necessary to perform the work but that are not incorporated into the project as defined in the contract documents.
- (6) “Contingency” means an amount set aside by the design-build firm to pay for unexpected events, as defined in the contract documents.

(B) Two-step process: For each design-build project, a public authority shall engage in a two-step best value selection process consisting of a qualifications phase and a request for proposal phase. For each design-build project, it shall be the responsibility of a public authority to:

- (1) Identify the qualifications criteria required for the project in accordance with paragraph (C)(1) of this rule and determine how it shall be evaluated in the qualifications phase of the selection;
- (2) Identify the performance criteria and pricing criteria required for the project in accordance with paragraphs (D)(1) and (D)(2) of this rule and determine how they shall be evaluated and weighted in the request for proposal phase of the selection;
- (3) Identify if there are any minimum or mandatory technical requirements for the project;
- (4) Establish a process for maintaining records of decisions made at all stages of the selection process; and
- (5) If appropriate, determine the amount of any stipend to be paid to the

non-selected short-listed firms for a responsive pricing and technical proposal.

(C) Qualifications Phase: Prior to the announcement of the qualifications phase, a public authority shall establish criteria and the scoring method for the evaluation of a firm's qualifications.

(1) Qualifications criteria: A public authority shall include the following as part of its qualifications criteria:

(a) Competence to perform the required design-build services as indicated by the technical training, education, and experience of the design-build firm's personnel and key consultants, especially the technical training, education, and experience of the employees and consultants of the design-build firm who would be assigned to perform the services, including the proposed architect or engineer of record;

(b) Ability of the firm in terms of workload and availability of qualified personnel, equipment, and facilities to perform the required professional design-build services competently and expeditiously, and experience working on similar types of projects;

(c) Past performance of the firm as reflected by the evaluation of previous clients with respect to such factors as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting deadlines and the past performance of the design-build firm's proposed architect or engineer of record;

(d) Compliance with sections 4703.182, 4703.332, and 4733.16 of the Revised Code, including the use of a licensed design professional for all design services;

(e) Financial responsibility including evidence of the capability to provide a surety bond in accordance with paragraph (A) of rule 153:1-4-02 of the Administrative Code;

(f) History of performance with meeting goals of any diversity and inclusion programs required by a public authority or by applicable law, and compliance with applicable affirmative action programs. For public improvement projects subject to section 9.47 of the Revised Code, a valid certificate of compliance shall be submitted; and

(g) Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

(2) Evaluation committee: A public authority shall convene an evaluation

committee. The composition of the committee is at the discretion of the public authority.

(a) During the qualifications phase, a public authority shall consult with the criteria architect or engineer, as defined in division (I) of section 153.65 of the Revised Code.

(b) A public authority may permit other independent advisors to support the evaluation committee or advise it on technical and pricing issues, but shall not permit an advisor to participate as a voting member of the committee.

(3) Release of request for qualifications: Once qualifications criteria are established and the evaluation committee has been selected, a public authority shall prepare and release the request for qualifications and any clarifications that may be made to it. A public authority shall answer any questions from interested firms in writing and make all questions and answers available to all interested firms.

(4) Short-listed firms: Once a public authority receives responses to the request for qualifications, the evaluation committee shall evaluate those responses and select no fewer than three firms which it considers most qualified to provide the required services, except that the evaluation committee shall select and rank fewer than three firms when it determines in writing that fewer than three qualified design-build firms are available. The firms selected and ranked in the qualifications phase shall be referred to as the “short-listed firms” in the request for proposal phase.

(D) Request for proposal phase:

(1) Pricing criteria: As part of its preparation for the pricing component of the request for proposal phase, a public authority shall establish pricing criteria which shall contain the following components:

(a) design services fee;

(b) preconstruction fee;

(c) design-build services fee;

(d) general conditions;

(e) contingency; and

(f) if applicable at the time proposals are requested, a guaranteed maximum price proposal as set forth in paragraph (F) of this rule.

(2) Performance criteria: As part of its preparation for the technical component of the proposal phase, a public authority shall establish performance criteria which may include an evaluation of a firm's proposed:

(a) schedule;

(b) approach to the work, including any anticipated self-performed work;

(c) work sequencing;

(d) performance history;

(e) approaches to performance specifications when used;

(f) plan for anticipated procurement difficulties;

(g) plan for meeting any goals set as part of any diversity and inclusion program required by the public authority or by applicable law; and

(h) plan for additional considerations which may include technical design, technical approach, quality of proposed personnel and management plan.

(3) Request for pricing and technical proposal: Once the evaluation committee has selected the short-listed firms, a public authority shall release a request for pricing and technical proposals. A request for pricing and technical proposals shall include:

(a) a description of the project and project delivery;

(b) the design criteria produced by the criteria architect or engineer;

(c) a preliminary project schedule;

(d) a description of any preconstruction services;

(e) a description of the proposed design services;

(f) the form of the design-build services contract;

(g) a description of how the guaranteed maximum price for the project shall be determined, including the estimated level of design detail upon which the guaranteed maximum price shall be based, if not otherwise set forth in the construction management contract; and

(h) A request for a pricing proposal, including the estimated cost of

construction for the project, for the purpose of calculating the fees proposed by a design-build firm.

(4) Pricing proposal: A design-build firm shall include at least the following in its pricing proposal:

- (a) a list of key personnel and consultants for the project;
- (b) design concepts adhering to the design criteria produced by the criteria architect or engineer;
- (c) the design-build firm's statement of general conditions and contingency;
- (d) a preliminary project schedule; and
- (e) A pricing proposal which includes the pricing criteria components set forth in paragraph (D)(1)(a) to (D)(1)(f) of this rule as established by the public authority.

(5) Technical proposal: A design-build firm shall include at least the following in its technical proposal:

- (a) a project-specific plan;
- (b) the identity of the proposed team;
- (c) the project-specific approach to deliver the expected services; and
- (d) the performance criteria components set forth in paragraph (D)(2)(a) to (D)(2)(h) of this rule as established by the public authority.

(6) Pre-proposal submission meetings: Prior to the submission of technical and pricing proposals, a public authority may meet individually with each short-listed firm to permit the firm to ask questions regarding the proposal requirements.

(E) Determination of Best Value:

(1) The evaluation committee shall interview each short-listed firm that submits a pricing and technical proposal. The purpose of the interview is to allow each short-listed firm an opportunity to clarify and respond to questions related to its proposal. The public authority may provide a list of questions to the short-listed firms in advance of each interview. The interview will not be scored or included in the scoring of the proposal. Should a public authority find any major discrepancy or irregularity in a pricing proposal, the public authority shall notify the affected firm in writing to address the concern at the interview and require the firm to provide its response in writing no later than

the date of the interview.

- (2) The evaluation committee shall evaluate each pricing and technical proposal utilizing the performance criteria and pricing criteria established by the public authority. The committee shall evaluate the performance criteria separately from pricing criteria and then combine the evaluations to reach a final evaluation.
 - (3) The committee shall rank the short-listed firms based on the final evaluation of each proposal to determine the best value.
 - (4) The public authority shall announce the firm determined to be the best value and shall enter into negotiations for a design-build contract in accordance with the requirements set forth in divisions (B), (C) and (D) of section 153.693 of the Revised Code.
- (F) Guaranteed maximum price: If a public authority intends to seek a guaranteed maximum price (“GMP”) proposal from the short-listed firms, the following procedures shall be followed:
- (1) The public authority shall define the guaranteed maximum price proposal requirements which may include allowances, unit prices, assumptions and clarifications, project schedule and scope of work to be self-performed;
 - (2) The GMP proposal shall be submitted to the public authority in a separate sealed package, identifying the firm’s name and consistent with instructions provided by the public authority;
 - (3) The GMP proposal shall be opened after the evaluation committee concludes its interviews under paragraph (E)(1) of this rule and scoring of the performance criteria;
 - (4) The evaluation committee shall conduct a comparative analysis of, and normalize, the GMP proposals received from the short-listed firms. In performing the analysis, the committee may request the assistance of the criteria architect or engineer, or other independent advisors selected under paragraph (C)(2) of this rule.
 - (5) Each firm’s GMP proposal shall be considered with the performance score given by the evaluation committee and the committee shall rank the short-listed firms based on the final evaluation of each short-listed firm’s proposal to determine the best value.
 - (6) The public authority shall announce the firm determined to be the best value and enter into negotiations for a design-build contract in accordance with the requirements set forth in divisions (B), (C) and (D) of section 153.693 of the Revised Code.

(G) Public Records: Records that are maintained by the public authority during the qualifications phase and proposal phase are public, to the extent permitted by sections 149.43 and 149.433 of the Revised Code, and shall be available for inspection only after the announcement of the public authority set forth in paragraphs (E)(4) or (F)(6) of this rule.

(H) Stipend:

(1) A public authority may provide a stipend for a responsive pricing and technical proposal received from the non-selected short-listed firms. The decision to award a stipend is at the sole discretion of a public authority.

(2) The amount of the stipend shall be determined by a public authority and may be a lump sum amount or a percentage based on the level of effort anticipated to be expended to meet the proposal requirements.

(3) After the award of the design-build contract and upon the submission of complete and acceptable documentation to the public authority of all actual costs of preparing a pricing and technical proposal, the remaining eligible design-build firms may receive payment up to the amount specified in paragraph (H)(2) of this rule, or the design-build firm's actual costs of preparing the proposal, whichever is less.

(I) Nothing in this rule affects a public authority's right to accept or reject any or all proposals in whole or in part.

(J) This rule does not apply to the department of transportation as the director of the department of transportation has specific statutory authority under chapters 5517, 5525 and 5526 of the Revised Code to establish a design build program, criteria and selection process.