

State of New Mexico
General Services Division
State Purchasing Division
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This rule was filed as 1 NMAC 5.7

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION

CHAPTER 5 PUBLIC PROPERTY PROCUREMENT AND MANAGEMENT

PART 7 DESIGN AND BUILD PROJECT DELIVERY SYSTEMS

1.5.7.1 ISSUING AGENCY: General Services Department - State Purchasing Division

[04-15-98; Recompiled 11/30/01]

1.5.7.2 SCOPE: All state agencies and local public bodies procuring design and build project delivery systems in accordance with the Procurement Code, (Section 13-1-28 through Section 13-1-199 NMSA 1978).

[04-15-98; Recompiled 11/30/01]

1. 5.7.3 STATUTORY AUTHORITY: Section 13-1-119.1 NMSA 1978 directs the secretary of the general services department, in conjunction

with the appropriate and affected professional associations and contractors, to promulgate regulations which shall be adopted by the governing bodies of all

using agencies and, except for road and highway construction or reconstruction projects of the state highway and transportation department or any local public

body, shall be followed by all using agencies when procuring a design and build project delivery system. [04-15-98; Recompiled 11/30/01]

1.5.7.4 DURATION: Permanent. [04-15-98; Recompiled 11/30/01]

1.5.7.5 EFFECTIVE DATE: April 15, 1998 unless a later date is cited at the end of a section or paragraph.

[04-15-98; Recompiled 11/30/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

1.5.7.6 OBJECTIVE: To ensure fair, uniform, clear, and effective procedures when using agencies are procuring a design and build project delivery system and to assist in the delivery of a quality project, on time and within budget.

[04-15-98; Recompiled 11/30/01]

1.5.7.7 DEFINITIONS:

A. "Design and build project delivery system" means a procurement process by which a using agency contracts with one firm who has responsibility for the design, construction and delivery of a project under a single contract with the using agency.

B. "Design and build team" or **firm** as the terms are used herein, are synonymous with one another and, within their broad definition mean any offeror, who may be a person, a legal entity, a consortium of experts, a joint venture, a team of persons who, through partnership, general or limited or other legal entity, corporation, association, other organizations, or any combination thereof, formally organized so that it may submit a qualified offer in response to a request for proposals and, as result, who may be considered for a contract award for a design and build project delivery system with a using agency. No distinction is made between formally organized design/build firms and a project-specific design/build firm.

C. "Determination" means the written documentation of a decision of a procurement officer, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

D. "Local public body" means every political subdivision of the state and the agencies, instrumentalities, and institutions thereof.

E. "Maximum allowable construction cost of more than ten million dollars" means a cost reasonably anticipated to exceed ten million dollars under a contract with a design and build team. Such allowable construction cost may include the estimated construction cost, the cost of design, gross receipts tax, utility connection fees, site development costs, built in equipment and furnishings, and a maximum contingency allowance of ten percent (10 percent), but excludes the cost of land, the cost of financing, and the costs required to operate and conduct business in the facility.

F. "Project" means a construction project undertaken by a state agency or a local public body.

G. "State agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative, or judicial branch of the government of this state. State agency includes the purchasing division of the general services department and the state purchasing agent, but does not include local public bodies. State agency also includes the property control division of the general services department.

H. "Using agency" means any state agency or local public body requiring services, construction, or items of tangible personal property.

[04-15-98; Recompiled 11/30/01]

1.5.7.8 DETERMINATION REQUIRED:

A. A design and build project delivery system, as defined in this rule, may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use design and build on a specific project with a maximum allowable construction cost of more than ten million dollars (\$10,000,000.00).

B. The determination shall include consideration of the following criteria:

- (1) the extent to which the project requirements have been, or can be, adequately defined;
- (2) time constraints for delivery of the project;
- (3) the capability, experience and availability of potential offerors familiar with the design and build process;
- (4) the suitability of the project for use of the design and build process as concerns time, schedule, costs, and quality; and
- (5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

C. It is recommended that determination also include consideration of:

- (1) budget constraints;
- (2) the desirability of alternative designs;
- (3) the need or desirability for a single point of accountability;
- (4) the desirability to use specialized services for the project;
- (5) the availability of design and build teams; and
- (6) other factors as may be documented with facts by the using body.

[04-15-98; Recompiled 11/30/01]

1.5.7.9 SOLICITATION OF DESIGN AND BUILD PROJECT DELIVERY SYSTEMS:

A. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect, and a contractor properly licensed in New Mexico for the type of work required.

B. For each proposed design and build project delivery system, the using agency shall utilize a two-phase request for proposal procedure for awarding design and build contracts.

- (1) During phase one, and prior to solicitation, the following shall occur:

(a) procurement documents shall be prepared for a request for qualifications based proposal by an engineer or architect registered in New Mexico;

(b) such registered engineer or architect may be either an employee of the using agency or selected in accordance with Section 13-1-120 NMSA 1978 (the Procurement Code); and

(c) the documents shall include minimum qualifications, scope of work statement and schedule, documents defining the project requirements, evaluation criteria and a description of the selection process, the composition of the selection committee, and a description of the phase two requirements, program statements for the facility that describe space needs, design goals and specific objectives so that all responsive offers can be comparably evaluated and meet using agency needs. If the using agency desires, it may include complete programming and schematic design including recommended or required building systems, elevations, areas, floor plans and cross sections, all depicted in limited detail for further development by design and build team.

(d) The document shall also include a description of subsequent management to be provided to bring the project to completion proposed contractual terms and conditions, and a summary of proposed relationships between the design and build team and the owner's specified representatives. It is recommended that the agency retain a qualified professional, or use the services of a professional employed by the using agency to assist the agency in the oversight of the project from the preparation of the documents to completion.

(e) The request shall include all design factors the using agency considers necessary to describe the project and should include, as appropriate, the following:

- (i) the legal description of the site;
- (ii) survey information, site data and subsoil investigation;
- (iii) interior space requirements;
- (iv) special material and quality standards;
- (v) aesthetic considerations and compatibility with existing facilities;
- (vi) conceptual criteria for project;
- (vii) special equipment and system requirements;
- (viii) cost or budget estimates including available funding;
- (ix) time schedules;
- (x) quality assurance and quality control requirements;
- (xi) site development requirements;
- (xii) special codes, regulations, ordinances, or statutes;
- (xiii) provisions for availability, and responsibility for costs of utilities,

parking and landscaping requirements;

- (xiv) future expansion requirements;
- (xv) existing contracts, if any, to be utilized; and
- (xvi) any other applicable requirements.

C. The entity shall evaluate the proposals and select a design and build team in two phases:

(1) In phase one, the agency shall evaluate each offeror's experience technical competence and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short-listed in accordance with technical and qualification-based criteria. A mandatory pre-proposal conference shall be conducted to allow a short-listed offeror the opportunity to submit questions of clarification. The using agency should not use any submittal as the basis of retaining any design and build team other than the submitting design and build team.

(2) In phase two, the agency shall invite short-listed offerors to submit detailed specific technical concepts or solutions, costs and scheduling.

(a) Unsuccessful phase two offerors submitting a responsive proposal may be paid a stipend to cover proposal expenses. It is recommended that criteria be developed to determine whether a stipend will be provided to the short-listed firms. For the purposes of this section, a stipulated stipend means using funds, as determined by the using agency, to cover some expenses likely to be incurred by the short-listed firms.

(b) The agency shall evaluate the short listed offerors with selection criteria stated in the RFP including the weight given to each criteria. The selection criteria should include but are not limited to:

- (i) phase one qualifications;
- (ii) quality of proposed design, including required technical submittals;
- (iii) quality of construction approach;
- (iv) demonstrated response to program requirements;
- (v) management plan for constructing the project; and
- (vi) cost and schedule.

(c) Presentation requirements to properly judge the offers should be stated in the RFP and should include but are not limited to:

- (i) the maximum number and size of drawings and/or technical submittals allowed;

- (ii) whether models are allowed or not; and
- (iii) types of media that can be used in the presentation.

(d) Upon completion of the evaluation process the selection shall be made and the contract awarded to the highest ranked offeror.

D. Once the proper determination is made in accordance with paragraph 8 [now 1.5.7.8 NMAC], and the evaluation and selection conducted in accordance with paragraph 9.3 [now Subsection C of 1.5.7.9 NMAC], the state purchasing agent or central purchasing office may award the contract regardless of whether the contract falls below, equals, or exceeds ten million dollars.

E. Except to the extent that this rule conflicts with the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, this rule is governed by the Procurement Code and all applicable general services department (GSD) regulations.

[04-15-98; Recompiled 11/30/01]

HISTORY OF 1.5.7 NMAC

History of Repealed Material: [RESERVED]