

Rule Development for Chapter 14-91 Florida Administrative Code:

Posted: November 20, 2014

The amendments to this rule have been posted on the Florida Administrative Register website. The amendments are being made to clarify language and provide options for competitive bidding on design-build projects.

A notification of the amendments to this rule can be viewed at the following link:

[https://www.flrules.org/gateway/RuleNo.asp?title=ADMINISTRATION OF COMBINED DESIGN AND CONSTRUCTION CONTRACTS \(DESIGN-BUILD\)&ID=14-91.002](https://www.flrules.org/gateway/RuleNo.asp?title=ADMINISTRATION OF COMBINED DESIGN AND CONSTRUCTION CONTRACTS (DESIGN-BUILD)&ID=14-91.002)

Please see text of the notice and draft rule development on the pages below:

Notice of Proposed Rule

DEPARTMENT OF TRANSPORTATION

RULE NOS.:RULE TITLES:

- 14-91.002 Definitions
- 14-91.004 Prequalification Requirements
- 14-91.005 Public Announcement Procedures
- 14-91.007 Selection and Award Process

PURPOSE AND EFFECT: The amendments to this rule are being made to clarify language and provide options for competitive bidding on design-build projects.

SUMMARY: These amendments allow for competitive bidding on Department advertised Design-Build projects. The rule includes a new procurement method for non-complex projects that includes price as a principle, but not exclusive, consideration in the awarding of a project. The rule allows qualified bidders to team with design professionals and others in the submission of a bid proposal and eliminates an unused optional provision for advertising of projects outside of the Department's website. The rule provides specific requirements for a letter of interest, and explains how Design-Build firms will be shortlisted by one of two methods after a review of the letters of interest. The rule provides that the assessments made by a Technical Review committee will be reviewed by a Selection Committee prior to the awarding of a Department project. The rule eliminates a chart providing a pre-set compensation range for stipend compensation to allow the stipend award to be placed in the project advertisement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the rule does not impose a fee for bidding on Design-Build projects and allows non-selected firms to receive stipend compensation.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 334.044(2), 337.11(7)(b) FS.

LAW IMPLEMENTED: 337.025, 337.11 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Susan Schwartz, Assistant General Counsel, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458, (850)414-5392, susan.schwartz@dot.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

14-91.002 Definitions.

For purposes of this rule chapter the following definitions apply:

(1) “Adjusted Score Design-Build” means the contract award is based on the lowest adjusted score which is determined by dividing the price proposal, with any adjustments for proposed contract time when identified in the request for proposal, by the sum of the letter of interest score and the technical proposal score.

(2) “Bid Proposal” means the documents required by the public advertisement to include: a letter of interest, a technical proposal, and/or a price proposal.

~~(1) “Design-Build” means combining the design and construction phases of a project into a single contract.~~

~~(3)(2)~~ (3) “Design-Build Firm” hereinafter referred to as “Firm” means any company, partnership, corporation, association, joint venture, design-build joint venture, or other legal entity authorized to practice engineering, architecture, and construction contracting as appropriate in the State of Florida.

(4) “Design-Build Project” means combining the design and construction phases into a single contract.

~~(3) "Project" means the work to be designed and constructed as described in the public announcement.~~

~~(5) "Factored Design-Build" means the contract award is based on the highest score received by comparing each proposer's price proposal to the lowest price proposal received and each proposer's score for Letter of Interest and Technical Proposal to the highest score for the Letter of Interest and Technical Proposal received by the Department. The sum of the scores for the Letter of Interest and the Technical Proposal from each proposer will be divided by the highest sum of the scores for Letter of Interest and Technical Proposal from any proposer multiplied by a factor ranging from 15% to 30% as described in the public advertisement, including any adjustments for proposed contract time when identified in the request for proposal. The lowest price proposal received will be divided by each price proposal submitted by any proposer to determine a value which will be multiplied by a factor ranging from 70% to 85% as described in the public advertisement, including any adjustments for proposed contract time when identified in the request for proposal. In no case will the factors applied to the sum of the Letter of Interest plus Technical Proposal and to the Price Proposal be greater than 100%.~~

~~(6) "Low Bid Design-Build" means the contract award is based on a responsive technical proposal with the the lowest price proposal.~~

~~(7) "Non-complex project" means a Design-Build project in which plans have been substantially developed; are located in an unincorporated area or an incorporated area with a population of less than 200,000; do not involve complex Maintenance of Traffic schemes; and have limited options for innovation and specialized engineering. The procurement method for non-complex projects will be low bid or factored design-build.~~

~~(4) "Major Bridge Project" means a bridge project with an estimated construction cost of \$10 million or more.~~

~~(5) "Building Project" means a project to provide administration offices, operation and maintenance facilities, toll facilities, rest areas, weigh-in motion facilities and other similar facilities.~~

~~(6) "Rail Corridor Project" means a project which involves design and construction of, improvements to or replacement of tracks and track components such as rails, ties, turnouts, crossings, bridges, trestles, culverts, signals, communication lines, poles, radio masts, buildings, structures, facilities and all other improvements or fixtures required for the operation of the railway.~~

~~(7) "Low Bid Design Build" means the contract award is based on the lowest responsive bid.~~

~~(8) "Adjusted Score Design Build" means the contract award is based on the lowest adjusted score, which is determined by dividing the price proposal by the technical proposal score.~~

~~(9) "Bid Proposal" means a separately sealed technical proposal and a sealed price proposal submitted by each Firm.~~

~~(10) "Value of Time Factor" means an adjustment to the price proposal to reflect the worth of completing a project in as short a time as possible. This adjustment factor is specified in subsection 14-91.007(7).
Rulemaking Authority 334.044(2), 337.11(7)(b) FS. Law Implemented 337.11(7) FS. History—New 3-13-88, Amended 6-13-90, 2-20-96, _____.~~

14-91.004 Prequalification Requirements.

(1) Design-Build Firms shall satisfy the technical qualification requirements as required by Rule Chapter 14-75, F.A.C., and all qualification requirements of Rule Chapter 14-22, F.A.C., based on the applicable category of the specific Design-Build Project project prior to the closing date for submittal of the letters of interest on Adjusted Score Design-Build Projects and Factored Design-Build Projects and prior to receiving the request for proposal on Low Bid Design-Build Projects.

(2) Design-Build Joint Venture. A Design-Build Joint Venture is created when a qualified bidder, or group of qualified bidders, and another entity enter into an agreement prior to bidding on Design-Build projects. A joint venture formed under Rule 14-22.007, F.A.C., will qualify as a Design-Build Joint Venture for purposes of this Chapter.

(a) The parties to the DBJV shall submit Form 375-020-18, Rev. 09/13, Declaration of Joint Venture and Power of Attorney for Bidding Specified Project(s), hereby incorporated by reference at <http://www.flrules.org/Gateway/reference.asp?No=Ref-03121>, and receive Department approval for bidding prior to the due date of the expanded letter of interest on Adjusted Score Design-Build and Factored Design-Build projects or receiving the request for proposal on Low Bid Design-Build Projects.

(b) Design-Build Joint Venture Capacity. The parties to the Design-Build Joint Venture shall submit a statement in the name of the Design-Build Joint Venture signed by each party, indicating that 100% of the proposed contract work can be debited against the qualified bidder(s) current bid capacity as established in Rule 14-22.006, F.A.C. If more than one qualified bidder is a party to the Design-Build Joint Venture, the parties to the Design-Build Joint Venture must indicate the percentage of the proposed contract work to be debited against each qualified bidders current capacity. No party in the Design-Build Joint Venture may exceed its current capacity by virtue of the percentage of proposed contract work debited against its available capacity, as expressed in the signed statement and using the budget estimate as the comparison figure. The provisions of this section regarding the apportionment of the debit among the parties shall in no way divide the responsibility for the Design-Build Joint Venture bid or contract among the parties.

(c) Qualified parties who form a Design-Build Joint Venture under the provisions of this rule must have a Federal Employer Identification Number (FEIN) for the Design-Build Joint Venture or give proof that a FEIN has been requested. The Design-Build Joint Venture shall provide this number to the Department before the contract award can be made.

Rulemaking Authority 334.044(2), 337.11(7)(b) FS. Law Implemented 337.11(7) FS. History—New 3-13-88, Amended 2-20-96,_____.

14-91.005 Public Announcement Procedures.

The Department will use either the Adjusted Score, Factored, or Low Bid Design-Build process. The public advertisement for a Design-Build Project will specify which process will be used. Design-Build Projects will be advertised on the Department's website at <http://www.dot.state.fl.us>, except when the Design-Build Project is necessitated by a declaration of emergency. The public advertisement will include a general description of the Design-Build Project and required submittals. Except in emergency situations where a proper declaration of emergency has been executed, the Department shall publish an announcement on the Internet web site at <http://www.dot.state.fl.us>, setting forth a general description of the project requiring design build services and defining the process for interested firms to submit a letter of interest. The announcement will state where the letters of interest are to be sent. Additionally, the Department may utilize other forms of communication, such as newspapers or magazines, mailouts, or television or radio, to announce the Project when:

- (1) There is a likelihood of limited interest in the project; or
- (2) There is specific expertise necessary for the design or construction of the project; or
- (3) There is a need for a wider variety of bidders because of the nature, size, or scope of the project.

Rulemaking Authority 334.044(2), 337.11(7)(b) FS. Law Implemented 337.025; 337.11(7) FS. History—New 3-13-88, Amended 2-20-96, 9-3-96, 10-18-00,_____.

14-91.007 Selection and Award Process.

(1) Letters of Interest Requirements. Design-Build Firms interested in submitting ~~desiring to submit~~ Bbid Proposals on an Adjusted Score Design-Build or a Factored a Ddesign-Build Project must submit a letter of interest, including the following information: ~~setting forth the qualifications of the members of the Firm and providing any other information required by the announcement of the project.~~

(a) Design-Build Firm name and prequalifications

(b) Past Performance Evaluations, Design-Build Project Experience, Organization and Staffing:

1. Contractor Grades

2. Professional Consultant Grades

3. Performance History with other States or Agencies, if none with the Department. If the contractor or professional consultant does not have a performance history working with the Department or if the performance history is no longer current (older than 5 years), the Design-Build Firm can submit evidence of past performance, including evaluations or grades and letters of reference, or recommendations. Contact information for the references must be provided for verification purposes. Past performance information is limited to three (3) 8 1/2"x11" pages and is restricted to contractors or professional consultants without a current performance history with the Department.

4. Design-Build Project Experience of the Contractor and Professional Consultant

5. Similar type of work experience

6. Environmental Record

7. Contractor Experience Modification Rating (Current Year)

8. Design-Build Firm organization

9. Design-Build Firm staffing plan

10. Design-Build Firm coordination plan

(c) Design-Build Project Requirements and Critical Issues:

1. Understanding of Design-Build Project requirements

2. Identification of critical issues

3. Outline for addressing critical issues

(d) One (1) page resumes on 8 1/2" x 11" paper for each of the key staff positions as provided in the public advertisement.

(e) A one (1) page organizational chart on 11" x 17" paper.

(f) If the public advertisement includes Group 4 Bridge Design work, the Design-Build Firm shall submit a Bridge Qualification Form, Form 375-030-55, 2/14 incorporated herein by reference at <http://www.flrules.org/Gateway/reference.asp?No=Ref-04766>.

(g) A certification that the Design-Build Firm is free of conflicting professional or personal interests.

(h) Any other information required by the public advertisement.

(2) Short Listing Criteria and Procedures. On Adjusted Score Design-Build and Factored Design-Build Projects, the Department will determine the short list of Design-Build Firms will be evaluated based on an evaluation of the information provided in by the letters of interest and in accordance with Rule Chapter 14-75, F.A.C. For this purpose, all references to "professional" or "consultant" in Rule Chapter 14-75, F.A.C., shall be deemed to be a reference to "Design-Build Firm" under this rule chapter. The public advertisement will state project specific shortlisting criteria purasant to one of the following methodologies:

(a) After completing evaluations of the letters of interest, the Department will notify the Design-Build Firms of the evaluation and their scoring. Design-Build Firms providing written affirmation of their intent to proceed to the technical proposal phase of the procurement within the time provided in the Department's notification will be shortlisted and be eligible to submit technical and price proposals.

(b) The Department will determine the short-list of Design-Build Firms.

(3) Scope of Services Requirements. The Department shall develop a request for proposal scope of services which furnishes sufficient information for Design-Build Firms to upon which Firms may prepare technical and price bid proposals and which sets forth the technical proposal evaluation criteria. The request for proposal will set forth the scope of services requirements, submittal requirements, and evaluation criteria.

(4) Bid Proposal Requirements. Bid proposals shall consist of a technical proposal and a price proposal. The technical proposal and price proposal must will be received by the Department by the deadline stated in the request for proposal stipulated in the public announcement.

(a) Technical Proposal. A technical proposal shall include all information requested in response to the request for proposals.

(b) Price Proposal. A price proposal shall include one lump sum for all costs of the Design-Build Pproject as defined by the request for proposal scope of services requirements. Examples of such services are: design, permits, construction engineering and inspection and construction of the proposed project.

(5) Technical Review Committee. Proposal evaluators will be assigned to a A Technical Review Committee with will be assigned the responsibility to review and evaluate the letters of interest and review technical proposals in accordance with the provisions of the public advertisement and request for proposal. Proposal evaluators The members of the Technical Review Committee will be designated by the appropriate Director, or designee, based on the nature of the work requested and the complexity of the Design-Build Pproject. When non-Department personnel serve on the Technical Review Committee, Department personnel shall constitute the majority unless otherwise approved by the appropriate Director. No employee of a Design-Build Ffirm pursuing a Design-Build Pproject under consideration will serve as a proposal evaluator on the Technical Review Committee.

(6) Project Selection Committee. The Department will establish a Project Selection Committee. The Project Selection Committee will award the Design-Build Project if it is in the best interest of the State. The Technical Review Committee's evaluations will be submitted to the Project Selection Committee prior to final action by the Project Selection Committee. The Project Selection Committee will review the evaluations of the Technical Review Committee, determine whether the submissions appropriately evaluate the letters of interest and proposals, and may ask the Technical Review Committee to reevaluate its submissions to the Project Selection Committee.

~~(6) The Department will use the Low Bid Design Build process when its scope of work is precise, explicit and clearly defined, and will use the Adjusted Score Design Build when the scope of work is flexible and identifies an end result that the Department wants to achieve, rather than dictating specific methods and materials. The public announcement for a particular project will specify which process will be used.~~

~~(7) When time is to be used as an evaluation criteria, the Department will include an adjustment for the value of time in either type of design build process referenced in subsection 14 91.007(6), F.A.C. This adjustment will be based on the Firm's proposed number of days to complete the project multiplied by a value per day established by the Department in the request for proposals, i.e., number of days multiplied by the dollar value per day equals the price proposal adjustment (increase). This factor will be used for selection purposes only and shall not affect the Department's liquidated damages schedule or affect the incentive/disincentive provisions of the contract.~~

~~(7)(8) Proposal Submission Limitation.~~ A prime The contractor or lead design professional consultant cannot team with others other partners to submit more than one Bid proposal per Design-Build Project.

~~(8)(9) Stipend Compensation.~~ When included in the public advertisement contract solicitation, the Department will shall pay a lump sum stipend to eligible shortlisted Design-Build Firms that were who are not selected for the Design-Build Project, but have submitted responsive Bid design build Pproposals. The stipend compensation amount and the conditions for stipend eligibility will be stated in the public advertisement. The Department reserves the right to use any of the concepts, ideas, technologies, techniques, methods, processes, and information that are contained within the Bid Pproposals of any Design-Build Firm receiving stipend compensation for that Bid Proposal without any further compensation.

~~(a) To be eligible for In order to receive the stipend compensation, the unselected short listed Ddesign-Build Ffirms that were not selected for the Design-Build Project, but submitted responsive Bid Proposals, must meet all eligibility requirements in the public advertisement and must enter into a contract with the Department immediately after short listing. The contract is required to document the terms and conditions for the stipend. The Department will issue the stipend contract on the Department's Design/Build Stipend Agreement Form No. 700 011 14, Rev. 11/09, incorporated herein by reference.~~

~~(b) The amount of the sStipend compensation will be based upon the estimated proposal development costs and the degree of engineering design required during the procurement process, in accordance with the following guidelines:~~

Contract Value	Complex Urban & Rehabilitation Projects	New Construction Projects	Compensation Range
<\$5M	0.0050 x Estimate	0.0040 x Estimate	\$15K - \$25K
\$5M - \$20M	0.0030 x Estimate	0.0025 x Estimate	\$15K - \$60K
\$20M - \$50M	0.0020 x Estimate	0.0018 x Estimate	\$36K - \$100K
\$50M - \$100M	0.0015 x Estimate	0.0012 x Estimate	\$60K - \$150K
>\$100M	0.0012 x Estimate	0.0010 x Estimate	\$100K +

The actual stipend compensation will vary based on the nature of the work, complexity of the Design-Build Pproject, technical expertise required, and the value of the work product to the Department. ~~The amount and conditions of the stipend compensation will be included in the Department's solicitation.~~

(c) A stipend is not intended to compensate the Ddesign-Bbuild Ffirms for the total cost of preparing the Bid Pproposal.

Rulemaking Authority 334.044(2), 337.11(7)(b), ~~337.11(8)~~ FS. Law Implemented 337.025, 337.11(7), ~~337.11(8)~~ FS. History--New 3-13-88, Amended 6-13-90, 2-20-96, 9-3-96, 10-18-00, 5-3-09, 2-17-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: David Sadler, Director, Office of Construction
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ananth Prasad, P.E., Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2014
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: February 7, 2014