

Rule Development for Chapter 14-91 Florida Administrative Code:

Posted: October 10, 2014

The Department held a rule development workshop to receive input on revising Chapter 14-91, Florida Administrative Code. An audio recording (mp3 format) of the workshop was made and will be posted when available.

Please Note: The Department will continue to accept comments and suggestions on the development of Chapter 14-91 Florida Administrative Code until the close of business Friday, October 17, 2014.

To submit comments, please email Alan Autry at Alan.Autry@dot.state.fl.us or call (850) 414-4195.

Please see text of the draft rule development and proposed additional definitions on the pages below:

CHAPTER 14-91
ADMINISTRATION OF COMBINED DESIGN AND CONSTRUCTION CONTRACTS (DESIGN-BUILD)

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

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) “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) “Low Bid Design-Build” means the contract award is based on a responsive technical proposal with the the lowest price proposal.

~~(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 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 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 letter of interest on Adjusted Score 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. 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 Low Bid Design-Build or Adjusted Score 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 ~~P~~proposals on an Adjusted Score a ~~D~~esign-~~B~~uild 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 ½" 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, incorporated herein by reference.

(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 ~~P~~projects, ~~the Department will determine the short list of~~ Design-Build Firms will be evaluated based on ~~an evaluation of~~ the information provided ~~in the 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. 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.

(3) Scope of Services Requirements. The Department shall develop a ~~scope of services request for proposal~~ which furnishes sufficient information ~~upon which Firms may~~ for Design-Build Firms to prepare bid technical and price 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 ~~will~~ must be received by the Department by the deadline ~~stipulated in the public announcement~~ stated in the request for proposal.

~~(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 ~~scope of services~~ request for proposal requirements. ~~Examples of such services are: design, permits, construction engineering and inspection and construction of the proposed project.~~

(5) Technical Review Committee. A Proposal evaluators will be assigned to a Technical Review Committee ~~will be assigned with~~ 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 interes

and proposals, and may ask the Technical Review Committee to reevaluate its submissions to the Project Selection Committee. ~~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. The A contractor or ~~design~~ professional consultant cannot team with others ~~other partners~~ to submit more than one Bbid proposal per Design-Build Pproject.~~

~~(8)(9) Stipend Requirements. When included in the public advertisement ~~contract solicitation~~, the Department will ~~shall~~ pay a lump sum stipend to eligible shortlisted Design-Build F firms that were ~~who are~~ not selected for the Design-Build Project, but ~~have~~ submitted responsive ~~design-build~~ Bid 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 Design-Build Firms 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 stipend 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 ~~P~~project, 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 Design-Build Firms for the total cost of preparing the Bid Proposal.

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,_____.

Additional Definitions Proposed for Rule 14-91, F.A.C.

(5) "Factored Design-Build" means the contract award is based on the combined scores of the Letter of Interest plus the Technical Proposals multiplied by a factor ranging from 15% to 30% as described in the Project Advertisement. Each price proposal will be divided by the lowest price proposal submitted by any proposer to determine a value which will be multiplied by a factor ranging from 85% to 70% as described in the Project Advertisement. The Design-Build Firm with the highest sum of the factored scores will be considered the winning Firm. 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%. Factored Design-Build will be considered for the procurement method only for non-complex design-build projects.

(7) Non-complex projects are those in which the plans have been developed to at least 90% design; are not located in urban areas as the term is defined in section 334.03, F.S.; do not involve complex Maintenance of Traffic schemes; and have limited options for innovation and specialized engineering.