Chapter 4

Design Bid Build

Procurement

April 2012

# CHAPTER 4 – Design bid build PROCUREMENT

**Overview**

As stated in Chapter 1, the purpose of this Procurement Manual is to establish a uniform method for the Authority to use in the Design Bid Build procurement for Construction Services (general contractors and subcontractors).

This chapter does not attempt to address every conceivable situation that may arise in contracting for construction services. Rather, its aim is to provide guidelines whereby necessary construction services can be obtained on a competitive basis and in accordance with established Authority polices, Massachusetts General Law Chapter 30, and Federal Transit Administration Circular 4220.1F Third Party Contracting. [FTA Circular 4220.1F.III.3.a;VI.2.e]

These procedures adhere to the FTA Circular 4220 1F and therefore, the goal of these procedures is also to provide contracting guidance to all personnel throughout the MBTA as well as the construction industry at large. Additionally, the MBTA is a recipient of Federal assistance awarded by the Federal Transit Administration (FTA). The FTA Circular 4220.1F incorporates the procurement provisions of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU), and includes the most recent guidance for the Federal Public transportation program as of November 1. 2008.

## Full and Open Competition

The Authority shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of construction procurement and complies with MBTA policy and Federal Transit Administration requirements and guidelines where applicable. Please see additional chapters in this manual for alternative delivery methods, such as design-build, construction manager at risk and others.

The Authority shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this manual. Some situations considered restrictive of competition and are prohibited are discussed in Chapter 1.

# 4.1 DESIGN BID BUILD (DBB)

The MBTA Construction Directorate is responsible for the overall competitive bidding and award process for construction contracts on major programs while developing and maintaining central files for each project. Contract Administration’s primary goal is to ensure that all contracts are awarded to the lowest responsive and responsiblebidder, are within specification requirements and in compliance with MBTA procurement policies and procedures and other Federal and State laws, rules and regulations. Contract Administration is also charged with the responsibility of maintaining procurement programs including monthly construction payments, change order process, contract quantity variance reporting, contract close-out process and preparation and furnishing of statistical contract data and summary reports to the appropriate State and Federal audit agencies and in-house staff. The following are the steps to successful construction procurement:

1. Contract Specification Review
2. Authorization to Advertise
3. Prequalification
4. Issuance of Bidding Documents
5. Bid Opening/Pre Award Documentation
6. Execution of Contract
7. Record of Procurement

## 4.1.1 CONTRACT SPECIFICATION REVIEW

The MBTA’s Contract Administration Department provides review of all construction contract specifications prior to and during the advertisement and bidding period. This review is to ensure that the proper format is followed and that the specifications are consistent with the Authority’s policies. This review is performed at the 60%, 90% and 100% design levels for all construction contracts. Please refer to the MBTA Project Manager’s Manual for additional guidance.

1. MBTA Project Manger transmits the construction specification at the 60%, 90% & 100% design levels to Contract Administration for review of conformance with MBTA policy, Construction Specification Institute (CSI) format and State & Federal regulatory requirements. (**Exhibit 4.1**)
2. The four major sections of the specification (bid form, contract forms, supplementary conditions and technical specifications) are reviewed to ensure that each section is consistent with the MBTA’s requirements. The MBTA provides a boilerplate contract specification guideline on the web site for the consultants to download and use as a starting point. These specification guidelines are then modified and tailored to each particular contract.
3. At the 100% design level, the consultant provides a final construction cost estimate which corresponds to the MBTA standard line item numbers and unit of measure so that the final bid form can be generated for insertion into the bid section of the specification. This estimate is also used as the base line for the comparison of all the bid proposals received on the bid opening day. Also at that level, the MBTA requests the most recent wage rates from State and Federal agencies which are also inserted into the supplementary conditions section of the specification. (federal rates are not required for bond funded contracts.)
4. Upon final approval of the specification, an electronic copy is provided to Contract Administration.
5. As part of the 100% design review the assigned Project Manager should have completed the Prebid Review Control Sheets (PRCS) and all associated memos. The PRCS is required to be signed off by the Project Manager, Area Director and the Director of Environmental Affairs. In addition, the PRCS is accompanied with the following memos:
* Independent Cost Estimate (Engineer’s Estimate)
* Budget approval
* DBE participation (for Federally funded projects only)
* QA/QC approval for paint systems
* Liquidated damages calculation
* Allowance items approval
* Real estate approval
* Risk Management approval
* Compliance with Architectural Access Board regulations
* Environmental Permitting
* Sole source justification approvals, if any. **(Exhibit 4.2)**

## 4.1.2 AUTHORIZATION TO ADVERTISE – FTA Circular 4220.1F.VI.2.a;VI.3.C(2)(c) (Exhibit 4.3)

The Authorization Request is initiated after submission of a completed PRCS package. The Authorization request contains the following documents **(Exhibit 4.4)**

* + 1. A Request to advertise is submitted to the Director of Contract Administration with draft Notice to Bidder, Independent Engineer’s Estimate and Budget approval letter.
		2. Approval “as to form” is obtained from the First Deputy General Counsel and the Assistant General Manager for Design and Construction.
		3. After the draft Notice to Bidders is approved, approval to advertise is obtained from the General Counsel and General Manager.

Once the construction contract specification review is complete at the 100% design and all approvals are obtained, the Authority advertises the construction contract for the solicitation of bids. The contract is advertised in the Central Register for posting for 14 days before the bid opening.

The MBTA is bound by State statute to procure the construction contract through a public advertisement and bid opening with the award going to the lowest responsive and responsible bidder. In order to procure the lowest responsible bidder, the construction contract is advertised in various publications and on the MBTA website. The construction contract advertisement, also known as Notice to Bidders, includes:

* + - The approximate dollar value for contract
		- Name of MBTA Project Manager
		- Date, time, and location for the bid opening
		- Site tour and pre-bid conference information
		- Pre-qualification requirements (if applicable)
		- Disadvantaged Business Enterprise (DBE) Goal
		- Federal & State wage requirements, including provisions as required by Federal or State funding requirements
		- Bonding information
		- Requests for interpretation of the plans and specifications and any other contract specific requirements

## 4.1.3 PREQUALIFICATION

When a contract is less than $1 million, pre-qualification is not required; however, post-qualification is performed (if requested by the Authority). Within five business days after opening of bids, the low bidder submits a post–qualification letter certifying the bidder’s experience, equipment and financial resources. A bidder who fails to comply with this requirement is considered non-responsive and will not be considered for award of the Contract.

Prequalification is required for General Contractors interested in bidding on MBTA Contracts where the project value is greater than $1 million. This process is a way for the MBTA Construction Directorate to evaluate contractors and determine their capability to physically perform the work as well possessing the financial capacity. The MBTA‘s Prequalification Statement documentation includes but is not limited to:

* Financial Statements
* Auditor’s Opinion
* Surety Letter (confirming bonding capacity)
* Massachusetts Corporation Annual Report
* Legal Letter of Liability
* Affidavit and Corporate Seal
* Excluded Parties Listing System (EPLS) Confirmation
* OSHA 300 Summary Form
* Previous work experience
1. The Contractor completes the Prequalification Statement and submits it to Contract Administration annually. In addition to completing the prequalification statement, the MBTA provides the Procedures Governing Classifications and Rating to Prospective Bidders. This document describes the prequalification process, defines the MBTA Classes of work, and details how prequalification ratings are determined. The Prequalification Statement and Procedures Governing Classification and Rating of Prospective Bidders are found on the MBTA’ website. **(Exhibit 4.5 and 4.6)**

2. The Prequalification Statement is received and reviewed by staff using the internal prequalification checklist. **(See Exhibit 4.7)** Contract Administration notifies Contractors if there are any omitted requirements or issues with the submittal. Upon determination that the Submittal meets the requirements it is presented to the Prequalification Committee for consideration.

3. An agenda is prepared by the Committee’s Recording Secretary for the prequalification meeting including contractors’ requests for classes of work, work history, and bonding limits. Meetings are typically held every Thursday at 7:30 AM. The committee consists of five voting members appointed by the Assistant General Manager for Design & Construction. The Director of Contract Administration serves as Chairperson. The Committee also includes a Recording Secretary as a non-voting member.

4. The Committee reviews the contractor’s completed work experience and bonding limits to determine a Single Project Rating for each Class of Work. The Director of Contract Administration issues a Prequalification Certificate. The certificate details each classification and corresponding Single Project Rating (SPR) as a determination based upon the Contractor’s Bonding Capacity and work history**. (See Exhibit 4.8)**

## 4.1.4 ISSUANCE OF BIDDING DOCUMENTS

After advertisement of the construction contract, contract plans and specifications are burned onto CD’s and labeled and made available for distribution to contractors. A plan holder's list is developed to identify all contractors, subcontractors and suppliers that have been issued CDs. This list is updated in real time on the MBTA’s web site. **(Exhibit 4.9)**

The MBTA typically has a bid cycle of thirty (30) days starting from the date of advertisement to the bid opening date. The bidding period can be reduced to twenty-one (21) days with prior authorization from the Office of Diversity and Civil Rights (ODCR).

1. During the bidding process, Contract Administration and the Project Office coordinate and attend the Pre–Bid Meeting for all construction contracts. This meeting is typically held within 10 days after the advertisement. The purpose of this meeting is to provide an overview of the construction project for the potential bidders as well as subcontractors.
2. As part of this meeting the Project Manager and Design Consultant provide an overview of the project scope. Other MBTA departments are present to identify coordination and other requirements that contractors may have to consider in preparing their bid submissions.
3. Additionally, during the Pre-Bid Meeting, a Contract Administration representative discusses procurement and bidding requirements, such as:
* Prequalification Requirements
* Bonding Information
* Workforce and Labor requirements (DBE, MMU, FMU, Davis Bacon)
* Applicable State and Federal and ARRA requirements
* Bid Opening Date
* Questions and Addenda process
1. Contract Administration works with the Project Office to assist in answering questions and concerns. All questions from Contractors are required to be submitted in writing and are answered in the formal addenda. Contract Administration reviews any addenda for conformance to MBTA policy and guidelines. Once the review is complete, Contract Administration obtains the Assistant General Manager for Design and Construction’s approval to issue the addendum. The addendum is then emailed to each planholder with a return receipt.
2. Any contractor that is prequalified and wishes to bid on a contract must complete a Request for Proposal (RFP) form. This form can be downloaded from the MBTA website. **(Exhibit 4.10)** The RFP form, the contractor’s prequalification limits and specific contract requirements are reviewed along with contractors’ workload. Contract Administration then makes a determination as to whether the contractor will be issued a pre-numbered proposal to bid on the project.
3. For contracts less than $1 million, a pre- numbered bid proposal and corresponding bid envelope will be provided to each contractor when issued a CD.

## 4.1.5 BID OPENING/PRE AWARD

In accordance with FTA Circular 4220.1F and M.G.L. Chapter 30, 39 M, MBTA primary goal is to ensure that all contracts are awarded to the lowest eligible, responsive, and responsible bidder. Below is a summary of steps that Contract Administration performs for MBTA Bid Openings and subsequent pre-award actions.

**BID OPENING**

1. Prepare a worksheet listing all pre-qualified contractors that were issued official Bid Proposals
2. Receive and time stamp each Bid delivered and attach to Bid Envelope
3. List each Bidder’s name and address on the Certified Tabulationin the order received
4. Secure each time-stamped Bid
5. Open Bids and record the estimated contract Bid Price for each Bid announced
6. After the Bids are opened and read, compile the results listing the order of lowest to highest Bidder
7. Validate Bid prices
8. Confirm DBE compliance with ODCR
9. Distribute procurement documentation to Project Office for development of staff summary **(Exhibit 4.11)**

### Pre Award

After the bids are publically read, the Engineer of record performs a bid analysis of all submitted bids to ascertain that the bids have met all the technical requirements. The Engineer of Record submits a Bid Analysis Recommendation letter documenting their analysis of all the bids, any questions that may have arisen out of the analysis, their recommendation that the lowest responsible bidder’s bid is fair and reasonable, and their recommendation to the MBTA to accept and award the contract to the apparent low bidder.

Contract Administration also performs a bid analysis of the individual line items and required forms and certifications and makes a determination if the lowest bidder has correctly filled out the bid form. Once Contract Administration’s review is completed and the Engineer of Record has performed its analysis, the apparent low bidder is invited to a Pre-Award meeting to discuss their bid and answer any questions that may have arisen out of the bid analysis. The MBTA Project Manager, Area Director, the Engineer of Record and the apparent low bidder attend the pre- award meeting.

The Project Manager must record the Pre-Award meeting minutes and obtain the letter of recommendation from the Design Consultant. Both documents shall be included in the staff summary.

**Excluded Parties Listing System**

After bid opening, and prior to award, a representative from Contact Administration will verify that the low bidder does not appear on the Excluded Parties Listing System website <https://www.epls.gov/epls/search>

**Staff Summary**

Design & Construction shall submit a Staff Summary or other appropriate authorization document for either the General Manager’s or the Board of Directors’ approval to award and execute a contract. Contract Administration will prepare an Award/Notice to Proceed for issuance by the General Manager and Assistant General Manager for Design and Construction. The MBTA Project Manager’s Manual provides comprehensive guidance on staff summary preparation.

## 4.1.6 EXECUTION OF CONTRACT

**Award Process**

Below are the steps necessary to officially execute a construction contract:

1. Upon the receipt of the Board of Directors vote from the MBTA Board Recording Secretary, the Manager of Construction Contract Procurement (CN Manager ) prepares the MassDot Approval Letter for all contracts over $1million to be signed by the General Manager and forwarded to the MassDOT Secretary for concurrence. **(Exhibit 4.12)** This is a requirement pursuant to M.G.L. Ch 161A Section 3 (f).
2. Upon return of the MassDot letter, CN Manager prepares the Notice of Award (NOA) **(Exhibit 4.13**). A letter from the Director of Contract Administration is also included with the NOA to describe the necessary documents that are required from the Contractor as it relates to Bonding, Insurance and Bid Escrow Documentation. **(Exhibit 4.14)**
3. CN Manager contacts General Contractor notifying them that two (2) conformed contract books are available for pick up.
4. The contractor has 10 days from Notice of Award date to provide bonding, insurance documentation and their corporate board vote.
5. CN Manager notifies the contractor they have five (5) days to produce the Escrow Bid Documents for all contracts of at least $1 million in value, per Section 00510 of contract.
6. Upon receipt of the signed conformed contract, CN Manager forwards to Risk Manager for review of insurance certificates. If Risk Manager has questions or requires additional information the CN Manager coordinates with the contractor and their insurance agent.
7. Contracts are then forwarded to the General Counsel's (GC) office. The General Counsel reviews bonding information; contractor’s corporate vote and verifies contract language.
8. Conformed contracts are forward to the General Manager (GM) for final signature.
9. When contract is received from the GM, CN Manager prepares the Notice to Proceed for AGM signature. **(Exhibit 4.15**)
10. CN Manager distributes executed contract and issues the NTP. **(Exhibit 4.16)**

## 4.1.7 RECORD OF PROCUREMENT

### Written Record of Procurement History

The Project Office shall work with the Contract Administration Department to prepare for the file the Written Record of Procurement History. The written record shall be maintained at the Project Office and Contract Administration Department. Refer to Section **4.8** of this manual for detailed lists of documentation required.

**4.2 Advance Payment** - FTA Circular 4220.1F Section IV.2.b (5)(b) prohibits the use of advance payments. The MBTA may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable; however, mobilization costs for construction projects are one of the exceptions discussed in the FTA Circular 4220.1F.

**4.3 Progress Payment -**  FTA Circular 4220.1F Section IV.2.b (5)(b) Progress Payments are payments for contract work that has not been completed. The Authority may use FTA assistance to support progress payments provided the Authority obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. The MBTA payment terms are provided in **Exhibit 4.17.** Please refer to the MBTA Project Manager’s Manual and Project Controls Manual for additional guidance on the payment process for construction contracts.

**4.4 MBTA Standard Terms and Conditions** - MBTA standard terms Section 00700 – General Conditions, Section 00800- Supplementary Conditions and Section 01150 - Measurement and Payment details the MBTA conditions for payment. Standard Terms can be found in **Exhibit 4.17**

**4.5 MBTA Change Order Guidelines -** MBTA Change Order Guidelines details the Authority’s changer order process.. These guidelines are available to contractors on the MBTA website. The MBTA Project Manager should take the lead in administering this procedure. The dollar value of the change order is used to determine the proper level of authority (AGM, GM & Board). Staff summaries are required for all actions that require General Manager or Board of Directors approval. When a Change Order requires GM or Board of Directors approval, the PM prepares the Staff Summary and submits it to Administration and Finance (A&F). Contract Administration works with A&F to process the change order through the Authority’s signatory process. **Exhibit 4.18**

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## 4.6 Compliance with FTA Circular 4220.1F

All procurements must comply with FTA Circular 4220.1F requirements when the project is funded using federal funds. These requirements include but are not limited to areas of general procurement standards applicable to third party procurements, competition, methods of procurement, contract cost and price analysis, as well as current FTA mandated contract clauses as listed in Exhibit 1.4.1 of this manual and available on the FTA.DOT.GOV website. [FTA Circular 4220.1F.IV.2]

## 4.7 Contract Administration

The Project Manager is responsible for maintaining contract files as specified in the Project Manager’s Manual.

Contract Administration shall maintain contract files that include at a minimum the documentation listed below. Contract Administration shall compile Pre-Advertisement “Green Book” and Pre Award “Yellow Book” for the contract file. The Contract Administration files shall contain the following documents:

# Checklist for “Pre- Advertisement / Bid Documents

1. Pre-Advertisement Documents
* Pre Bid Review Control Sheets
* Budget Letter
* DBE Letter
* Real Estate Letter
* Engineer’s Estimate (ICE)
* Allowance Letter
* Risk Manager Approval
* Paint System Approval
* ADA Compliance Letter
* Liquidated Damages Letter
* Environmental Permitting Status Letter
* Request for Prevailing Wage
1. Advertisement
* Request to Advertise Memo
* Copy of 1st Draft
* Copy to General Manager
* Central Registry Confirmation
* Publications for Advertisement
* Copy of Notice to Bidders
* Copy of Invoices for Payment of Advertisements

#### Addendum Issuance

* Contract Administration to Assistant General Manager Memorandum
1. Other Bid Documents
* List of Planholders
* Request for Proposal Form
* Disinterested Bidder’s List
1. Contract Review Comments

### Checklist for “Pre-Award/Award” Documents

**WRITTEN RECORD OF PROCUREMENT HISTORY**

#### A. Tabulated Bid Results

#### B. Edit & Comparison of Bids Memorandum with CMS backup

#### C. Bid Documents

* Press Secretary Notification
* Supervisor of Cash Receipts Notification
* Labor Relations Verification of “Work in Harmony”
* Memo to P.M. transmitting Bid Package
* Excluded Party List System (EPLS)
* Bid Protest Documentation (if applicable)

D. Approved Staff Summary for Award with Vote

#### E. Award Documents

#### Labor Relations Approval

#### Certified Board Vote

#### MassDOT Approval

#### Transmittal/Approval Memo for Notice of Award

#### Notice of Award Letter

#### Notice to Proceed

#### Letter to Contractor Transmitting Fully Executed Conformed Copy of Contract

#### Items Provided Under Separate Cover (when applicable)

* Executed contract

#### Modifications (Change Orders, Extra Work Order Letters, Contract Quantity Variance Reports & Claims)

* Payment Book(s)

#### Approvals or Disapproval’s of Waivers & Deviations

#### Documentation regarding Disputes, Settlements, Audits and Legal Reviews

#### Termination or Suspension of Work Orders

* Contract-required insurance documentation
* Post-award correspondence from or to the contractor or other government agencies
* Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements.
* Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., Director, Assistant General Manager, Board of Directors) of the settlement amount;
* Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
* Documentation relating to contract close-out

**4.8 CONTRACT CLOSE-OUT**

The Project Manager’s Manual, Section 10 provides specific guidance for Project Managers and Contract Administration to ensure proper Project Closeout.

**EXHIBITS**

**DESIGN BID BUILD PROCEDURE EXHIBITS**

**EXHIBIT**  **TITLE**

4.1 Specification Checklist

4.2 Pre-bid Review Control Sheets

4.3 Flow Chart Specification Advertising

4.4 Sample Advertising Memos

4.5 Prequalification Guidelines

4.6 Prequalification Statement

4.7 Prequalification Checklist

4.8 Sample Prequalification Certificate

4.9 Sample Planholder’s List

4.10 Requests for Proposal Form (RFP)

4.11 Sample Bid Package Staff Summary

4.12 MassDot Approval Letter

4.13 Notice of Award

4.14 Director of Contract Administration NOA Letter

4.15 Notice to Proceed

4.16 Executed Contract Memo

4.17 Standard Contract Terms

 Section 00200 – Instruction to Bidder

 Section 00700 – General Conditions

 Section 00800 – Supplementary Conditions

 Section 01150 – Measurement and Payment

* 1. Change Order Guidelines