Design Build
Procurement Guide
April 2013
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CHAPTER ONE
INTRODUCTION

1.1 PURPOSE

The design build procurement process is one of the tools the MBTA is authorized to use in third party contracting with the Inspector General’s approval. This document has been developed to establish Authority guidelines and procedures to be used in the design build contracting process.

1.2 AUTHORITY

The use of design build procurement for “Public Works Projects” is subject to Sections 14–21 of Chapter 149A of the General Laws as inserted by Section 27, Chapter 193 of the Acts of 2004. Chapter 149A allows for the use of design build for the construction, reconstruction, alteration, remodeling, and repairs of a public works project estimated to cost not less than $5,000,000.00. The MBTA must obtain MBTA Board of Directors and Office of Inspector General (OIG) approval to use Design Build procurement method prior to initiating the procurement process for every Design Build procurement. Unlike other agencies, which have general legislative authorization to utilize design-build, the MBTA must obtain approval for each design build procurement. The OIG’s application procedures are attached in Appendix A.

1.3 SCOPE

The information presented in this guide provides the requirements for using the design build contracting method. The intent is to use the Authority’s existing contracting systems to the extent possible, changing or adding only as necessary to facilitate the design build method of contracting.

1.4 BACKGROUND

Design-build combines into a single contract the design, construction, and in certain cases, construction engineering and inspection services (CEI). All work shall be in accordance with MBTA Design Standards and criteria, specifications, and contract administration practices. These projects allow the contractor and designer to work together on all phases of the project in an effort to reduce costs and expedite project delivery while maintaining required quality and compliance.

The design-build contracting process and contract administration will follow standard MBTA practices, unless differences are otherwise identified herein. The Contract Administration Department within the Design & Construction Directorate will be responsible for conducting the design build contracting process for projects. Throughout the procurement process, the relevant selection committee will apply MBTA’s current guidelines for the RFQ/P process and MBTA procedures, as outlined by MBTA’s Procurement Manual, Project Management Manual, and Resident Engineer Manual, where applicable, and as further developed within this design-build guideline. The design and construction criteria will be established
specifically for each design build project and will be used as the basis for the evaluation and ranking of the Proposals.

1.5 FTA PROCEDURAL GUIDANCE FOR DESIGN-BUILD PROCUREMENT

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expressly authorizes the use of FTA capital assistance to support design-build projects “after the recipient complies with Government requirements,” 49 U.S.C. Section 5325(d)(2).

(1) Procurement Method Determined by Value. First, the MBTA must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the MBTA to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

(a) Construction Predominant. The construction costs of a design-build project are usually predominant so that the MBTA would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based Brooks Act procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural, engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.

(b) Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the Brooks Act as described in FTA Circular 4220.1F Chapter VI subsection 3.e.
1.6 OWNER’S REPRESENTATIVE

In accordance with MGL Chapter 149A, Section 151/2, the Authority will retain an Independent Owner’s Representative prior to award of the Design-Build contract when the certified estimated cost of construction exceeds $50,000,000.

CHAPTER TWO
DEFINITIONS

For purposes of this guideline, the following definitions shall apply:

2.1 Advertisement is the public announcement of a design-build project similar to the public announcement for professional services currently used by the Authority. The advertisement shall appear in the Central Register and shall be advertised in a newspaper of general circulation in the area in which the project is located or to be located. If the project is federally funded using American Recovery and Reinvestment Act (ARRA) funds, it must also be advertised in the state COMPASS system.

2.2 Best Value Design Build (BVDB) means the highest overall value to the Authority, considering quality and cost. The contract award is based on the lowest adjusted score, which is determined by dividing the price proposal by the technical proposal score.

2.3 Bid Proposal means a technical proposal and a separately sealed price proposal submitted by each Design Build Entity.

2.4 Contracting Unit is the unit within MBTA that has been given the responsibility of procuring design build contract. This unit may mean either the Contract Administration Office or the Design & Construction Directorate; whichever is appropriate for the task required.

2.5 Construction Engineering Inspection Services (CEI), are the services required of the DB Entity that include construction inspection, off-site plant inspection, materials sampling and testing, surveying, and other Quality Control functions as specified for the particular project.

2.6 Authority is the Massachusetts Bay Transportation Authority.

2.7 Design Build (DB), a construction delivery system that provides responsibility for the delivery of design services and construction services within a single contract.

2.8 Design Build (DB) Entity, an individual, sole proprietorship, firm, partnership, joint venture, corporation, or other entity that provides design-build services.

2.9 Design and Construction Criteria is the document included in the RFP that
defines the essential elements of the project to meet the needs determined by the Authority.

2.10 **Design Professional**, shall have the same meaning as "designer" as defined in section 38A 1/2 of chapter 7 which can be an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscaping architecture or engineering who will provide technical advice and professional expertise to the Authority for the duration of the two-phase design build selection process.

2.11 **Letters of Interest (LOI)** is the information provided by interested DB Entities in response to a project advertisement. A DB Entity desiring to be considered for a design build project must submit a Letter of Interest and provide the information required in the advertisement of the project.

2.12 **Low Bid Design Build (LBDB)** means the contract award is based on the lowest price responsive bid.

2.13 **Major Participant**, a private entity that would have a significant role in the design or construction of the project as a member of the Design Build Entity.

2.14 **Non-Responsive** refers to any submission that does not meet the criteria identified in the RFQ or any Technical Proposal that does not comply with the criteria defined in the RFP.

2.15 **Prequalification** is the process used to identify DB Entities that meet certain criteria necessary to advance to the RFP stage of the selection process. The Construction Prequalification Committee shall be responsible for determining the prequalification status of each DB Entity using information provided in LOI’s, SOQ’s, and on file from other Authority prequalification procedures, or from other appropriate sources as necessary.

2.16 **Project** means the scope of services to be designed and constructed as described in the public advertisement.

2.17 **Project Manager (PM)** is the Authority’s designee responsible for the administration of the DB project.

2.18 **Request for Proposal (RFP)** the document issued by the Authority to solicit proposals from pre-qualified design build entities for the purpose of entering into a design build contract.

2.19 **Proposal** an offer by the proposer in accordance with all RFP provisions for the price contained in the Proposal.

2.20 **Request for Qualifications (RFQ)** the document issued by the Authority for the purpose of creating a list of qualified design build entities to respond to an RFP to be issued by the Authority.
2.21 **Responsible Proposer**, a person, corporation, or other organization or entity which has the capability to perform the requirements of the design-build contract, has the integrity and reliability to assure good faith performance, and meets the qualifications component of the RFQ and/or RFP.

2.22 **Selection Committee**, the group of individuals established by the Authority who will review proposals and recommend selection of best-value or low-bid proposals. The Selection Committee may also receive assistance from any sub-committees that evaluate the technical and or price proposals as needed. Additionally, the Authority may use Technical Advisors as required.

2.23 **Technical Proposal** is the information provided by the potential DB entity that enables the Authority to evaluate the capability of the DB Entity to provide the desired services. The design shall be sufficiently defined by drawings, narrative, and outline specifications to enable the Authority to evaluate the level of quality of the proposed design and construction based on the scope of work requirements contained in the RFP.

2.24 **Statement of Qualifications** is the complete package received from a DB Entity in response to the Authority’s Request for Qualifications (RFQ) that defines the DB Entity’s experience and capabilities to provide the services requested.

2.25 **Two-Phase Selection Process**, a procurement process in which the first phase consists of creating a list of qualified design build entities as determined by responses to an RFQ. The second phase consists of the submission of technical and price proposals in response to an RFP by the qualified design build entities.

2.26 **Owner's Representative** shall mean an individual registered by the Commonwealth of Massachusetts as a professional engineer, who has not less than five years of experience in the construction and supervision of construction of the type which is the subject of the design-build contract in nature, scope and complexity.

2.27 **Technical Advisor** shall mean the project Design Professional or other publicly procured consultant.
CHAPTER THREE

BEST VALUE DESIGN-BUILD PROCUREMENT PROCESS (BVDB)

The best value procurement process will be used to select the proposal with the best value to the Authority and public, in which the combination of technical, quality, schedule, operating, and pricing factors meet or exceed the Authority’s requirements identified in the RFP. The Authority will follow a specific decision making process to identify and select a project for using the design build method of procurement. Assessment of the project risks, project complexity, size, operational impacts, traffic management, and project schedule requirements will be required. The Authority will also identify project development staffing needs and determine who (in-house or consultant) will perform services such as preliminary mapping and baseline survey, hydraulic analysis, geotechnical investigation, traffic management, right of way, environmental studies and permitting.

The Authority will establish a multi-disciplined team to develop the RFQ and RFP documents prior to project advertisement. This will include identifying the project team members for the Selection Committee and any subcommittees. The project development team will identify the project goals, develop the preliminary design and construction scope of work, develop a detailed description of the project, collect the base data, identify the required design elements, identify environmental permitting requirements, identify ROW needs, etc.

If the scope of work requires substantial engineering judgment, the quality of which may vary significantly as determined by the Authority, then the basis of award shall be best value.

3.1 PREQUALIFICATION REQUIREMENTS

The Authority will publish an advertisement requesting Letters of Interest (LOI) and announcing the availability of Request for Qualifications packages (RFQ) in the same manner as a typical procurement for a professional services contract with the Authority. The advertisement shall contain a description of the project, the required services, evaluation criteria, funding source, and any prequalification requirements of the DB Entity. The Authority will require that the DB Entity be prequalified by the MBTA through the RFQ process set forth herein.

3.2 DEVELOPMENT OF DESIGN AND CONSTRUCTION SCOPE OF WORK

The project description and detailed scope of work is the most important aspect of the project development and should be developed early in the process. This information provides the vehicle to ensure that the project team understands the complete project and provides a common basis for distribution of project teamwork tasks. The project description should define the purpose of the project, its limits, unique conditions, design elements, physical components, schedule issues, traffic
management parameters, operational issues, community issues and other items as necessary to fully describe the project.

The Authority shall contract for the duration of the 2 phase selection process with a Design Professional to provide technical advice and professional expertise to the Authority; but, in retaining the services of a design professional, the MBTA may utilize the services of a design professional already in the employ of the Authority or, if the Authority does not already have in its employ the design professional, the Authority shall procure the services of a design professional pursuant to its Procurement Manual, which is inclusive of FTA Circular 4220.1F Third Party Contracting. The Design Professional must be in place before issuing the RFQ.

The Authority shall develop, with the assistance of the Design Professional, a scope of work statement that defines the Project and provides prospective DB Entities with sufficient information regarding the Authority’s objectives and requirements. The scope of work statement shall include criteria and preliminary design, general budget parameters, and general schedule requirements.

The Design Professional retained to provide technical assistance and consulting services to the Authority shall not be eligible to participate in any way as a member of the DB Entities competing for the award of the design build contract.

If the project is subject to FTA oversight, the RFP shall be consistent with FTA Circular 4220.1F Third Party Contracting and Section 1 of these guidelines.

Design and construction criteria should clearly and completely identify design build requirements/services, including any information, data, and services to be furnished by the Authority and must be included in the RFQ or RFQ/P package including the relative weighted average to be assigned each criterion. The RFP shall identify the basis, low-bid or best value, by which the Authority will evaluate proposals.

The design and construction criteria shall provide a summary of the project’s objectives and furnish sufficient information upon which DB Entities may prepare bid proposals (i.e. technical and price proposals). Criteria may include geotechnical analysis, surveying, environmental permitting, right of way, utility coordination, etc. The design and construction criteria shall state the specifications, design criteria, and standards to be used in the design and construction of the project unless otherwise referenced in the RFP.

Prior to advertisement, the Selection Committee, Contract Administration, and the assigned Technical Advisors should hold a briefing session to discuss the design build process, scoring, evaluation criteria, reference check process and other selection committee member questions.
3.3 CONTRACT NUMBER ASSIGNMENT

Contract Administration will obtain a contract number and enter the project into the Authority’s Capital Management System (CMS) for monitoring as a design build project. The price proposal bid items must conform to the Authority’s CMS system.

3.4 ADVERTISEMENT

The Authority will publish an advertisement requesting LOI and announcing the availability of RFQ or RFQ/P packages in the same manner as a typical procurement for a professional services contract with the Authority. A minimum of two weeks will be allowed from the time of the advertisement to the deadline for submitting Letters of Interest. Letters of Interest received by the deadline identified in the advertisement will be provided with either an RFP (in a single-phase, low bid procurement) or an RFQ package (in a two-phase best value procurement). The RFQ package will request a Statement of Qualification (SOQ) which will be used in the qualification step of the two-step selection process. An “Industry Review Draft” of the RFP may be provided with the RFQ package, if available.

Advertisements requesting LOI shall be placed in a newspaper of general circulation in the area in which the project is located or to be located and in the Central Register. The advertisement shall also be posted on the MBTA website. If the contract uses American Recovery and Reinvestment Act (ARRA) funds, the advertisement will be published on the Commonwealth’s COMPASS system.

Each advertisement shall include, as a minimum:

- the name and description of the project,
- location of the project,
- the major type(s) of work required,
- any minor types of work that are required for the project (but not normally associated with the major work),
- the estimated construction cost of the project,
- the time period within which the project is to be completed,
- prequalification requirements,
- how and where DB Entities can respond,
- any additional technical qualifications desired,
- the time and date for receipt of Letters of Interest,
- the name of the individual receiving the submittals,
- address of the office to which the responses are to be delivered,
- the time frame in which the Authority will respond to the Letters of Interest,
- the number of copies to be received,
- evaluation criteria,
- Disadvantaged Business Enterprise (DBE) goal (if applicable),
- funding source, and
- tentative dates for RFP release and final DB Entity selection.
In a two-phase, best value procurement, the advertisement shall also contain a statement that the RFQ will be used to identify qualified DB Entities to submit a proposal pursuant to Section 19 of M.G.L Chapter 149A.

All advertisements should summarize the Authority’s selection schedule for the prospective DB Entities. The selection schedule should provide an outline of specific calendar dates, and clearly identify the time allotted for the preparation of qualification statements for design build proposals. Each project advertisement should be drafted to fit the unique needs of that particular project.

3.5 PREPARATION OF REQUEST FOR QUALIFICATIONS (RFQ)

Pursuant to Section 3, a Design Professional shall be in place prior to issuance of the RFQ.

The RFQ shall serve as the basis by which the MBTA will create a ranking of DB Entities that are qualified to receive an RFP in phase 2 of the two-phase selection process. The RFQ will be provided to each DB Entity submitting a Letter of Interest. The RFQ shall contain the date certain by which Statement of Qualification (SOQ) responses to said RFQ are due and should specify the time and place for their submission. The RFQ should also include all performance criteria and measures that will be utilized during the SOQ evaluation process.

The RFQ requests interested proposing teams (Proposers) to submit a well-defined package outlining historical information related to capabilities, experience, and past performance on specific issues pertinent to the design build project. Information about project team organization, key project team members, and individual team history will be required. The evaluation criteria and scoring system will be clearly identified in the RFQ. The goal of the evaluation of the SOQ’s is to select a minimum of two and up to five highest ranked Proposers based on their qualifications and experience in specific areas that are important for the design build project. Proposers may be required to give an oral presentation to the Selection Committee or to otherwise provide clarifying information needed to properly evaluate qualifications.

Requested information from each Major Participant will include:

- **Standard Form 330** which includes:
  - List of Subconsultants and applicable DBE designation
  - Team organization Chart;
  - Identification and resumes of Key personnel;
  - Past work experience on projects similar in size and scope for the past three years;
  - Team history;
- **Terminations** - Any terminations from work or failure to complete work for the past three years;
- **Litigation** - Any lawsuits filed against any Major Participant for the past three years;
- **Business and Safety Record** - The prior business record of the officers or principals of each Major Participant, and the safety record of each Major
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Participant; said information shall be provided for the past 3 years;

- **References** - Including references from previous clients, bank references, surety references, and a complete record of public projects for the past three years;
- Bonding capacity, which shall be evidenced by a commitment letter from an approved surety; and
- **Other Performance Measures** - Any other performance measures that will be used as a basis for evaluating responses to the RFQ

Each DB Entity shall respond to the Authority by submitting all information required by the RFQ to the Authority no later than the date and time indicated in the RFQ.

An Industry Review Draft of the RFP may be issued at the same time as the RFQ is being issued for review and comment by prospective DB Entities. DB Entities receiving a draft RFP may submit written comments on the draft RFP to the Authority at the same time as submitting a response to the RFQ. The Authority, at its sole discretion, may incorporate any of these comments into the final RFP.

The MBTA shall establish a Selection Committee which will be responsible for the evaluation and ranking of the SOQs on the basis of the evaluation criteria set forth in the RFQ. The designated individuals shall have design build experience in design and/or construction and be approved by the Assistant General Manager for Design and Construction. The individuals shall prepare their evaluations based solely on the information requested pursuant to the RFQ.

The evaluations shall specify in writing:

1) For each evaluation criterion, a rating of each response as, advantageous, not advantageous or unacceptable, and the reasons for the rating.

2) A composite rating for each SOQ using said ratings as advantageous, not advantageous, or unacceptable, and the reasons for said composite rating.

The MBTA will investigate and verify all information received. All financial information, trade secrets or other information customarily regarded as confidential business information shall not be deemed to be public information and shall remain confidential to the extent permissible under current law.

DB Entities achieving a composite rating as determined by the SOQ rankings by total composite scores achieved using the criteria and weighted averaged identified in the RFQ that falls within the scoring range of highly advantageous or advantageous shall be eligible to receive an RFP in phase 2 of the two-phase selection process. If the MBTA fails to identify at least 2 DB Entities who qualify to receive an RFP, the MBTA shall re-advertise the project and renew the RFQ process. It is recommended that the number of firms receiving a RFP be limited to no fewer than 2 and no more than 5 of the most qualified DB Entities as determined by the SOQ rankings. Detailed evaluation guidelines are discussed in more detail later in this section.
3.6 PREPARATION OF REQUEST FOR PROPOSALS (RFP)

The components of the RFP Package are based on the Authority's standard bid proposal documents, with some additional components that identify the selection process requirements and criteria to be used. The RFP will contain the necessary information to describe the project (scope), the technical requirements for designing and constructing the project (standards), the method for selecting the DB Entity, the scoring process to be used, performance criteria, quality criteria, and relative weight assigned to the evaluation criteria. The RFP and the selected DB Team's proposal will become the basis for the contract and the means to administer the contract.

3.6.1 Project Time/Schedule

The RFP shall state a time period in which the services and/or work are to be delivered. Time of performance requirements in the RFP are best stated in elapsed consecutive calendar days from the date identified in the contract notice-to-proceed. In this way, changes in the schedule to solicit, receive, evaluate, and select an award can be changed without affecting the project schedule. In those instances where the completion date is critical, the RFP must include a "but-not-later-than" qualifier in the project schedule.

Each DB Entity's proposal shall include a project schedule, which should depict when the DB Entity intends to complete each element/phase of the project. The RFP should identify and define schedule submittal requirements in sufficient detail so that proposals can be compared to each other effectively. The DB Entity's project schedule shall be developed using critical path method (CPM) techniques (or other appropriate scheduling techniques based on the type of project) and specify the time frame for interim events. These events may include submittal requirements of the DB Entities, such as design development drawings, or construction documents. They may also include requirements of the Authority directly or through a third party (e.g., site availability, completion of an environmental report/permits or the delivery of MBTA-furnished equipment or materials).

Again, the interim deadline requirements should be stated in elapsed days and may be an obligation of the DB Entities or Authority. The obligation of the Authority to complete specific submittal reviews (if required) within a specified time period should also be included in the proposer's project schedule.

It is recommended that the RFP require a 30 to 90 day plans preparation period and the required review period should be front-loaded into the project schedule prior to allowing the contractor to begin actual construction. This will allow the design process to get out ahead of the contractor as well as providing sufficient time for the Authority to conduct its conformity reviews. This plans preparation time must be clearly spelled out in the RFP so that the DB Entities can include it in their contract time calculation.
It may be appropriate to allow certain construction activities (such as geotechnical investigations and clearing and grubbing) during this plans preparation period. Specific requirements should be included in the RFP identifying these activities.

A clear Value Engineering phase should be identified in the scope of work, especially where design packages are anticipated to be issued sequentially rather than together, to make sure the MBTA is able to maintain choice; some decisions may preclude others.

Value Engineering proposals should follow FTA guidelines, and not be proposed for under $100,000, except during DB preparation of final documents, to avoid delays caused by time required for review.

3.6.2 Payout Schedule
The RFP must clearly address the invoicing and payment process including a payout schedule. The payout schedule should be based on major, well-defined tasks related to the DB Entity’s CPM (or other appropriate) schedule. The payout schedule should also include provisions for tracking DBE participation. Generally, the details of the payout schedule are to be worked out between the selected DB Entities and the Authority after the project is awarded. Examples of payout schedules are based on monthly or percentage of completion of work schedules. The MBTA requires construction schedules to be resource and cost loaded.

3.6.3 Technical Proposal
The RFP shall include well-defined technical proposal requirements. This should include detailed instructions regarding the content and format. (Instructions to Proposers – ITP).

3.6.4 Price Proposal
The RFP shall include well-defined Price Proposal requirements. Design Build projects are bid lump sum and are paid through a payout schedule based on percentage of completion of major work items or tasks. The DB Entity’s price proposal shall include the lump sum price, as well as the standard bid blank forms.

The Project Manager should include the appropriate Design Build Bid Items that reflect the scope of the work in the Bid Proposal Form.

3.6.5 Subcontract Services
The RFP shall contain language that allows DB Entities to subcontract portions of their work. Major Participants in the DB Entities (i.e., contractor or designer) cannot be changed after contract award without written consent of the Authority. Failure to receive approval on such a change may result in the assessment of damages, contract cancellation or other Authority remedy.
3.6.6 DBE Requirements

The RFP/Specifications shall address the Authority’s commitment to diversity in contracting. Utilization of women and minority-owned businesses is encouraged by the Authority to be used on all projects. The Project Manager shall contact the Office of Diversity and Civil Rights for current contract requirements. Pursuant to 49 CFR Part 26 only Massachusetts Supplier Diversity Office (SDO)-certified DBE participation is attributable to attaining the DBE goal.

3.6.7 Technical Proposal Evaluation Criteria

The RFP shall include the evaluation criteria and scoring process and relative weight thereof to be used by the Selection Committee to evaluate technical proposals on all Best Value or Low Bid Design Build projects. The criteria shall be established by the Selection Committee to meet the specific needs of a particular project.

3.6.8 General Liability Insurance, Professional Liability and Contract Bonding

Owner Controlled Insurance Policy (OCIP) – OCIP is not allowed.

Railroad Protective Insurance: The RFP/Specifications shall stipulate the amount of railroad protective insurance required and term (the length of time) of coverage.

General Liability Insurance: The RFP/Specifications must include current Standard Specifications regarding general liability.

Auto: The RFP/Specifications shall stipulate the amount of auto insurance required and term (the length of time) of coverage.

Professional Liability: The RFP/Specifications shall stipulate the amount of professional liability insurance required and term (the length of time) of coverage.

Contract Bonding: The RFP/Specifications must require applicants to be capable of providing evidence of a performance and payment bond in the full amount of the total Design Build contract. Performance and payment bonds shall be required as a condition of contract award.

3.6.9 Public Involvement

Since public involvement is an important aspect of the project development, it is imperative that the Project Manager, working with the appropriate MBTA staff, defines in the RFP the level of coordination/involvement required for a particular project and whether MBTA Design and Construction or the Design Build Entity will support the community process. Public involvement includes
communicating to all interested persons, groups and government organizations (stakeholders) information regarding the development and construction of the project.

### 3.6.10 Design and Construction Quality Assurance and Quality Control

The Quality Assurance Program is a critical component of the design and construction of the project. It represents assurances to the Authority that the Design Build Entity is executing in accordance with the contract documents. The Authority will provide the oversight of the DB Entity’s quality assurance program which may include independent testing/peer review, surveillance or auditing, but the established QA/QC Program is the basis on which the Authority will gauge compliance. The Contract Provisions should require that the QA Program submitted with the proposal be in conformance with the Authority’s requirements. The Authority may negotiate the provisions of the QA/QC Program and finalize an acceptable Program within thirty (30) days of the award of the contract.

### 3.6.11 RFP Requirements

**Detailed Scope of Work** – The scope of work must include design concepts, technical requirements, performance criteria, right-of-way access and impact plan, construction requirements, time constraints and all other requirements that have been determined by the Authority to have a substantial impact on the cost, schedule and quality of the Project and the project development process.

**Cost Basis (Low Bid or Best Value) and Submission Requirements** – The RFP shall identify the cost basis, low bid or best value, by which the proposals will be evaluated. If the basis for award is low bid, proposers shall submit one complete, sealed proposal package that includes price information. If the basis for award will be best value, proposers must simultaneously submit two separate, sealed proposals: a sealed technical proposal and a sealed price proposal.

**Evaluation Criteria** – The RFP must include all criteria to be used in evaluating and ranking proposals. For best value procurements, the RFP must specify the scoring process, quality criteria and relative weight thereof. The RFP must state the method by which the “overall value rating” for each proposal will be calculated. The overall rating must be calculated either by dividing the total price by the quality score or by using another objective formula clearly detailed in the RFP.

**Bid Deposit** – Each Proposal shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer’s or cashier’s check issued by, a responsible bank or trust company, payable to the Authority. The amount of the bid deposit shall be 5 percent of the value of the bid.
Noncollusion Statement – Each Design Build Entity submitting a Proposal shall certify on the proposal as follows: “The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph, the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.” The statement must be signed by the person signing the proposal, accompanied by the company name.

Proposal Submission Information – The RFP must specify the date by which Proposals must be submitted to the Authority and should specify the time and place for Proposal submissions. For best value procurements, the RFP must also designate the time and place at which price proposals will be publicly opened after the evaluation of technical proposals is completed.

Stipend Information – At the Authority’s option, the RFP may provide for a stipend upon terms specified in the RFP to unsuccessful proposers that submit proposals that conform to the requirements of the RFP. The Authority may only use ideas and designs contained in non-successful proposals if a stipend is paid to the unsuccessful proposer.

Conceptual Technical Submittals Review – At the Authority’s option, the RFP may provide for a process, including the establishment of a team, to review conceptual technical submittals before full proposal submittal for the purposes of identifying defects that would cause rejection of the proposal as non-responsive.

Alternative Technical Concept Review – At the Authority’s option, the RFP may provide for a process to review proposer options to the base technical concept in the form of alternative technical concepts (“ATCs”) to inform proposers whether such ATCs would be acceptable to the Authority if presented with the technical proposal.

3.7 CONSIDERATIONS FOR RFP DEVELOPMENT

Formulation of the RFP package is a significant effort that should not be overlooked in project scheduling, or underestimated. This is the portion of the contract in which the Authority has the opportunity to properly define the desired outcome. The team members need to ensure that the required information is incorporated into the RFP. This section describes some of the considerations necessary for developing the major components of the RFP.

1) Prior to advertisement, existing right of way must be verified and a determination made if the project can be built within existing right of way. If additional right of way will be needed, a decision must be made in the identification stage if right of way services will be included in the Design Build contract or handled separately.

Design build contracts may be advertised and awarded prior to right of way
activities being completed. However, work on a parcel of land to be acquired may not begin until rights to that parcel have been acquired or otherwise secured.

2) Design Build Entities may be required to provide independent Construction Engineering Inspection services as part of the Quality Assurance and Quality Control program. It should be determined in the early identification stage if this will be part of the RFP. The MBTA Quality Assurance Laboratory must approve of the inspection and testing program.

3) The Authority will put together an experienced multi-disciplined team to assist in the development of the request for proposal information. Team members need to be identified early so that all disciplines that are essential to the type of work in the scope are aware of their roles and responsibilities. An MBTA Project Manager must be assigned prior to project scope development, in order to have that person on the MBTA Design Build team. This allows project management and field personnel to become familiar with the process.

4) The type of funding must be identified in order to include the correct bid documents in the request for proposal. If federal funds are involved, all the normal FTA procedures for approval and authorization must be followed.

5) Stipends: The issue of reimbursement for the preparation of the technical proposals needs to be addressed up front so that funds for stipends are included in the project budget. Where Federal funds are to be used, FTA approval must be attained prior to inserting a stipend clause in the RFP. Federal funds may be used to reimburse those DB Entities that submitted proposals in response to an RFP for their effort in the preparation of the technical proposal. If the job is relatively small and not complex a stipend should not be offered. If an idea is used, a stipend must be paid to the DB Entity that proposed the idea. The Proposers will sign a stipend agreement and submit the agreement with the Technical Proposal submission.

Once a project has been identified for Design Build procurement:

1) Preliminary design work may be required prior to advertisement. Such work may include survey, geotechnical data, right of way, permitting, utility identification and/or other items of work. The more information available, the more detailed the scope of work will be to the prospective DB Entities. A decision needs to be made as to how much preliminary design work will be done. A reasonable target would be a 30% design effort with any specific complex issues being identified in the scope of work (or developed further) prior to advertisement. Preliminary environmental studies and permitting requirements need to be assessed. An appropriate target, whether 30% or 90% for some or all elements shall be established, depending on project-specific needs. For example, a project not impacting the ROW, not involving customers, and not involving complex design issues might require only 30% design, where one involving ROW impacts, signal systems modifications, complex path of travel issues, or special building technology requirements
might require 90% design for most or all aspects of the design. For these complex projects, full Project Development Group (PDG) process must be followed.

2) Set up a preliminary schedule for the development of the RFQ and RFP documents. Consider the terminology normally used and that which is used with design build projects. It may not be the same and needs to be understood by all parties. The Draft RFP should be complete and ready to go at the time the advertisement appears. This means that a design build schedule is very front-end loaded for scope development, scope review, appropriate approvals and advertisement time. It is prudent to inform and involve the FTA throughout the development of the RFP. Informing the FTA of the RFP should not be left to the last minute.

3) Writing an RFP is time consuming and requires review by various disciplines within the Authority and FTA. Allow for at least two reviews. Allow time, up front, to make modifications knowing that each item listed in the procedure must be addressed. The more detailed the work the more time will be needed to write the RFP. A decision to include construction engineering inspection work must be made early so that it can be included in the RFP.

4) Authority review times must be identified in the RFP. These times are absolute. If MBTA review comments are not provided to the DB Entity by the cut-off date, the DB Entity may encounter delays and may be entitled to additional time and costs associated with the delay in receiving the review comments. The Project Manager should discuss this with the design review sections to ensure their understanding. Explain that the reviews are generally done on an “over-the-shoulder” basis and that review times are significantly shorter (usually about 15 days) than those for normal design projects. The reviews are, however, for “meeting design criteria” only, and not final approval. Where review times are shortened, it must be for simple issues, not resolving complex design issues.

5) Although there are established DB Entities, most of the responses to Authority advertisements for Design Build projects will be received from two separate companies that have teamed up specifically for a DB project. The contractor or consultant may lead. Contractors have more bonding capacity than consultants. Consultants tend to know the professional services contracting procedures more thoroughly and are more familiar with writing technical proposals than contractors.

6) Perform a risk analysis for the Project. Evaluate areas of potential risk to the Project's budget, scope, and schedule and identify those that are significant. Examples of areas of risk include: delays in receipt of funding, scope changes, actual cost of work, rework, permitting delays, legal claims (such as permitting appeals or land taking damage disputes), unforeseen site conditions (e.g. hazardous materials, unsuitable soils, rock, unknown utilities), force major events (e.g. storms, strikes, terrorism), unexpected cost increases (e.g. price spikes in fuel or steel), third-party demands for design changes or construction restrictions, third-party delays (e.g. utility work,
Assign responsibility for each identified significant risk to the Authority or the DB Entity (or both) depending upon which party is best able to control or manage the risk. Just assigning responsibility for all risks to the DB Entity will only result in higher bids due to inclusion of additional contingencies. Risks and responsibility should be spelled out in the RFP/Contract and associated cost contingencies included in the Project budget. In some cases it will be appropriate and cost effective to procure insurance to manage a risk.

7) In general: Be very specific, not vague – only if you tell the bidders exactly what you want will get it. Avoid contradiction between documents - contractor will apply the most favorable version to them (justifiably) - apply the rule of thumb of saying things only once to avoid this problem; provide for unanticipated occurrences: withdrawal or suspension of NTP's, permits issued in a different order than anticipated, infeasibility of agreed mitigation elements, additional design investigations required (borings, surveys, wetland flagging, etc.), serious archeological or hazmat discoveries, etc; maximize understanding of bidder's assumptions - how does their design differ from proposal, how will hazmat be handled cost wise, how much land do they anticipated requiring, what do they expect the permit conditions to be, etc., all of which will help evaluate the bid as well as assist in change negotiations later.

8) Clearly state in proposal documents what the state of involvement and buy-in by critical third parties is (i.e. regulators) so that bidders don't have to assume. Seriously consider involving regulators and others such as DEP or MassDOT in the establishment of Contract procedures and strategies for permitting, design review, etc. Having advance agreement on Special Project Designation, expedited review, what district will review what plans in how much time, etc. will avoid delay later. People that were not involved in setting up the Contract will not have any incentive to help the Authority implement it successfully.

3.8 SOQ EVALUATION GUIDELINES

The purpose of this section is to provide guidelines that will allow the Selection Committee to take all the SOQs received by the deadline stated in the RFQ and reduce them to a ranked listing in the order of the highest composite score achieved by each DB Entity.

The RFQ requests interested proposing teams (Proposers) to submit a well-defined package outlining historical information related to capabilities, experience, and past performance on specific issues pertinent to the design build project. Information about project team organization, key project team members, individual team history and current workload will be required. The evaluation criteria and scoring system will be clearly identified in the RFQ. The goal of the evaluation of the SOQ's is to select a minimum of two and up to five qualified Proposers based on their experience in specific areas that are important for the design build project.
Proposers may be required to give an oral presentation to the Selection Committee or to otherwise provide clarifying information needed to properly evaluate qualifications.

The Committee shall take into consideration the following criteria as it applies to the project. Not all criteria will apply or may have little value for the particular project. The committee should determine in advance the criteria and its importance in the evaluation of the SOQ's to produce the ranked list. The criteria to be considered and included in the RFQ are:

1. **Past Performance Grades:** Contractor, Designer, and CEI (if CEI is included in contract)
2. **Joint experience of the DB Entities working together**
3. **Design Build experience of the DB Entities**
4. **Similar type work experience**
5. **The current workload of the DB Entities**
6. **Time delays on past projects**
7. **Experience of key personnel to be assigned to the project.**
8. **Safety record**
9. **DB Entity’s organization, resources and location**
10. **Environmental record**
11. **Incidents of litigation/disputes history**
12. **DBE Past Performance**
13. **Other categories the Selection Committee determines**

The following are definitions of the above criteria:

1. **Past Performance:** Evaluate past performance of the Major Participants as listed in the Contractor Past Performance Evaluation Report. See Contract Administration for Evaluation Reports. Primary Designer past performance should also be evaluated using the Consultant Performance Evaluation Rating Sheets (CPER) past ratings and reviews if available.

2. **Joint Experience of the DB Entities Working Together:** It may be beneficial to have information about experience that the major DB Entities’ members have had in the past. Traditional projects may have involved the Designer and Contractor working together during construction. This could include but not be limited to Design Build. They may have a history of working with each other that has supported their coming together as a DB Entity. Many Consultants use Contractors for constructability reviews as well as Contractors using Consultants for design issues. This past history can also include projects where the Consultant member designed the project and the Contractor built the project. Even though some of these
projects may or may not have been transportation projects, it still demonstrates that the DB Entities have a confidence level in each other that has led to teaming again. This may be considered a positive in the evaluation process, as compared to a Designer and Contractor that have not worked together in the past.

3) **Design Build Experience of the DB Entity:** Consider the individual DB Entity members’ past experience with Design Build projects of similar type (i.e. bridge, garage, station, roadway, building, etc.) as well as the experience of the complete team on past Design Build projects in other states. Consider the overall project type, as well as the complexity and unique features, of past projects as compared to the demands of the subject project. Past Design Build experience could be drawn from projects contracted by other DOTs, private industry, or local governments. The criteria should carry a heavy emphasis on very sensitive projects. Projects, such as a complex station renovation or construction, would be the standard for giving the criteria a heavy emphasis.

4) **Similar Work Type Experience:** Consider experience that clearly demonstrates that the DB Entity has performed design and construction of the same type, scope, and complexity as the advertised project. For example, if the advertised project is a three-mile long precast segmental bridge, then the contractor should be able to show, as a minimum, experience with segmental construction – precast would be good, but cast-in-place is acceptable – and with repetitive type operations. If the advertisement is for a predominantly track project and the Contractor’s experience is mainly with bridges, the DB Entity may not be considered as a strong candidate.

5) **Current Workload:** Consider the DB Entity’s current workload and whether the DB Entity may be overextended, which could compromise its ability to perform at a high level by taking on too much work. Consider the impact on other Authority projects on which the DB Entity may be working. Verify the DB Entity’s bonding capacity and exclude any team unable to bond the project from being considered.

6) **Time Delays on Past Projects:** Timely completion of past projects should carry a heavy emphasis. DB Entities who have demonstrated the ability to finish jobs on time, particularly when they have encountered conditions differing from those represented in the plans, on current or past projects should be given greater consideration.

7) **Experience of Key Personnel:** Consider the experience of key personnel who are proposed by the DB Entities to be in charge of the day-to-day work on the project. This includes the project manager and key persons in responsible charge of construction, design, critical specialty work, inspection, and testing.
8) **Safety Record:** The DB Entity’s performance in the safety area can be evaluated by review of past performance on construction projects and citations by OSHA for safety violations.

9) **DB Entity’s Organization:** Organization of the proposed DB Entity and sub-consultants should be evaluated for ability to do the job; the DB Entity’s ability to work together as a cohesive team should also be evaluated. The DB Entity’s members’ experience with local and state governments, permit and regulatory agencies, and community groups can also be evaluated. Be advised that the FTA prohibits geographical preferences.

10) **Environmental Record:** The performance of the DB Entities can be evaluated by reviewing citations from DEP, EPA, etc. This information will most generally be published in the daily clips or newspaper articles. MBTA Construction personnel’s experience with the DB Entities with NPDES requirements can also be used.

11) **Incidents of Litigation/Disputes History:** Consider a history of contractor claims pertaining to additional compensation or time extensions that are not negotiated and resolved through a Supplemental Agreement, or final estimate quantities disputes that proceed, after final acceptance, to mediation, arbitration or litigation. Also, a history of disputes being escalated to Dispute Review Board (i.e., disputes may be initiated by Contractor or Owner, generally contractor initiates) should be considered.

12) **Other:** There may be other criteria, unique to the proposed project that warrants inclusion in the initial evaluation that is not listed above. The Authority must recognize this in the development of the RFQ and RFP packages.

**Confidentiality:** Critical to the validity of the selection process is the absolute necessity for confidentiality. Each Authority participant in the evaluation process for either the RFQ or RFP shall sign a “Confidentiality and Non-Disclosure Agreement” and a “No Conflict of Interest Statement”.

The Selection Committee may take many approaches to identify DB Entities to receive an RFP. A scoring matrix will be developed by the Selection Committee to identify the categories and the associated weighted averages for the scoring system. The list should also have a narrative comment summary of strengths and/or weaknesses as identified by the Committee of each DB Entity. The evaluation categories and scoring weighted averages (scoring matrix) will be developed and identified prior to distribution of the RFQ.

The following are suggestions for the Selection Committee to consider based on lessons learned:

- There should be a 1:1 correlation between the items requested and the scoring criteria
• The RFQ should be detailed to include technical disciplines (does it need a parking garage consultant) and organizational chart role requirements (list key positions), and every other requirement on which teams will be judged.
• The evaluation sheets should have scoring criteria that are clearly grouped / separated, e.g.: “work for the MBTA” (sometimes not relevant) and “similar type of work” should be two separate items so that scorers understand on what basis to score.
• Wherever information can be requested in metric form (how many garages, how many change order dollars per construction dollar, etc), it will be easier for scorers to “see” the information.

3.9 PRE-PROPOSAL MEETING FOR DB ENTITIES RECEIVING RFP

Prior to the RFP due date, a pre-proposal meeting will be held, with FTA being invited on oversight projects, in order to discuss the project in detail and to clarify any concerns that the DB Entities may have.

The purpose of this meeting is to provide a forum for all concerned parties to discuss the proposed project, answer questions on the design and construction criteria identified in the RFP, project schedule, method of compensation, instructions for submitting proposals, contract terms, and other relevant issues. The DB Entities should be instructed to direct all questions after the meeting to one entity, either the Project Manager or the Director of Contract Administration or designee. Questions must be submitted in writing and a cutoff date for questions should be established. No questions should be answered relating to the project objectives after the information cutoff date.

The design should be fully presented to interested firms at the pre-proposal meeting. This presentation should include as much detail as possible, including images, design intent, requirements and parameters.

During and after the meeting, it is the responsibility of the Authority to ensure that each DB Entity develops its technical proposal with the same information. If one DB Entity receives information from the Authority relating to the project prior to the information cutoff date, the Authority will ensure that all DB Entities receive the same information in a timely fashion. The project file will clearly document all communications with any DB Entity regarding the design and construction criteria by the Technical Advisor, Selection Committee Chairperson and Contract Administration.

At the conclusion of the meeting or when it is reasonable to assume that no further changes regarding design and construction criteria will be required, the Technical Advisor, Contract Administration, along with the Project Manager, will update the criteria, as necessary. The updated criteria shall be made available to each member of the Selection Committee prior to the evaluation of the technical proposals. Also, should significant changes result from the meeting, the DB Entities shall be provided the updated criteria or any changes occurring in the RFP by the issuance of an addendum.
3.10 PROPOSALS SUBMITTED BY DB ENTITIES

The Authority shall request proposals from no fewer than two DB Entities. DB Entities will be asked to develop and submit proposals based on the RFP. Proposals will be segmented into two parts: Technical Proposals and Price Proposals. Technical and Price Proposals will be received by the date, time and appropriate office, as noted in the instructions. Technical and price proposals shall be submitted simultaneously in separate sealed packages and the appropriate bid deposit per M.G.L. 149A, Section 20.

Price proposals shall include all DB package forms (i.e., Bid Bond, DBE Utilization Summary Form, etc.) The office receiving the proposals will send the technical proposals to the Selection Committee and hold sealed price proposals until technical proposal scores are compiled by the Selection Committee. If a DB Entity withdraws from consideration after the Authority requests a proposal, the Authority may continue with the procurement as long as at least two proposals are received.

3.10.1 Technical Proposals

Technical proposals should include the following: a detailed project schedule using CPM (or other techniques as appropriate), preliminary design plans, preliminary specifications, technical reports, calculations, permit requirements, total contract time and other data requested in response to the RFP. The package shall indicate clearly that it is the technical proposal and shall clearly identify the DB Entity’s name, project description, and any other information required.

3.10.2 Price Proposals

Price proposals shall include lump sum prices for each defined category of the work, with a final lump sum for the total cost of all design, construction, and construction engineering and inspection (if CEI is included) of the proposed project. The package shall clearly indicate that it is the price proposal and shall clearly identify the DB Entity’s name, project description, and any other information required.

3.11 PROPOSAL EVALUATION PROCESS

3.11.1 Evaluation Overview

The Selection Committee shall first determine whether the proposals meet the Pass/Fail criteria and whether the proposals are otherwise responsive to the requirements of the RFP. Committee members shall evaluate the appropriate components of the proposals against the criteria contained in the RFP and submit their findings to the full Committee. Following the oral presentations, Committee members shall revise their evaluation sheets and narratives, where appropriate. Standard MBTA evaluation forms will be used as modified for project specific criteria.
The RFP will identify a specific period of time for Proposers to submit questions and written requests for clarifications during the development of their proposals. All inquiries must be in writing and directed to the Authority’s Project Manager identified in the RFP. Answers to all substantive questions will be made available to all RFP recipients via e-mail or File Data Transfer Site; and when appropriate, revisions, substitutions, or clarifications will be issued as official addenda to the RFP.

The RFP may allow for a process to review alternative technical concept submittals prior to final submission for the purpose of determining the Authority’s willingness to accept an alternative proposal options prior to the submittal due date.

Approximately one week after the proposals are submitted, each Proposer may be allowed to make a one-hour oral presentation to all members of the Selection Committee. The presentation will afford the Proposers the opportunity to highlight the significant aspects of their technical proposal and their understanding of the project and offer a chance for the Selection Committee to ask clarifying questions. The Selection Committee shall decide in advance as to what Proposal information may require clarification and which of the design build entity’s key personnel it wishes to interview. The oral presentation shall not be used to fill in missing or incomplete information that was required in the written proposal. The oral presentation shall not be used as an opportunity by the Proposers to improve or supplement their proposals. This step in the selection process will be clearly identified in the RFP.

Following the review of any subcommittee reports and the qualitative ratings, the Selection Committee will determine if clarifications will be required. The Selection Committee will notify in writing each Proposer for which clarifications of their proposal is required in accordance with the schedule contained in the RFP. Oral presentations may be requested and will serve the purpose of assisting the Committee in understanding and clarifying the proposals. Oral presentations will afford each proposer equal time to present their approach to completing the project. Following the formal presentation Committee members may ask questions of each Proposer with the intent of clarifying information in the technical proposal. The committee may request the submission of additional information for the purpose of clarifying and improving the Committee’s understanding of its proposal.

**Qualitative Ratings**

Each major category (i.e. Design, Construction, Operations and Maintenance, Finance/Joint Development) and each subcategory will be qualitatively evaluated by each reviewer and assigned a rating as follows:

**EXCEPTIONAL (90-100):** The proposer has demonstrated an approach that is considered to significantly exceed stated requirements/objectives and provides a consistently outstanding level of quality. There is very little or no risk that this proposer would fail to
meet the requirements of this aspect of the work. There are essentially no weaknesses in this item of the proposal.

**GOOD (80-89):** The proposer has demonstrated an approach which is considered to exceed stated requirements/objectives and offers a generally better than acceptable quality. There is little risk that this proposer would fail to meet the requirements of this aspect of the work. Weaknesses, if any, are very minor.

**ACCEPTABLE (70-79):** The proposer has demonstrated an approach that is considered to meet the stated requirements/objectives and has an acceptable level of quality. The proposal, for this aspect of the work, demonstrates a reasonable probability of success. Weaknesses are minor and can be readily corrected.

**POOR (60-69):** The proposer has demonstrated an approach that fails to meet stated requirements/objectives as there are weaknesses and/or deficiencies, but they are susceptible to correction through oral presentations. The response is considered marginal in terms of the basic content and/or the amount of information provided for evaluation, and the proposer should be capable of providing an acceptable or better proposal for this item.

**UNACCEPTABLE (0-60):** The proposer has demonstrated an approach that contains significant weaknesses/deficiencies and/or unacceptable quality. The proposal fails to meet the stated requirements/objectives and/or lacks essential information and is conflicting and/or unproductive. There is no reasonable likelihood of success; weaknesses/deficiencies are so major and/or extensive that a major revision would be necessary.
The Committee will use the guide as a means of converting the applicable weighting factors to the qualitative ratings established in the review of the proposals. The guide will enable the Committee to apply the appropriate weight to each selection factor as set forth in the project specific proposal evaluation process.

3.11.2 Selection Criteria

Detailed selection criteria to be used by the Selection Committee and subcommittees will be identified in the RFP and will be detailed for each specific project. Committee members shall refer to these criteria when completing the evaluation sheets.

The Committee will evaluate each DB Entity’s technical proposal. The rating and technical evaluation process is extremely important.

Each Committee member will submit a final technical proposal scoring form for each DB Entity’s Proposal to the Selection Committee Chairperson. During this technical review process, it is recommended that the Committee members meet together to discuss their thoughts on each proposal. This is intended to be a structured meeting to discuss concerns and to determine how well each proposal met the criteria. Rating points for each proposal should not be discussed at this meeting. The purpose of the meeting is to give each reviewer a better understanding of the technical merits of each proposal, not to develop a group score.

The Selection Committee shall notify all DB Entities who receive an RFP of the date, time, and location of the public opening of the sealed price proposal.

The Selection Committee shall publicly open and read, at the time and place designated in the RFP, the sealed price proposals and shall publicly calculate the overall value rating for each proposal using the method detailed in the RFP. The overall value rating shall be the total price (which included overhead and profit) divided by the technical score or other objective formula clearly detailed in the RFP. (Divide each DB Entity’s price proposal by the technical score to obtain an adjusted score; the DB Entity with the lowest adjusted score is the entity whose proposal will be determined to provide best value). The following example shows how the selection formula would work:
DB ENTITY | TECHNICAL SCORE | PRICE     | ADJUSTED SCORE
-----------|----------------|-----------|------------------
A          | 90             | $6.7 Million | 74,440          
B          | 80             | $6.5 Million | 81,250          
C          | 70             | $6.3 Million | 90,000          

Alternative Technical Concept (ATC)

In the event the Authority requests Alternative Technical Concepts (“ATCs”), the RFP shall clearly state the evaluation and scoring process relative to the consideration of ATCs.

3.12 SELECTION COMMITTEE RECOMMENDS AWARD

Unless all proposals are rejected, the Selection Committee will provide a formal recommendation that the Authority enter into good faith negotiations with the DB Entity with the lowest adjusted score. In the event that two or more proposers have the same lowest price per technical score, the Authority shall enter into good faith negotiations with the Responsible Proposer who submitted the lowest price. In the advertisement and pertinent bid documents, the Authority shall reserve the right to reject all proposals and waive minor proposal irregularities.

The Authority shall post the results and provide written notification to each DB Entity submitting a proposal of the award of the project or rejection of all proposals within thirty (30) days of final selection or determination to reject all proposals. After signing a design build contract, the Authority shall notify in writing all other Design Build Entities that their proposals were not accepted.

3.13 STIPENDS FOR UNSUCCESSFUL DB ENTITIES

On BVDB projects, the unsuccessful DB Entities submitting Proposals may receive compensation (lump sum) for their efforts in preparing a Proposal if the Proposal is determined to be responsive by the Selection Committee. The intent to compensate, the amount of this compensation and the conditions for receiving the compensation will be noted in the RFP package. A stipend is not intended to compensate the DB Entities for the total cost of preparing the bid package. Compensation will be commensurate with the level of effort required to develop a bid proposal. In return, the Authority shall reserve the right to use any of the
concepts or ideas within the technical proposals, including ATCs, as the Authority deems appropriate.

FTA must approve any stipend program prior to issuance of an RFP if FTA funds are used.

On Best Value Design Build (BVDB) projects where the Authority intends to compensate the unsuccessful DB Entities for submitting a Proposal, the Authority will enter into a contract with each DB Entity immediately after a successful Proposer is selected. Before this contract is awarded the Project Manager will ensure that a request for encumbrance is approved by the Budget Office in accordance with the contract funds approval process. A contract is required to document the terms and conditions for compensation and a contract form shall be included in the RFP. This form shall be submitted with the proposal. The stipend will be paid upon issuance of the Notice to Proceed to the successful Proposer.

CHAPTER FOUR

LOW BID DESIGN BUILD (LBDB) BID PROCESS

As a general rule, the low bid approach should be used on projects where the design and construction criteria are concise, clearly defined, and innovation or alternatives are not being sought.

4.1 PREQUALIFICATION REQUIREMENTS

The Authority will publish an advertisement requesting Letters of Interest (LOI) and announcing the availability of Request for Qualifications packages (RFQ) in the same manner as a typical bidding for a professional services contract with the Authority. The advertisement shall contain evaluation criteria, funding source, description of the project, the required services, and any prequalification requirements of the DB Entity. Potential bidders who submit Letters of Interest received by the deadline identified in the advertisement will be provided with an RFQ package. A “Draft RFP” may be provided with the RFQ package if available.

4.2 CONTRACT NUMBER ASSIGNMENT

Contract Administration will obtain a contract number and enter the project into the Authority’s Capital Management system for monitoring as a design build project.

4.3 ADVERTISEMENT Same as for BVDB: Section 3.4.
4.4 PRE-BID MEETING FOR LOW BID DESIGN BUILD

If the LBDB project is complex, a pre-bid meeting may be held in order to discuss the DB Project and clarify any concerns. This meeting may be waived if the complexity of the project does not warrant such a meeting.

4.5 PREPARATION OF REQUEST FOR QUALIFICATIONS (RFQ) Same as for BVDB: Section 3.5.

4.6 PREPARATION OF REQUEST FOR PROPOSALS (RFP) Same as for BVDB: Section 3.6.

4.7 BID OPENING FOR LOW BID DESIGN BUILD

Under LBDB process, the Authority will publicly open the price proposals on the day, time, and location noted in the advertisement, and send the Selection Committee the technical proposals for only the lowest bid submitted.

4.8 RESPONSIVENESS OF PROPOSALS

The Selection Committee shall review the design concepts and preliminary designs of the lowest bidder proposed in order to assess the responsiveness of the lowest bidder's technical proposal compared to the Design and Construction Criteria Package.

In the event the lowest bidder's technical proposal is found to be non-responsive, the Selection Committee will then review the next lowest bidder's technical proposal to determine its responsiveness. (A Bid Proposal is considered non-responsive if it does not contain all the required information and level of detail, or is non-compliant with the design and construction criteria defined in the RFP. It may be appropriate for the Authority to contact the non-responsive DB Entity to discuss/clarify its concerns prior to moving on to the next lowest bidder. However, once determined that the low bidder is non-responsive, the process will continue until the lowest bidder having a responsive proposal is found.

Unless all proposals are rejected, the Selection Committee will recommend that the Assistant General Manager for Design & Construction, approve and enter into non fee negotiations with the DB Entity with the lowest responsive bid. The Authority reserves the right to reject all proposals and waive minor proposal irregularities.
4.9 SELECTION COMMITTEE RECOMMENDS CONTRACT AWARD TO THE DB ENTITY WITH THE LOWEST RESPONSIVE BID

Unless all proposals are rejected, the Selection Committee will recommend to the Assistant General Manager for Design & Construction and/or the General Manager to award to the DB Entity with the lowest bid that has a responsive technical proposal. In the advertisement and pertinent bid documents, the Authority shall reserve the right to reject all proposals and waive minor proposal irregularities.

The Authority shall post the results and provide written notification to each DB Entity submitting a proposal of the award of the project or rejection of all proposals within thirty (30) days of final selection or determination to reject all proposals.
Procedures relative to receiving a Notice to Proceed to Use Design-Build Services

April 2013
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One Ashburton Place
Boston, MA 02108

**Contact Information:**
(617) 727 - 9140
(617) 523 - 1205 (MCPPO Program)
(800) 322 - 1323 (Confidential 24-hour Hotline)
(617) 723 - 2334 (FAX)
(617) 722 - 8809 (Design-build application)
www.mass.gov/ig

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Introduction

Office of the Inspector General
Design-Build Application to Proceed

Prior to using the design-build delivery method to procure a contract for the construction, reconstruction, alteration, remodeling, or repair of any public works project estimated to cost $5 million or more, an awarding authority must obtain a Notice to Proceed to use the design-build delivery method from the Office of the Inspector General (OIG).

The OIG has developed this design-build application to be completed on a project specific basis. The application process will be important to awarding authorities in assessing the qualifications and commitments that are necessary to ensure construction of a high-quality, cost-effective public works project.

Under M.G.L. c. 149A, § 4, the OIG will issue a Notice to Proceed when the awarding authority has demonstrated that:

a. The awarding authority has authorization from its governing body to enter into a contract for design-build. The authorization shall include the results of any public vote if applicable.

b. The awarding authority has the capacity, a plan and procedures in place and approved of by the governing body, where appropriate, to effectively procure and manage a design-build entity for the specific project.

c. The awarding authority has in place procedures to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement process.

d. The public works project has an estimated construction value of $5,000,000 or more.

e. The awarding authority has determined that the use of design-build is appropriate for the public works project and states in writing the reasons for the determination.

The OIG will review an awarding authority’s complete application and within 60 days from the date a completed application is received will determine whether the awarding authority meets the requirements necessary to obtain a Notice to Proceed.

Pursuant to M.G.L. c. 149A, § 16(b), if the OIG declines to issue a Notice to Proceed to an awarding authority, the Inspector General shall provide in writing to the awarding authority the reason(s) for the decision. An awarding authority not receiving a Notice to Proceed may resubmit its application upon correcting or responding to the reason(s) for denial provided to the awarding authority by the OIG. The OIG shall make a timely
review of the resubmitted application and, if the awarding authority meets the requirements, the Inspector General will issue a Notice to Proceed.

The Inspector General shall decline to issue a Notice to Proceed to an awarding authority that has failed to provide complete and accurate answers to all questions in the application and all other information and documentation required by the OIG. Providing false, misleading, or incomplete information will be considered grounds for denial.

Applications must be submitted to: Office of the Inspector General, Room 1311, One Ashburton Place, Boston, MA 02108.

If you have any questions regarding the application process or would like to receive an electronic file version of the application, contact Mary Kolesar, Senior Policy Analyst, Policy and Government Division, at 617-722-8809 or by e-mail at Mary.Kolesar@massmail.state.ma.us.
## Schedule

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<thead>
<tr>
<th>Day</th>
<th>Event</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day 1</td>
<td>Awarding Authority Submits Application to Proceed (by mail) to:</td>
<td>Date stamp application.</td>
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<tr>
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<td>Office of the Inspector General</td>
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<td>One Ashburton Place, Room 1311</td>
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<td>Boston, MA 02108</td>
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<tr>
<td>Day 1 –</td>
<td>1. OIG reviews application in a timely manner.</td>
<td>Review application.</td>
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<td>15</td>
<td>2. OIG contacts applicant acknowledging receipt of the application.</td>
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<tr>
<td>Day 1 –</td>
<td>1. OIG determines whether additional information is necessary and if</td>
<td>• Verify information.</td>
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<td>60</td>
<td>so, requests awarding authority to send information.</td>
<td>• Request more information, if necessary.</td>
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<td>2. OIG reviews application to determine whether awarding authority</td>
<td>• Analyze credentials based on evaluation</td>
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<td>meets requirements and will be issued a Notice to Proceed.</td>
<td>criteria.</td>
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<tr>
<td></td>
<td>3. OIG sends Notice to Proceed or Denial of Notice to Proceed.</td>
<td>• Complete review and issue determination.</td>
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Application

Please submit one original with signature pages and one copy of the following information. Use additional sheets where necessary. To assist the evaluation process, please submit information and documents in accordance with the item numbers on this application form.

Part A: General Information

1. Awarding Authority ____________________________________________
2. Awarding Authority Person in Charge of Project____________________
   a. Awarding Authority Address____________________________________
   b. Phone number of Awarding Authority Person in Charge of Project____
   c. Fax number of Awarding Authority Person in Charge of Project ______
3. E-mail address of Awarding Authority Person in Charge of Project________
4. Narrative description and brief history of the project:

______________________________________________

5. Project schedule elements, including but not limited to:
   a. Letters of interest solicitation date;
   b. Selection date of the design professional to provide technical advice and professional expertise to the awarding authority, if not an employee of the awarding authority;
   c. Request for qualifications (RFQ) and draft RFP(if any) distribution date;
   d. Request for proposals (RFP) issue date;
   e. Design-build entity selection date;
   f. Design-build entity contract date;
   g. Project completion date.
6. Submit an estimated total project budget, including but not limited to line items for the following items:
   a. Design professional contract amount (if not an employee of the awarding authority):
   b. Stipend, if any;
   c. Design-build entity contract amount;

1 "Design-build entity", is an individual, sole proprietorship, firm, partnership, joint venture, corporation, or other entity that provides design-build services. [M.G.L. c. 149A, §15]
d. Other costs

e. Identify the source of the estimated public works project budget and estimated construction costs.

7. Submit the attached form (see last page) regarding the authorization from the awarding authority’s governing body that the awarding authority may enter into a contract for design-build, including the date of authorization. Submit copies of any public vote if applicable.

8. Submit the name(s) and title(s) of the individuals authorized to sign the design-build entity contract on behalf of the awarding authority.

9. Submit written evidence of the approval of the governing body of the project plan and procedures, if applicable.

10. Submit the written determination by the awarding authority that the use of design-build is appropriate for the public works project and the reasons for the determination.

Part B. Awarding Authority Capacity Information

11. Provide an organizational chart of the project organization showing the roles and responsibilities of each individual or entity participating on the project, including contractors.

12. Provide the name, affiliation, and contact information for all known key members of the project team. List all relevant qualifications and experience, including any public project experience and any design-build experience (public or private) on project(s) of similar size and complexity or on any other projects, for:

   a. the individual/s within the awarding authority that will make project decisions for the awarding authority and that will supervise the design professional and the design-build entity,

   b. the design professional, if known, and

   c. any other members of the project team or special consultants to be used to support the project (e.g., counsel, accountant, financial advisor), if any.

13. Submit a copy of the proposed scope of services for the design professional contract or, if the design professional is an employee, submit the individual’s title, job description, and scope of work related to the design-build project.
The OIG reviews the awarding authority’s plan and procedures for procuring and managing the design-build services to ascertain whether the awarding authority has in place procedures, in accordance with M.G.L. c. 149A, to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement process. Therefore, provide information regarding each of the following components of a design-build:

14a. The awarding authority’s plan and procedures for acquiring appropriate expertise to assist where the team may not have the necessary experience to meet anticipated challenges.

14b. The awarding authority’s plan and procedures for conducting phase one of the two-phase selection process, and the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement. Please specify whether the awarding authority plans on issuing a draft RFP at the same time it issues the RFQ. Please specify how many design-build firms the awarding authority plans on selecting to receive an RFP in phase two.

14c. The awarding authority’s plan and procedures for conducting phase two of the two-phase selection process. Please specify whether the awarding authority plans on using a best value process with separate technical and price proposals or a low bid process and the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement. Please specify whether the awarding authority plans on reviewing conceptual technical submittals before full proposal submittal. Please specify whether the awarding authority plans on providing for a stipend.

14d. The awarding authority’s plan and procedures relative to administering and coordinating the project and maintaining project communications.

14e. The awarding authority’s plan and procedures relative to monitoring and auditing all project costs.

14f. The awarding authority’s plan and procedures relative to controlling risks, including but not limited to design risks and construction warranties and guarantees.

Please do not submit requests for qualifications (RFQs), requests for proposals (RFPs), draft contracts, or other such documents related to the design-build delivery method procurement.

\[\text{\footnotesize 2 The plan and procedures must be approved by the governing body, where appropriate. [M.G.L. c. 149A, §16(a)(2)]]}\]
Evaluation Process

Office of the Inspector General's Evaluation Process

The OIG will review the information submitted by the awarding authority and assess whether the plan and procedures provide an adequate framework for procuring and managing a design-build delivery method project. The following criteria will be used in making a determination whether to issue a Notice to Proceed.

- Is the estimated construction cost $5 million or more?
- Did the awarding authority receive approval from the appropriate governing body?\(^3\)
- Did the awarding authority's governing body approve the plan and procedures?
- Are the awarding authority’s goals and objectives for using the design-build method reasonable and designed to maximize competition?
- Has the awarding authority established a plan for developing an effective project organization, including identifying a point of contact, establishing decision-making rules, and addressing other components of managing a design-build project?
- Do any project team members have relevant design-build experience for the size and scope of the project?
- Does the plan and do the procedures and the proposed scope of services for the design professional contract, or if an employee, the job description, demonstrate an appropriate assessment of the awarding authority's tasks and responsibilities associated with a design-build contract, including all aspects of coordination and administration of the design-build delivery method?
- Has the awarding authority established a plan for acquiring appropriate expertise to assist where the team may not have the necessary experience to meet anticipated challenges?
- Does the plan and do the procedures provide an adequate framework for conducting the two-phase selection process for a design-build entity? Does the plan and do the procedures specify whether the awarding authority will be using a best value process with separate technical and price proposals or a low bid process and do they clearly delineate the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement? Do the phase one components comply with statutory requirements? Do the phase two components comply with statutory requirements?

\(^3\) The "appropriate governing body" varies, depending on an awarding authority's charter and other factors.
Does the plan and do the procedures provide an adequate framework for administering and coordinating the project and maintaining project communications?

Does the plan and do the procedures provide an adequate framework for auditing and monitoring all project costs?

Does the plan and do the procedures demonstrate an appropriate assessment of the design-build delivery method risks and include appropriate safeguards?

Is the schedule realistic?

Although the OIG will rely primarily on the information presented in the application to make its determination, the OIG reserves the right to obtain additional information and to verify information.

Certification

The undersigned hereby certifies under the pains and penalties of perjury that all answers and all information contained in this application is, to the best of my knowledge, true and correct.

_________________________________  ______________________________________
Signature    Date

_________________________________  ______________________________________
Title    Awarding Authority
If the OIG’s review results in a determination that an awarding authority appears to lack sufficient capacity to effectively procure and manage a design-build project, the OIG will provide in writing to the awarding authority the reason(s) for the determination. An awarding authority may resubmit a detailed application, correcting or responding to the reason(s) identified by the OIG. The OIG shall review the resubmitted application.

If the OIG review results in a determination that an awarding authority has demonstrated sufficient capacity to effectively procure and manage a design-build public works project, the OIG shall issue a Notice to Proceed.

The OIG shall decline to issue a Notice to Proceed to an awarding authority that has failed to provide complete and accurate answers to all questions in the application and all other information and documentation required by the OIG. Providing false, misleading, or incomplete information will be considered grounds for denial.
CERTIFICATION OF AUTHORITY TO USE THE DESIGN-BUILD DELIVERY METHOD

I, ______________________, [legal counsel for the governing body as identified below] do hereby certify to the Office of the Inspector General of the Commonwealth of Massachusetts, in accordance with M.G.L. c. 149A, §16(a)(1), regarding using Design-build services for the following project ______________________ (“Project”), as follows:

(1) That ______________________ [name of political subdivision] is an awarding authority as defined in M.G.L. c. 149, §15, is duly organized and existing under the laws of the Commonwealth of Massachusetts, and has received the necessary authority and power from ______________________ [its city council, town meeting or other governing body] to enter into a contract for Design-build and to perform all its obligations in connection with the Project.

(2) That the public vote of the governing body, attached hereto (if applicable) was duly adopted and is currently in effect.

______________________________
Signature

______________________________ [SEAL]

Title

______________________________
Date