

<i>Vendor Selection – Transit Design Build Procurement</i>	PROCEDURE	
	Document Number:	FRS-PR-035
	Version Number:	02

1.0 Purpose:

To establish the procedure within VTA to select vendors using the Design Build (DB) procurement process and manage the resulting DB contract. The DB process is defined as a procurement process in which the design and construction of a transit project are procured from a single entity.

2.0 Scope:

This Procedure applies to all VTA departments and all vendors participating in the established VTA procurement process.

3.0 Responsibilities:

It is the responsibility of the Purchasing and Materials Manager to draft and obtain approval of this Procedure and to assure organizational understanding and compliance with this Policy.

4.0 Procedure:

- 4.1 The DB procurement process will be employed in compliance with Policy FRS-PL- 035 Section 4 and as specified in California Public Contract Code (PCC) Section 20209.5 et seq. for transit capital projects.
- 4.2 EARLY INVOLVEMENT Procurement & Contracts staff shall be involved at an early stage of such procurements to provide guidance on the process to be used and to set tentative procurement timelines.
- 4.3 BOARD APPROVAL REQUIRED The PCC requires that the VTA Board of Directors approve the use of the DB process (see Sec. 4.1.2 of FRS-PL-035).
- 4.4 REQUISITION REQUIRED A complete and acceptable requisition must be received by Procurement & Contracts staff before the procurement process will begin. When the requisition is received, Procurement & Contracts staff will review all documents to determine the funding source and to assure that the specifications are clear, complete and non-restrictive. Any incomplete documents or restrictive specifications will be discussed with the Requestor and must be corrected and approved by Procurement & Contracts staff prior to solicitation.
- 4.5 EVALUATION CRITERIA The evaluation criteria shall be established consistent with the goals of the project and in compliance with established law which is set out in PCC Section 20209.8. Award is made to the responsible bidder whose proposal is determined to be the best value to VTA. DB contracts for non-rail transit projects that exceed \$2,500,000 and for acquisition and installation of technology applications or surveillance equipment designed to enhance safety, disaster preparedness and homeland security

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efforts may be awarded using either the lowest responsible bidder or by best value. DB may not be used for a capital maintenance or capacity-enhancing rail project unless it exceeds \$25,000,000.

- 4.5.1 Price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability and acceptable safety record must collectively represent at least 50 percent of the total weight of consideration given to all criteria factors.
- 4.5.2 The established evaluation criteria and their relative importance must be specified in the solicitation documents in compliance with PCC Section 20209.7.
- 4.5.3 The Contract Administrator and the Requestor shall jointly develop evaluation forms for each specific area to be evaluated in sufficient detail to assure accurate and complete evaluation of each area.
- 4.5.4 If a preponderance of the work is to be Design in nature, the requirements of the Brooks act, 40 U.S.C. Sections 1101 through 1104 and the California Government Code Sections 4526 et seq. must be used.
- 4.6 **KICK OFF MEETING** Generally, Procurement & Contracts staff will meet with the Requestor to determine the following:
 - If a Pre-Proposal conference is needed;
 - The required staff attendees for the Pre-Proposal conference;
 - The advertising to be used and department/project advertisement budget availability;
 - The need to obtain Board approval for execution of the final contract;
 - If federally funded, the required federal clauses;
 - The Requestor understands that the Office of Small and Disadvantaged Business (OSDB) must approve all DBE and or SBE goals for the solicitation;
 - Bonding and insurance requirements;
 - The need for and amount of Liquidated Damages;
 - The dates of interviews to be included in the RFP document;
 - Develop the evaluation criteria to be used in the DB process with the assistance and concurrence of the Contract Administrator.
 - The Contract Administrator shall assure that the evaluation criteria is clear, non-restrictive and allows for fair competition;
 - The evaluation criteria must be in sufficient detail to allow the Selection Team and Evaluation Teams to determine which vendors are deemed to have met the established evaluation criteria;
 - Depending on the complexity of the procurement, there may be a significant number of pages of evaluation criteria in the Technical, Contract Administration and Pricing evaluation areas.

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- The Selection Team:
 - Shall consist of VTA staff recommended by the Project Manager and approved by the Contract Administrator;
 - The Contract Administrator shall act as chairperson and facilitator of the Selection Team and be a voting member;
 - If there is a demonstrated need for non-VTA staff to be on the Selection Team, the Project Manager and Contract Administrator will agree on who those team members shall be;
 - The Selection Team should be kept to a workable size. The Contract Administrator and three to four members would be an ideal size depending on the complexity of the Design Build procurement contract;
 - The Selection Team, using information and input from the Evaluation Teams, will determine which proposers will be invited for interviews and ultimately Best and Final Offers (BAFO's) if BAFO's are determined to be needed;
 - No consultants may be on the Selection Team.
- Evaluation Teams:
 - Will be formed to evaluate various aspects of the proposals including Technical and Management components and others as determined necessary by the Contract Administrator and the Project Manager;
 - If there is a demonstrated need for non-VTA staff to be on the Selection Team, the Project Manager and Contract Administrator will agree on who those team members shall be;
 - Shall consist of VTA Staff recommended by the Project Manager and approved by the Contract Administrator;
 - Will each have a Chairperson agreed upon by the Contract Administrator and the Project Manager who will report scores and findings to the Selection Team;
- Members of the Selection and Evaluation Teams will be required to sign a Confidentiality Agreement and Conflict of Interest Disclosure form;
- The Contract Administrator shall have the responsibility of contacting the proposed evaluation team members and confirming their participation;
- The Contract Administrator shall have the responsibility of arranging the location for the Pre-Proposal meeting and subsequent evaluation meetings;
- The Contract Administrator shall have the responsibility of notifying all evaluation team members of the dates, times and locations of necessary meetings;
- The Contract Administrator will have the responsibility of assuring that all of the Selection Team or Evaluation Team members have signed all Conflict of Interest forms that may be required;
- The overall procurement timeline must include the date and time of the pre-proposal conference and the date, time and location for submitting proposals;
- Any vendor sources recommended by the Requestor.

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4.7 **PREQUALIFICATION** Prospective DB entities must be prequalified in accordance with the requirements set forth in PCC Section 20209.7.

4.7.1 Procurement & Contracts staff will work with the Requestor to establish a questionnaire using the standard questionnaire as developed by the State Director of Industrial Relations (DIR) for the prequalification process.

4.7.2 The questionnaire shall require information included in the DIR model, but is not limited to that information. Additional information may be required as determined by the Requestor and Procurement & Contracts staff.

4.8 **RESTRICTED FIRMS** Any architectural or engineering firm or individual retained by VTA to assist in the development criteria or preparation of the request for proposal shall not be eligible to participate in the competition for the design build entity.

4.9 **INDUSTRY REVIEW** Depending on the perceived complexity of the project, VTA may provide certain procurement documents to prequalified firms and others for review prior to issuance of the formal RFP document. This determination will be made by the Requestor and Procurement & Contracts staff.

4.10 **ADVERTISING** When the above steps have been completed and the solicitation schedule agreed upon, the Contract Administrator will prepare the solicitation for advertisement in a newspaper of general circulation, the VTA website and any other outlets agreed upon with the Requestor. Procurement & Contracts staff will have the responsibility for:

- Preparing the solicitation document;
- Assuring the DB document contains the scope of work, the evaluation criteria and their relative importance and any necessary federal clauses and other required elements;
- Assuring that documentation of the decision for the solicitation method used is in the file;
- Placing all agreed upon advertisements;
- Receiving notices of publication;
- Uploading the required information to the VTA website;
- Arranging the meeting room for the Pre-proposal conference,
- Making arrangements for any needed site visits,
- Making available all solicitation documents to requesting parties.

4.11 **PRE-PROPOSAL CONFERENCE** Should a Pre-Proposal conference be needed, Procurement & Contracts staff will have the following responsibilities:

- To chair the meeting and assure that questions asked are responded to appropriately, and to fully outline the procurement process that will be followed;

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- It is at this meeting that Procurement & Contracts staff will remind prospective proposers that all communications with VTA throughout the procurement process will be with assigned Procurement & Contracts staff only unless indicated otherwise in this Procedure;
- To notify attendees that they must register as an interested vendor for the specific RFP so they will be notified of any addenda that may be issued;
- To assure that needed VTA staff are in attendance. This includes staff from the requesting department, staff from the Office of Small and Disadvantaged Business and any others that may be needed to be responsive to anticipated questions from prospective proposers;
- OSDB staff will outline the DBE or SBE goals for the project and provide all related DBE/SBE information to the attendees;
- To accurately document questions that are asked and answered and questions that must be responded to in writing at a later date;
- To assure that all attendees have signed in on sheets prepared for that use;
- Coordinate with the Requestor and Legal Counsel's office if necessary to develop written responses to questions raised at the Pre-Proposal conference;
- Provide written responses to all plan holders of record to questions raised at the Pre-Proposal conference.

4.12 COMMUNICATION WITH VENDORS Procurement & Contracts staff will be solely responsible for all communications with the vendors throughout the procurement process. Any VTA staff member that is contacted by a bidder or a prospective bidder must inform that vendor that such contact is inappropriate and refer that person to the Procurement & Contracts staff member that is responsible for the procurement. Additionally Procurement & Contracts staff should be notified of the contact. The only exception to this requirement is that prospective bidders may contact the OSDB to discuss related procedures and requirements.

4.13 ADDENDA Any needed addenda to the procurement document must be prepared and issued by the responsible Procurement & Contracts staff person. The issuance of such addenda will be done with involvement and concurrence of the Requestor. Such addenda will be sent to all plan holders of record.

4.14 PLAN HOLDERS OF RECORD The plan holders of record will be determined by those vendors who have registered on the VTA website for the specific DB solicitation in question. Vendors who submit bids without having been so registered do so at the risk of not receiving addenda and potentially having their proposal rejected.

4.15 PROPOSAL OPENING RESPONSIBILITIES Procurement & Contracts staff will have the following responsibilities:

- To receive all proposals submitted in a timely manner;

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- To consult with Legal Counsel's Office to determine the proper handling of "late" submissions;
- To assure all proposals received are complete and responsive.

4.16 **POST PROPOSAL OPENING RESPONSIBILITIES** After the proposals are received Procurement & Contracts staff will be responsible for the following:

- Distribute proposals to the members of the Selection and Evaluation teams that have submitted approved Confidentiality Agreement and Conflict of Interest Disclosure forms;
- The OSDB must approve or disapprove all DBE/SBE goal attainment and direct any Good Faith Efforts review that may be necessary;
- Schedule and chair the meetings of the Selection Team;
- Assure that the evaluation of the Technical, Management and Price proposals are consistent with the published evaluation criteria and are in the competitive range;
- Assure that adequate meeting rooms have been reserved for the number of interviews determined by the Selection Team;
- If interviews are to be held, the Contract Administrator will assure that invitations are sent and the attendance of all invited proposers is confirmed as to time, place and duration;
- If any proposal is determined to be unacceptable, notify that firm of that fact and indicate that they will no longer be considered in the selection process;
- Schedule a meeting of the Selection Team, if needed, to determine areas of concern and plan the important aspects of the discussion with the vendor;
- Chair the interviews with the proposers and assure that appropriately detailed notes are taken of the discussions;
- Convene necessary meetings of the Evaluation Teams and the Selection Team to review and evaluate information received during the interviews;
- Determine if the DB requirements need to be changed based on information received during the interviews;
- If an addendum to the DB RFP is necessary, work with the Project Manager and others as necessary to draft the addenda and submit it to the remaining proposers with an invitation to submit their BAFO by a date and time certain.

4.17 **RECEIPT OF BAFO'S** After BAFO's (or Revised Proposals) are received Procurement & Contracts staff will be responsible for the following:

- Distribute BAFO's to the Selection Team;
- The Price Proposal will be kept by the Contract Administrator unopened until the BAFO's have been reviewed;
- Schedule a meeting of the Selection Team and the Evaluation Team(s) (as needed) to review the various aspects of the BAFO's;
- The Selection Team shall determine which of the BAFO's are fully responsive to the DB requirements and are acceptable;

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- The Selection Team shall rank the acceptable proposals using the same evaluation criteria as previously developed;
 - Only after the above has been completed, may the Price Proposals be opened;
 - Using the established ranking and the BAFO's, the Selection Team will determine which proposal presents the most advantageous offer to VTA considering the established evaluation criteria, including, but not limited to, technical expertise, skilled labor force availability, acceptable safety record, fitness of purpose, warranty, vendor financing, performance reliability, standardization, life cycle costs, delivery timetables, support logistics, and other similar factors in addition to price;
 - Complete any needed negotiations on contract terms;
 - When a decision on the recommended award is reached, complete the Solicitation Summary and obtain needed approval signatures from the Selection Team;
 - The Project Manager and the Purchasing and Materials Manager will discuss the proposed recommended award with appropriate executive management prior to issuing a formal Notice of Recommended Award (NRA);
 - Draft the NRA and send to all plan holders of record;
 - Assist the Requestor with drafting the necessary Board Memo recommending contract authorization;
 - Create the necessary contract documents for signature when the contract has been approved;
 - Secure the required signatures on the contract documents from the awardee and VTA;
 - Distribute the fully executed contract documents to the awardee and the Requestor;
 - Maintain a complete procurement contract file.
- 4.18 **PROTESTS** Any protests received during the procurement process will be handled according to Policy and Procedure FRS-PL-036 & FRS-PR-036 and in compliance with PCC Section 20209.5 et seq.
- 4.19 **AMENDMENTS** Any changes to the executed contract must be accomplished by a contract amendment. A contract amendment can be requested by the vendor or VTA. Procurement & Contracts staff will have the following responsibilities when a contract amendment is contemplated:
- Work with the Project Manager to develop the scope of the intended contract change;
 - Assure that the proposed amendment is within the scope of the original agreement;
 - Assure that the proposed amendment is not a "Cardinal" change to the contract;
 - Assure that the Project Manager has developed a valid Independent Cost Estimate (ICE);
 - Participate, as needed, in the negotiations of such amendments with the vendor;

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- Assure that the Project Manager has completed a Negotiation Summary which documents the negotiations that took place to resolve differences in price or scope between the ICE and the vendors proposal;
- Draft or approve the amendment;
- Secure appropriate approval signatures from the vendor and VTA;
- Assure that the vendor and the Project Manager receive fully executed amendments.

4.20 CONTRACT CLOSEOUT Procurement & Contracts staff will assure that all contract closeout requirements are met.

5.0 **Definitions:**

Best Value: A value determined by objective criteria and may include, but is not limited to, price, features, functions, life-cycle costs and other criteria deemed appropriate by VTA.

Design Build Entity: A partnership, corporation or other legal entity that is able to provide appropriately licensed contracting, architectural and engineering services as needed pursuant to a design build contract.

RFP: Request for Proposals.

RFQ: Request for Qualifications.

Contract: A contract can be:

- A formal contract document that contains all of the terms, conditions and specifications of the agreement;
- A standard VTA Purchase Order.

Requestor: The responsible VTA staff member that has requested the product or service, sometimes referred to as the Project Manager or Project Engineer.

Project Manager: The person who submitted the requisition for the product or service and is (or will be) the responsible party for the contract once executed.

6.0 **Records:**

N/A.

7.0 **Appendices:**

N/A.

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8.0 Training Requirements:

N/A.

9.0 Summary of Changes:

Update wording to include reference to the requirement of the Brooks Act if Design is the predominant factor in selection.

10.0 Approval Information:

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 Thomas B. Smith Purchasing and Materials Manager	 Bill Lopez Director of Business Services	 Nuria I Fernandez General Manager

1/20/15
Date Signed