

CONSTRUCTION MANAGEMENT (CM) PROCEDURES AS ADOPTED BY THE SECRETARY OF ADMINISTRATION

In accordance with the provision of § 2.2-4306 of the *Code of Virginia*, I hereby adopt the following procedures for the procurement of Construction Management ("CM") contracts, as defined in § 2.2-4301, which shall be followed by all departments, agencies, and institutions of the Commonwealth (each of which is hereinafter referred to as the "Agency"). These procedures shall be effective March 28, 2012.

- A. **LEGISLATIVE AUTHORITY:** Under authority of § 2.2-4306 of the *Code of Virginia*, the Commonwealth may enter into a contract with a Construction Manager in accordance with these procedures and § 2.2-1502 of the *Code of Virginia*. Under authority of § 2.2-4303 (D)(1) of the *Code of Virginia*, an Agency is authorized to use competitive negotiations to procure CM contracts when it determines in advance, and sets forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.
- B. **CRITERIA FOR USE OF CM:** CM contracts may be approved for use on projects where 1) fast tracking of construction is needed to meet Agency program requirements, or 2) value engineering and/or constructability analyses concurrent with design are required.

The use of CM shall be limited to projects with a construction value that is in excess of \$10,000,000. With proper justification for small complex projects, the Director may grant a waiver of this requirement.

- C. **PROCEDURE FOR APPROVAL TO USE CM:** Prior to taking any further action, the Agency shall request authority, in writing and receive approval from the Director of the Division of Engineering and Buildings ("Director"), to use a CM contract.

The request shall justify and substantiate that a CM contract meets the criteria found in paragraph B. The request must also include the stipulation that the CM contract will be initiated no later than the Schematic Phase of design. The request shall also include a written justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for the use of a CM contract shall also be stated in the Request for Qualifications.

Approval of or exceptions to this procedure may be granted by the Director, who is the approving authority for requests to use CM procedures.

- D. CM SELECTION PROCEDURES: On projects approved for C/M, procurement of the contract shall be a two step process unless a one step process is approved pursuant to Subsection G. The following procedures shall be used in selecting a C/M and awarding a contract:
1. The Agency shall appoint an Evaluation Committee ("Committee") which shall consist of at least three members from the Agency, including a licensed design professional, if possible. The Committee shall include a licensed professional engineer or architect provided by the Division of Engineering and Buildings. The Agency shall contact the Section in the Office of the Attorney General representing the Division of Engineering and Buildings (currently the Real Estate and Land Use Section) to determine whether a representative from the OAG should be involved.
 2. The basis of the award of the contract shall be in accordance with § 2.2-4301(3)(b) and the criteria for the award shall be submitted to the Director of the Division of Engineering and Buildings, in advance, for approval. It is noted that cost is a critical component of the selection process.
 3. Selection of Qualified Offerors (STEP I): On projects approved for CM, the Agency shall conduct a prequalification process as follows to determine which offerors are qualified to receive Request for Proposals (RFPs).
 - a) The Agency shall prepare a Request for Qualifications ("RFQ") containing the Agency's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class "A" contractor registered in the Commonwealth of Virginia as part of the Project team.
 - b) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Virginia Code and in accordance with the latest edition of the Construction and Professional Services Manual.
 - c) The Committee shall evaluate each responding firm's RFQ responses and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
 - d) The RFQ evaluation process shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied prequalification only as specified under the *Code of Virginia* § 2.2-4317, but the short list shall also be based upon the RFQ criteria.
 - e) At least 30 days prior to the date established for the submission of proposals, the Agency shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

4. Selection of a Construction Manager (STEP II):

- a) The Agency shall send a Request for Proposal (“RFP”) to the offerors on the short list and request submission of formal proposals from them. The criteria for award shall be included in the RFP.
- b) Proposals as described in the RFP shall be submitted to the Committee.
- c) The Committee will evaluate and rank the proposals. After evaluation and ranking of the proposals, the Committee shall:
 - 1. Conduct negotiations with two or more offerors submitting the highest ranked proposals. (or)
 - 2. Should the Agency determine, in writing and at its sole discretion, that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.
- d) The Committee shall make its recommendation on the selection of a construction manager to the Agency head based on its evaluations and negotiations. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the Request for Proposal.
- e) The Agency shall notify the Division of Engineering and Buildings of the its selection of the Construction Manager and shall request authority to award a contract by processing the CO-8, *Approval to Award Construction Contract* and providing supporting documents to the Bureau of Capital Outlay Management via e-mail to coforms@dgs.virginia.gov.
- f) The Agency will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the Agency may notify all offerors who submitted proposals of the Agency's intent to award the contract to a particular offeror at any time after the Agency head has selected the Construction Manager. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- g) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

E. REQUIRED CONSTRUCTION MANAGEMENT CONTRACT TERMS: Any Guaranteed Maximum Price construction management contract entered into by any department, agency or institution of the Commonwealth will contain provisions requiring that (1) not more than 10% of the construction work (measured by cost of the work) will be performed by the CM with its own forces and (2) that the remaining 90% of the construction work will be performed by subcontractors of the CM which the CM must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding. The Director may modify these contractual requirements in whole or in part for projects where it would be fiscally advantageous to the public to increase the amount of construction work performed by the Construction Manager.

- F. The Guaranteed Maximum Price shall be established at the completion of working drawings unless a waiver has been granted to this requirement by the Director.
- G. An Agency may request from the Director approval to perform a one-step solicitation for its project. If adequate justification is provided, in writing, the Director may approve the request.
- H. Any institution of higher education with authority for capital projects pursuant to the Restructured Higher Education Financial and Administrative Operations Act, may utilize these procedures or such other procedures as they may have adopted pursuant to any signed memorandum of agreement.
- I. The Code of Virginia requires other public bodies planning to use CM to adopt guidelines consistent with the above procedures. A key difference is that steps requiring the approval or involvement of the Director of the Division of Engineering and Buildings will instead seek the approval or involvement of the appropriate authority, as directed by the governing body of the public body. Before implementing CM, such public body must have the required professional staff and meet the material requirements of Code of Virginia § 2.2-4308. It should also be noted that certain procedures incorporated above are mandated by Code for state agencies. Other public bodies may not be required to adopt identical standards, but their procedures are required to be consistent with these.
- J. Guidance for the use of these procedures can be found in Section 7.31.1 of the Construction and Professional Services Manual (2012 Edition, as amended) and all of its subsections.

 3-28-12

Lisa Hicks-Thomas
Secretary of Administration

Date