
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1327 Session of
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INTRODUCED BY STRUZZI, GROVE, JAMES, KEEFER AND SMITH,
JUNE 6, 2023

REFERRED TO COMMITTEE ON TRANSPORTATION, JUNE 6, 2023

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in source selection and contract formation, further
3 providing for definitions and for methods of source selection
4 and providing for design build best value process and
5 establishing the Design Build Advisory Committee.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 501 of Title 62 of the Pennsylvania
9 Consolidated Statutes is amended by adding definitions to read:

10 § 501. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Complex project." A stand-alone construction project:

15 (1) with an estimated construction value greater than
16 \$15,000,000;

17 (2) planned by the Department of Transportation or
18 Pennsylvania Turnpike Commission; and

19 (3) that has unique characteristics that foster

1 innovation or a need for accelerated completion where using
2 the design build best value process under section 513.1
3 (relating to design build best value process) would be more
4 advantageous to the Commonwealth than competitive sealed
5 bidding.

6 "Design build best value." The procurement process described
7 in section 513.1 that is used by the Department of
8 Transportation or Pennsylvania Turnpike Commission as an
9 alternative to competitive sealed bidding.

10 * * *

11 "Responsive proposer." A design-build entity that submits a
12 statement of qualifications:

13 (1) in response to a request for qualifications issued
14 by the Department of Transportation or Pennsylvania Turnpike
15 Commission; and

16 (2) that meets the minimum requirements under section
17 513.1(f)(1).

18 Section 2. Section 511 of Title 62 is amended to read:

19 § 511. Methods of source selection.

20 Unless otherwise authorized by law, all Commonwealth agency
21 contracts shall be awarded by competitive sealed bidding under
22 section 512 (relating to competitive sealed bidding) except as
23 provided in:

24 Section 512.1 (relating to competitive electronic auction
25 bidding).

26 Section 513 (relating to competitive sealed proposals).

27 Section 513.1 (relating to design build best value process).

28 Section 514 (relating to small procurements).

29 Section 515 (relating to sole source procurement).

30 Section 516 (relating to emergency procurement).

1 Section 517 (relating to multiple awards).

2 Section 518 (relating to competitive selection procedures for
3 certain services).

4 Section 519 (relating to selection procedure for insurance
5 and notary bonds).

6 Section 520 (relating to supplies manufactured and services
7 performed by persons with disabilities).

8 Section 905 (relating to procurement of design professional
9 services).

10 Section 3. Title 62 is amended by adding a section to read:

11 § 513.1. Design build best value process.

12 (a) General rule.--Notwithstanding any other provision of
13 this chapter, an agency may use the design build best value
14 procurement process on construction projects in the limited
15 circumstances described in this section.

16 (b) Conditions for use.--

17 (1) Design build best value may only be used:

18 (i) When a construction project is identified as a
19 complex project by an agency's innovative contracting
20 division, except a construction project procured under 74
21 Pa.C.S. Ch. 91 (relating to public-private transportation
22 partnerships).

23 (ii) After an agency establishes a project selection
24 matrix and an innovative contracting division as
25 described in subsections (c) and (d).

26 (2) All other agency construction projects shall be
27 procured through a competitive sealed bidding process as
28 described in section 512 (relating to competitive sealed
29 bidding).

30 (3) An agency shall develop a policy to determine

1 whether a project is a complex project. The policy shall be
2 available on the agency's publicly accessible Internet
3 website.

4 (c) Project selection matrix.--

5 (1) In accordance with subsection (d), an agency's
6 innovative contracting division shall establish a project
7 selection matrix to thoroughly evaluate a potential
8 construction project for consideration as a complex project.

9 (2) In addition to the minimum construction cost, an
10 agency's innovative contracting division shall consider the
11 following when creating a project selection matrix to
12 determine if design build best value would be advantageous to
13 the Commonwealth:

14 (i) Project complexity.

15 (ii) Potential for innovation.

16 (iii) Unique equipment or specialized systems.

17 (iv) Project risks.

18 (v) Project schedule.

19 (vi) Other project considerations.

20 (d) Innovative contracting division.--An agency shall
21 establish an innovative contracting division that shall:

22 (1) Develop a project selection matrix in accordance
23 with subsection (c).

24 (2) Evaluate and determine if a project is a complex
25 project according to the policy developed under subsection
26 (b) (3).

27 (3) Develop rules and policies relating to the use of
28 design build best value.

29 (4) Provide oversight on the steps of the design build
30 best value process under this section.

1 (5) Appoint selection committees under subsection (k).

2 (6) Hold debriefing sessions as required under
3 subsection (l).

4 (7) Provide oversight and assistance in administering
5 the awarded design build best value contract.

6 (e) Public notice and request for qualifications.--

7 (1) Within a reasonable time prior to the date set for
8 opening of responses, an agency shall provide adequate public
9 notice of the request for qualifications.

10 (2) An agency may publish written policies and
11 promulgate regulations as necessary relating to methods of
12 public notice.

13 (3) An agency shall make available, upon request of an
14 interested party, copies of a request for qualifications.

15 (4) The public notice shall, at a minimum, contain:

16 (i) A detailed description of the project for which
17 the agency seeks statements of qualifications.

18 (ii) A general description of design parameters and
19 requirements.

20 (iii) The agency's nonbinding cost estimate.

21 (iv) A description of contractual documents that the
22 agency requires.

23 (v) In accordance with subsection (f)(2), the
24 specific criteria for scoring and selection, including
25 the minimum requirements a construction firm must achieve
26 to be considered a responsive proposer.

27 (vi) The amount of the stipend for a nonsuccessful,
28 short-listed offeror under subsection (g).

29 (f) Statement of qualifications and short-list process.--

30 (1) A statement of qualifications received by an agency

1 from a responsive proposer shall be scored by a selection
2 committee established under subsection (k).

3 (2) In scoring a statement of qualifications, the
4 selection committee shall consider the following criteria:

5 (i) Similar projects designed by the responsive
6 proposer.

7 (ii) Similar construction projects constructed by
8 the responsive proposer.

9 (iii) Qualifications of individuals who the
10 responsive proposer intends to assign to the project.

11 (3) The selection committee may consider the following
12 criteria:

13 (i) The approach that a responsive proposer takes to
14 design build best value projects generally.

15 (ii) An overview of the approach that the responsive
16 proposer intends to use for the proposed project for the
17 agency.

18 (iii) How the responsive proposer intends to address
19 the risks that may occur on the proposed project.

20 (iv) Other unique factors relevant to the selection
21 of a responsive proposer as identified by the selection
22 committee.

23 (4) Criteria under paragraph (1) used for a complex
24 project and the weight of the criteria shall be published in
25 the public notice for a request for qualifications.

26 (5) The selection committee shall score and rank, from
27 highest score to lowest score, the statements of
28 qualification.

29 (6) After the statements of qualification are ranked
30 under paragraph (5), the selection committee shall develop a

1 short list of at least three, but no more than five,
2 responsive proposers before proceeding.

3 (7) If three or fewer responsive proposers submit a
4 statement of qualifications:

5 (i) the responsive proposers shall be shortlisted;

6 (ii) the agency may reissue the request for
7 qualification with public notice; or

8 (iii) the agency may proceed with the project under
9 the competitive sealed proposal process.

10 (8) The agency shall publicly post a list of all
11 responsive proposers and the total score for each responsive
12 proposer and identify the responsive proposers that have been
13 shortlisted.

14 (g) Stipend for nonselected shortlisted responsive
15 proposers.--

16 (1) A responsive proposer shortlisted under subsection
17 (f) (6) that submits a responsive technical and price proposal
18 and is not awarded a design build best value contract shall
19 receive a stipend in an amount to be determined by the agency
20 for participation in the process.

21 (2) The stipend shall be paid by the contracting agency
22 within 45 days after award of the design build best value
23 contract.

24 (3) In the event the agency cancels a request for
25 qualification following the development of the short list,
26 but prior to the date of the opening of technical and price
27 proposals, the shortlisted responsive proposers shall receive
28 a prorated share of the stipend based on the prorated time
29 period originally established for the time for shortlisted
30 responsive proposers to submit technical and price proposals.

1 (4) If the agency cancels the request for proposals
2 process following the receipt of the technical and price
3 proposals, a shortlisted responsive proposer shall receive
4 the entire stipend within 45 days of the cancellation.

5 (5) An offeror that submitted a statement of
6 qualifications under the request for qualifications process
7 and was not shortlisted by the agency, may not receive a
8 stipend, but is eligible to submit proposals under the
9 request for proposals process.

10 (6) A design-build entity that did not submit a
11 statement of qualifications under subsection (f) shall not be
12 eligible to submit a request for proposals under subsection
13 (h).

14 (h) Request for proposals.--

15 (1) Following the development of a short list and to the
16 extent that an agency is satisfied with the number of
17 responsive proposers, the agency shall issue a formal request
18 for proposals to a responsive proposer.

19 (2) An agency shall allow at least 20 weeks following
20 the publication of the short list for a responsive proposer
21 to submit a proposal.

22 (3) In addition to the information contained in the
23 original statement of qualifications, the request for
24 proposals shall contain a more detailed proposed contract
25 that includes both negotiable and nonnegotiable terms.

26 (4) In addition to paragraph (3), a request for
27 proposals shall include:

28 (i) Project goals.

29 (ii) Design and construction criteria.

30 (iii) When feasible, a project design that is

1 approximately 30% complete.

2 (iv) Known utility information.

3 (v) Right-of-way status.

4 (vi) Quality assurance and quality control
5 requirements.

6 (vii) Diverse business or disadvantaged business
7 enterprise requirements.

8 (viii) Available geotechnical information.

9 (ix) Status of environmental review and permitting.

10 (x) Detailed instructions for technical proposals.

11 (xi) Evaluation criteria.

12 (xii) Scoring as described under subsection (f).

13 (5) A request for proposals shall include separate
14 proposals for a technical solution, to be known as the
15 technical proposal, and the proposed price, to be known as
16 the price proposal.

17 (6) The request for proposals shall include a
18 requirement that a responsive proposer, if not shortlisted,
19 has a defined time frame to inform the selection committee
20 that the responsive proposer intends to submit a technical
21 and price proposal.

22 (i) Criteria for selection.--

23 (1) After receipt of all technical and price proposals,
24 the selection committee shall evaluate each submission. The
25 technical and price proposals shall be evaluated and scored
26 separately. A price proposal shall not be opened until all
27 technical proposals are scored.

28 (2) Technical proposals shall include:

29 (i) Project-specific management approaches relating
30 to construction and design.

1 (ii) How the responsive proposer intends to meet
2 schedules.

3 (iii) Project challenges and innovative solutions.

4 (iv) The conceptual design proposed.

5 (3) In accordance with paragraph (7), for each project,
6 the agency shall develop a methodology for scoring technical
7 and price proposals and publish the methodology in the
8 request for proposals. The methodology may not be changed
9 following receipt of the request for proposals.

10 (4) Diverse business or disadvantaged business
11 enterprise participation requirements may not be considered
12 as part of the technical proposal score. Such requirements
13 will be treated separately.

14 (5) Failure of a responsive proposer to meet the
15 requirements of a request for proposal, technical proposal or
16 price proposal shall result in the proposal being deemed
17 nonresponsive.

18 (6) The criteria that may be considered by an agency in
19 reviewing a technical proposal include:

20 (i) Compliance with applicable technical
21 specifications and required design parameters.

22 (ii) Ability to achieve project goals.

23 (iii) Innovative solutions.

24 (iv) Design and construction approach.

25 (v) Work plan.

26 (vi) Project management, including quality, safety,
27 mobility and environmental.

28 (vii) Other unique factors relevant to the project.

29 (7) Technical and price proposals shall be ranked in
30 accordance with the following scoring methodology:

1 (i) Price proposals shall constitute no less than
2 50% of the score.

3 (ii) The technical proposal shall constitute the
4 remainder of the score. In calculating the technical
5 score, the agency shall consider the criteria listed in
6 this subsection and use the scores from the request for
7 qualifications process. The scores from the request for
8 qualifications process shall constitute between 10% and
9 20% of the technical score.

10 (j) Maximum transparency.--

11 (1) It is the intent of the General Assembly that all
12 decisions made for solicitations and awards under this
13 section shall be subject to complete transparency.

14 (2) An agency must open and evaluate proposals without
15 disclosing the contents to a competing responsive proposer.
16 After the agency identifies a selected responsive proposer as
17 the highest-scoring bidder, the agency shall publish the
18 rationale for scoring all proposals.

19 (3) Following execution of a contract, the agency shall
20 make available all technical and price proposals received by
21 the agency.

22 (k) Selection committee.--

23 (1) The innovative contracting division of an agency
24 shall establish two separate selection committees for a
25 complex project to be procured by the design build best value
26 process.

27 (2) A selection committee for the request for
28 qualifications stage shall consist of at least three
29 individuals employed by the agency, at least one of whom must
30 be a member of the innovative contracting division.

1 (3) The innovative contracting division shall appoint
2 one selection committee to evaluate proposals submitted in
3 response to the request for proposals. The committee selected
4 to review requests for proposals shall consist of at least
5 five employees of the agency. At least one of the employees
6 must be a representative of the innovative contracting
7 division.

8 (4) The agency may engage consultants and advisors to
9 assist in review of technical proposals. Consultants may not
10 be committee members or participate in deliberations or
11 scoring of the technical proposals.

12 (l) Debriefing.--

13 (1) The agency shall individually conduct a debriefing
14 conference with a responsive proposer that was shortlisted
15 but not selected.

16 (2) The debriefing conference shall be scheduled within
17 15 days from the date of the determination of the selected
18 responsive proposer.

19 (3) During a debriefing conference, the agency shall
20 discuss the contents of the nonselected responsive proposer
21 proposal and the reasons another proposal was selected.

22 (m) Bid process.--

23 (1) Consistent with Chapter 17 (relating to legal and
24 contractual remedies), a responsive proposer that is
25 aggrieved in connection with the solicitation or award of a
26 contract under this section may file a written protest with
27 the agency.

28 (2) A responsive proposer may file a protest under
29 paragraph (1) within seven days after the debriefing
30 conference held under subsection (1).

1 (n) Design Build Advisory Committee.--

2 (1) The Design Build Advisory Committee is established
3 within the department. The advisory committee shall consist
4 of:

5 (i) The Secretary of Transportation or a designee.

6 (ii) The Pennsylvania Turnpike Commission chief
7 executive officer or a designee.

8 (iii) One public member appointed by the President
9 pro tempore of the Senate.

10 (iv) One public member appointed by the Minority
11 Leader of the Senate.

12 (v) One public member appointed by the Speaker of
13 the House of Representatives.

14 (vi) One public member appointed by the Minority
15 Leader of the House of Representatives.

16 (vii) The following members appointed by the
17 Governor representing transportation, construction and
18 engineering companies operating in this Commonwealth:

19 (A) One member representing prime contractors.

20 (B) One member representing subcontractors.

21 (C) One member representing engineers.

22 (D) One member representing material suppliers.

23 (E) One member representing diverse businesses.

24 (2) The members of the advisory committee shall annually
25 elect a chair, a vice chair and a secretary from among the
26 public members.

27 (3) The following shall apply to meetings and expenses:

28 (i) The advisory committee shall meet at least
29 quarterly.

30 (ii) A public member who misses three consecutive

1 meetings without good cause may be replaced by the
2 Secretary of Transportation upon recommendation of the
3 chair.

4 (iii) The public members shall be allowed actual,
5 necessary and reasonable per diem expenses in accordance
6 with regulations of the department.

7 (4) The department shall provide appropriate staff
8 support to enable the advisory committee.

9 (5) The advisory committee shall provide:

10 (i) Guidance and oversight to an agency to utilize
11 the design build best value process for procurement.

12 (ii) Open communication between an agency and
13 industry with respect to a mutual interest in improving
14 and enhancing design build best value procurement in this
15 Commonwealth.

16 (o) Report.--The advisory committee shall provide an annual
17 report to the General Assembly.

18 (p) Regulations.--The department shall promulgate rules and
19 regulations to effectuate the provisions of this section.

20 (q) Limitation of use.--The procurement process described in
21 this section shall be limited to a project or projects for which
22 cumulative annual expenditures during the project's or projects'
23 duration do not exceed more than 15% of the Department of
24 Transportation's or Pennsylvania Turnpike Commission's annual
25 capital program.

26 (r) Definitions.--As used in this section, the following
27 words and phrases shall have the meanings given to them in this
28 subsection unless the context clearly indicates otherwise:

29 "Advisory committee." The Design Build Advisory Committee
30 established in this section.

1 "Agency." The Department of Transportation or Pennsylvania
2 Turnpike Commission.

3 "Statement of qualifications." A design-build entity's
4 response to an agency, after the agency issues a request for
5 qualifications.

6 Section 4. This act shall take effect in 90 days.