

INTRODUCED: September 9, 2024

A RESOLUTION No. 2024-R030

To adopt, pursuant to City Code § 21-44, procedures for utilizing construction management or design-build contracts.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: SEP 23 2024 AT 6 P.M.

WHEREAS, section 2.2-4382(A) of the Code of Virginia (1950), as amended, and section 21-44 of the Code of the City of Richmond (2020), as amended, require that the City Council adopt procedures for utilizing construction management and design-build contracts as a prerequisite to the City’s use of construction management or design-build contracts for City construction projects; NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

That, in accordance with section 2.2-4382(A) of the Code of Virginia (1950), as amended, and section 21-44 of the Code of the City of Richmond (2020), as amended, the Council hereby adopts and implements the document identified as Department of Procurement Services Policy

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

and Procedure No. 50 (“Design-Build and Construction Management Contracting”), concerning design-build and construction management contracting, a copy of which is attached to this resolution.

APPROVED AS TO FORM:


CITY ATTORNEY'S OFFICE



City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2024-1040

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Patron(s):

Enactment Date:

Attachments: Admin-2024-1040 Ord. AATF Procurement Policy No. 50 Update 2024 - approved 7-31-2024v2, Admin-2024-1040 Revised DPS Pol Proc No 50 DB and CMAR_2024 update (2024-06-24 SMM clean), Admin-2024-1040 Revised DPS Pol Proc No 50 DB and CMAR_2024 update (2024-06-24 SMM tracking)

Enactment Number:

Contact:

Introduction Date:

Drafter: Rene.Almaraz@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	8/22/2024	Sabrina Joy-Hogg	Approve	8/26/2024
1	2	8/22/2024	Lincoln Saunders	Approve	8/26/2024
1	3	8/30/2024	Mayor Stoney	Approve	8/26/2024

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File Admin-2024-1040

O&R REQUEST

DATE: August 22, 2024

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg, Deputy Chief Administrative Officer

FROM: Rene M. Almaraz, Director of Procurement Services

RE: Resolution to Adopt Revised Procedures for Design-Build and Construction Management Contracts Pursuant to City Code §21-44

ORD. OR RES. No.

PURPOSE: To adopt, pursuant to City Code § 21-44, revised procedures for utilizing construction management or design-build contracts.

REASON: This proposed resolution would adopt a revised procedure for use in procuring design-build or construction management contracts in order to comply with state law (Va. Code § 2.2-4382).

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND: Although City regulations, policies and procedures are normally established administratively, the City Council’s adoption of the specific procedures to be used in procuring design-build and construction management contracts is a statutory prerequisite to the use of either design-build or construction management contracts for construction. Va. Code § 2.2-4382(A) and City Code § 21-44 require that the City Council adopt the procedures to be used by the City in procuring design-build or construction management contracts to meet new state requirements.

Specifically, Va. Code §2.2-4382(A) permits a local public body to “enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that the local public body... has by ordinance or resolution implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing construction management or design-build contracts.” City Code § 21-44 provides, “The City may enter into a

contract for construction on a fixed-price or not-to-exceed price construction management or design-build basis, provided that (i) the City Council, by resolution, has adopted procedures for utilizing construction management or design-build contracts that meet the requirements of Code of Virginia, title 2.2, ch. 43.1, art. 4 (Va. Code §2.2-4382 et seq.), the City Council, by resolution, has provided approval for the City to utilize a construction management or design-build contract for the project prior to the City's issuance of a Request for Qualifications for the project, and (iii) the City complies with the requirement of Code of Virginia title 2.2, ch. 43.1, art. 4 (Code of Virginia, § 2.2-4382 et seq.) and such procedures adopted by the City Council."

As a result, on June 26, 2023, through Res. No. 2023-R030, the City Council adopted the current procedures for utilizing construction management or design-build contracts (City of Richmond Procurement Services Policy No. 50 "Design-Build and Construction Management Contracting"). As required by City Code section 21-44 and Va. Code section 2.2-4382, Policy No. 50 attached to Res. No. 2023-R030 was consistent with Va. Code section 2.2-4382 and the procedure of the Commonwealth's Secretary of Administration for utilizing construction management or design-build contracts in effect at that time. However, through the 2024 General Assembly session, Va. Code section 2.2-4382 was amended (effective July 1, 2024) as a result of HB 1108. Therefore, Policy No. 50 must be revised for consistency with Va. Code section 2.2-4382.

Policy No. 50 (attached) has been updated to comply with the changes in Va. Code section 2.2-4382 and to ensure consistency with the current procedure of the Commonwealth's Secretary of Administration. A tracked version of Policy No. 50 is also attached for ease of reference.

FISCAL IMPACT / COST:

- **If Adopted:** This proposed ordinance should not impose any cost in the upcoming fiscal year or succeeding fiscal years.
- **If Not Adopted:** N/A

FISCAL IMPLICATIONS: This proposed ordinance should not impose any costs on the City in the foreseeable future.

BUDGET AMENDMENT NECESSARY: No.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: September 9, 2024

CITY COUNCIL PUBLIC HEARING DATE: September 23, 2024

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development September 19, 2024

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: Department of Procurement Services, Office of the City Attorney

RELATIONSHIP TO EXISTING ORD. OR RES.: Res No. 2023-R030.

REQUIRED CHANGES TO WORK PROGRAM(S): No changes to work programs are required.

ATTACHMENTS: Revised Policy and Procedure No. 50 (“Design-Build and Construction Management Contracting”) [with tracked changes]; Revised Policy and Procedure No. 50 (“Design-Build and Construction Management Contracting”) [clean copy].

STAFF: Rene M. Almaraz, Director of Procurement Services, (804) 646-5020.

NO. 50 DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTING

- 50-1.0** **Scope.** This Policy and Procedure applies to all City construction contracts using the design-build or construction management methods of contracting. This Policy and Procedure does not apply to construction contracts procured by competitive negotiation pursuant to City Code § 21-67(a)(3)(b) or (3)(c).
- 50-2.0** **Purpose.** The purpose of this Policy and Procedure is to implement the authority granted by City Code § 21-44 to engage in design-build and construction management contracting.
- 50-3.0** **References.**
- (a) City Code § 21-4.
 - (b) City Code § 21-5.
 - (c) City Code § 21-44.
 - (d) City Code § 21-46.
 - (e) City Code § 21-67.
 - (f) Va. Code § 2.2-4382.
 - (g) Procurement Services Policy and Procedure No. 46.
- 50-4.0** **Definitions.** For purposes of this Policy and Procedure, the words and phrases set forth in this section have the meanings ascribed to them by this section unless the context clearly indicates that a different meaning is intended.
- 50-4-1** “*Complex project*” has the meaning set forth for that term in Va. Code § 2.2-4379.
- 50-4.2** “*Construction management contract*” means a contract in which a party is retained by the City to coordinate and administer contracts for construction services for the benefit of the City, and may also include, if provided in the contract, the furnishing of construction services to the City. City Code § 21-4.
- 50-4.2.1** “*Construction management agency*” means a construction project delivery method in which the City enters into contracts for the delivery of a construction project and the construction manager administers those contracts on the City’s behalf.
- 50-4.2.2** “*Construction management at-risk*” means a construction project delivery method in which (i) the construction manager is required to deliver the project within a Guaranteed Maximum Price and (ii) provides or is at-risk for all or a portion of the construction to be provided.

50-4.3 *“Design-bid-build” means a project delivery method in which the City sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.*

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50-4.4 *“Design-build contract” means a contract between the City and another party in which the party contracting with the City agrees to both design and build the structure, roadway or other item specified in the contract. City Code §21-4.*

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50-4.54 *“Guaranteed Maximum Price” means a pricing arrangement in a construction management contract in which the construction manager is compensated for actual costs incurred plus a fixed fee subject to a ceiling price, the construction manager is responsible for cost overruns, and cost savings are returned to the City.*

50-5.0 **Background.** Pursuant to Va. Code § 2.2-4382(A), the City Council adopted the current wording of City Code § 21-44 in order to authorize the use of construction management and design-build contracting for the delivery of construction projects. Pursuant to Va. Code § 2.2-4382(A) and City Code § 21-44, this policy and procedure is effective only upon the City Council’s adoption of a resolution adopting this policy and procedure.

50-6.0 **Policy.**

50-6.1 **General.** The process of competitive sealed bidding ~~remains~~ is the ~~preferred default~~ method of construction procurement for the City. However, under certain circumstances, the City may use design-build contracting or construction management contracting, or both, for the delivery of specific construction projects in accordance with the requirements of this Policy and Procedure.

50-6.2 **Process to Be Followed.** In general, the procurement procedure for these types of contracts will consist of a combination of the procedure for prequalification of construction contractors set forth in City Code § 21-46 and the procedure for the procurement of goods and non-professional services set forth in City Code § 21-67, as modified by this Policy and Procedure. All procurement and contracting procedures for design-build and construction management contracts shall be as set forth in this Policy and Procedure.

50-6.3 **Professional Advisor.** Prior to making a determination as to the use of a design-build contract or a construction management contract for a specific construction project, the using agency shall have an architect or professional engineer with professional competence appropriate to the project who will advise the City regarding the use of design-build or construction management contracting for that project and who will assist the City with the preparation of the Request for Proposals and the evaluation of proposals submitted by interested offerors in response to the Request for Proposals for that project. The using agency shall have

(i) an architect or professional engineer meeting the requirements of this section in its employ, (ii) made arrangements with another City agency for the use of an architect or professional engineer meeting the requirements of this section employed with that other City agency or (iii) an architect or professional engineer meeting the requirements of this section under contract.

50-7.0 Procedures.

50-7.1. Procedures for Design-Build Contracting.

50-7.1.1 Criteria for Use of Design-Build Contracting. ~~A design-build contract is intended to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design phase and the construction phase of a project. The use of design build contracts usually should be limited to construction projects in the following general categories:~~

- ~~(a) — Warehouses and storage buildings;~~
- ~~(b) — Garages and maintenance shops;~~
- ~~(c) — General mercantile buildings;~~
- ~~(d) — Single story administrative buildings;~~
- ~~(e) — Recreational and concession buildings;~~
- ~~(f) — Exhibition and agricultural buildings;~~
- ~~(g) — Housing; and~~
- ~~(h) — Utility facilities and infrastructure.~~

~~However, the appropriateness of the use of a design build contract must be made on a case by case basis.~~

~~Pursuant to Va. Code § 2.2-4382(E)(1), design-build contracts may be used for projects, provided that (i) the project is a complex project and (ii) the procurement method for the project is approved by the City Council. The approval by City Council must be provided on a “per project” basis in a public forum and prior to the City issuing a Request for Qualifications for the project. The written approval of the City Council shall be maintained in the procurement file.~~

50-7.1.2 Written Determination Required Approval for Procurement of Design-Build Contract. In order for a design-build contract to be procured for a particular construction project:

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- (a) The using agency must submit a memorandum to the Director of Procurement Services requesting the use of a design-build contract.
- (b) The memorandum requesting the use of a design-build contract must:
 - (1) Justify and substantiate that the criteria for use of a design-build contract set forth in section 50-7.1.1 are met;
 - (2) Indicate how the City will benefit from using a design-build contract;
 - (3) Identify the architect or professional engineer meeting the requirements of section 50-6.3 for the project for which the design-build contract is sought and set forth the competency of that architect or professional engineer in the following categories:
 - a. Education, training and general experience;
 - b. Prior experience with projects of similar size, scope and complexity; and
 - c. Prior experience with design-build contracts or substantially similar experience; and
 - (4) Include a written justification that ~~competitive sealed bidding~~the design-bid-build project delivery method is not practical or not fiscally advantageous, or both.
- (c) The Director of Procurement Services must determine and set forth in writing in advance of the commencement of any procurement of a design-build contract that ~~competitive sealed bidding~~the design-bid-build project delivery method is either not practicable or not fiscally advantageous ~~to the public, and such writing shall document the basis for the determination to utilize design-build, including the determination of the project's complexity.~~

50-7.1.3 Evaluation Panel. The Director of Procurement Services shall appoint an evaluation panel of not less than three voting members. If the architect or professional engineer identified pursuant to section 50-7.1.2(b)(3) is a City employee, that architect or professional engineer shall be a voting member of the evaluation panel. If that architect or professional engineer is not a City employee, the architect or professional engineer shall participate on the evaluation panel to the extent allowed for independent consultants by section 46-5.6 of Policy and Procedure No. 46.

50-7.1.4 Two-Step Selection Process. On projects approved for design-build contracting, procurement of the contract shall be a two-step competitive negotiation process. The first step shall consist of a prequalification based on an advertised Request for Qualifications, and the second step shall consist of a competitive negotiation based on a Request for Proposals issued to prequalified and selected offerors.

50-7.1.5 Step 1—Prequalification.

50-7.1.5.1 Request for Qualifications.

- (a) The using agency shall prepare a Request for Qualifications for approval by the Director of Procurement Services. The Request for Qualifications shall:
- (1) Indicate in general terms that which is sought to be procured;
 - (2) Include the ~~memorandum submitted by the using agency and approved determination made~~ by the Director of Procurement Services pursuant to section 50-7.1.2(c);
 - (3) Contain the using agency's facility requirements, the building and site data, and any available site and survey data;
 - (4) Require that each potential offeror have both a contractor appropriately licensed and in good standing as a Class A general contractor in the Commonwealth of Virginia and an architect or professional engineer registered in the Commonwealth of Virginia as part of its project team;
 - (5) Include any unique capabilities or qualifications which will be required of the offeror;
 - (6) Specify the factors which will be used in evaluating the potential offeror's qualifications;
 - (7) Include an evaluation of the potential offeror's past ten years' experience to determine whether the potential offeror has constructed, by any method of project delivery, at least three projects of similar program and size;
 - (8) Request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria; and
 - (89) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the

Request for Qualifications can be received and considered prior to the time set for receipt of qualifications.

- (b) Once the Director of Procurement Services has approved the Request for Qualifications, the Department of Procurement Services shall publish notice of the Request for Qualifications from potential offerors at least 30 days prior to the date set for receipt of qualifications by posting on the City's electronic procurement website, OpenGov and the Commonwealth of Virginia's central electronic procurement website (i.e., eVA). The Request for Qualifications must specify that qualifications submittals must be submitted only on paper or whether electronic submittals are acceptable.

50-7.1.5.2 Selection of Qualified Offerors. The evaluation panel shall evaluate each responding potential offeror's qualifications submittal and any other relevant information and shall select between ~~two~~three and five offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the Request for Qualifications. To the extent one or more of the offerors deemed fully qualified among those submitting their qualifications is a MBE/ESB as verified through the City's Office of Minority Business Development (a "Qualified MBE/ESB"), then at least one Qualified MBE/ESB must be selected as one of the three and five offerors selected pursuant to this section 50-7.1.5.2. An offeror may be denied prequalification only upon those grounds specified in City Code § 21-46(g). At least 30 days prior to the date established for the submission of proposals, the City shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified and whether that offeror is one of the between ~~two~~three and five offerors selected on the basis of the criteria set forth in the Request for Qualifications. In the event that an offeror is denied prequalification or is not one of the between ~~two~~three and five offerors selected on the basis of the criteria set forth in the Request for Qualifications, the written notification to such offeror shall state the reasons for such denial of prequalification or selection and the factual basis of such reasons.

50-7.1.6 Step 2—Competitive Negotiation.

50-7.1.6.1 Request for Proposals.

- (a) The using agency shall prepare a Request for Proposals for approval by the Director of Procurement Services. The Request for Proposals shall:
 - (1) Include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (e.g., HVAC), and electrical systems; and special telecommunications;

- (2) Define the criteria to be used by the evaluation panel to evaluate each proposal;
 - (3) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Proposals can be received and considered prior to the time set for receipt of proposals; and
 - (4) Define such other requirements, if any, as the Director of Procurement Services determines appropriate for that particular construction project.
- (b) At least 30 days prior to the date set for receipt of proposals, the City shall invite those potential offerors prequalified and selected under section 50-7.1.5.2 to submit sealed technical and cost proposals. The Request for Proposals must specify whether proposals must be submitted only on paper or whether electronic submittals are acceptable. An offeror's cost proposal shall be sealed separately from its technical proposal. Upon receipt of an offeror's technical and cost proposals, the City shall secure and keep sealed the offeror's cost proposal until evaluation of all technical proposals is completed.

50-7.1.6.2 Selection of Design-Build Contractor.

- (a) The evaluation panel shall evaluate each of the technical proposals based on the criteria set forth in the Request for Proposals. As a part of the evaluation process, the evaluation panel may require presentations or discussions with offerors, as necessary, to clarify material in the offeror's proposal. In its conversations with offerors, the evaluation panel shall exercise care to discuss the same City information with all offerors. In addition, the evaluation panel shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to City Code § 21-5(f).
- (b) Based upon its review of each offeror's technical proposal, the evaluation panel shall determine whether any changes to the offeror's technical proposal should be made to clarify the proposal. If such changes are required, the Department of Procurement Services shall require each such offeror to provide the necessary revisions to its technical proposal within an appropriate period of time determined by the Director of Procurement Services.
- (c) Based on any revisions to the technical proposals, the evaluation panel and an offeror may negotiate additive or deductive modifications, or both, to the offeror's cost proposal. In addition, an offeror may submit sealed additive or deductive modifications, or both, to its original sealed cost proposal which are not based upon revisions to the technical proposals.

- (d) At the conclusion of this process, the evaluation panel shall open and tabulate the cost proposals. The evaluation panel shall add to or deduct from the appropriate cost proposal any cost adjustments contained in amendments submitted by an offeror.
- (e) Based on any revisions to the technical proposals, the evaluation panel shall evaluate and rank the proposals. Price must be a critical basis for award of the contract but need not be the sole determining factor. After ranking the proposals, the evaluation panel shall conduct negotiations with two or more offerors submitting the highest ranked proposals.
- (f) Should the Director of Procurement Services determine in writing 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.
- (g) After negotiations have been conducted with each offeror selected for negotiations pursuant to subsections (e) or (f) of this section, the evaluation panel shall make its recommendation on the selection of the construction manager to the Director of Procurement Services based on its evaluation and negotiations. The Director of Procurement Services shall select the offeror which the Director determines is fully qualified and has submitted the proposal providing the best value in response to the Request for Proposals.
- (h) The Department of Procurement Services will notify all offerors who submitted proposals which offeror was selected for the project by posting an intent to award the contract and, once awarded, a notice of award of the contract in accordance with the Department of Procurement Services' standard procedures for posting notices of intent to award and notices of award. Upon request, the Department of Procurement Services shall make available to the unsuccessful offerors documentation of the process used for the final selection.

50-7.2 Procedures for Construction Management Contracting.

50-7.2.1 Criteria for Use of Construction Management Contracting.

- ~~(a) The use of construction management contracts shall be limited to construction projects with an estimated cost in excess of \$26,000,000.~~
- (ba) Pursuant to Va. Code § 2.2-4382(~~DE~~)(1), construction management contracts may be used for projects ~~where the project cost is expected to be less than \$26,000,000~~, provided that (i) the project is a complex project and (ii) the ~~project~~ procurement method for the project is approved by the City Council. The approval by City Council must be provided on a "per project"

basis in a public forum and prior to the City issuing a Request for Qualifications for the project. The written approval of the City Council shall be maintained in the procurement file.

- (eb) Pursuant to Va. Code § 2.2-4382(~~DE~~)(3), the construction management contract must be entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions.

50-7.2.2

Written Determination Required for Procurement of Construction Management Contract. In order for a construction management contract to be procured for a particular construction project:

- (a) The using agency must submit a memorandum to the Director of Procurement Services requesting the use of a construction management contract.
- (b) The memorandum requesting the use of a construction management contract must:
- (1) Justify and substantiate that the criteria for use of a construction management contract set forth in section 50-7.2.1 are met;
 - (2) Indicate how the City will benefit from using a construction management contract;
 - (3) Identify the architect or professional engineer meeting the requirements of section 50-6.3 for the project for which the construction management contract is sought and set forth the competency of that architect or professional engineer in the following categories:
 - a. Education, training and general experience;
 - b. Prior experience with projects of similar size, scope and complexity; and
 - c. Prior experience with construction management contracts or substantially similar experience;
 - (4) Identify the specific type of construction management contract that the using agency desires to procure (i.e., construction management agency or construction management at-risk) and the reasons for selecting that specific type of construction management contract; and

(5) Include a written justification that the design-bid-build project delivery method is not practical or not fiscally advantageous, or both.

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(c) The Director of Procurement Services must determine and set forth in writing in advance of the commencement of any procurement of a construction management contract that ~~competitive sealed bidding~~ the design-bid-build project delivery method is either not practicable or not fiscally advantageous to the public, and such writing shall document the basis for the determination to use construction management contracting, including the determination of the project's complexity.

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50-7.2.3 Evaluation Panel. The Director of Procurement Services shall appoint an evaluation panel of not less than three voting members. If the architect or professional engineer identified pursuant to section 50-6.3 is a City employee, that architect or professional engineer shall be a voting member of the evaluation panel. If that architect or professional engineer is not a City employee, the architect or professional engineer shall participate on the evaluation panel to the extent allowed for independent consultants by section 46-5.6 of Policy and Procedure No. 46.

50-7.2.4 Two-Step Selection Process. On projects approved for construction management contracting, procurement of the contract shall be a two-step competitive negotiation process. The first step shall consist of a prequalification based on an advertised Request for Qualifications, and the second step shall consist of a competitive negotiation based on a Request for Proposals issued to prequalified and selected offerors.

50-7.2.5 Step 1—Prequalification.

50-7.2.5.1 Request for Qualifications.

- (a) The using agency shall prepare a Request for Qualifications for approval by the Director of Procurement Services. The Request for Qualifications shall:
- (1) Indicate in general terms that which is sought to be procured;
 - (2) Include the determination by the Director of Procurement Services made pursuant to section 50-7.2.2;
 - (3) Contain the using agency's facility requirements, the building and site data, and any available site and survey data;
 - (4) Require that each potential offeror provide:

- a. Evidence that such offeror is appropriately licensed and in good standing as a Class A general contractor in the Commonwealth of Virginia;
 - b. Evidence that such offeror has the ability to obtain appropriate insurance coverage for the project;
 - c. Evidence that such offeror has the appropriate bonding capacity for the project;
 - d. A listing of experience of at least three projects of similar scope and complexity, including for each such project the construction cost, the construction schedule, and contact information for the owner or owner's representative; and
 - e. A list of at least three references, including contact information for each;
- (5) Include any unique capabilities or qualifications which will be required of the offeror;
- (6) Specify the factors which will be used in evaluating the potential offeror's qualifications;
- (7) Include an evaluation of the potential offeror's past ten years' experience to determine whether the potential offeror has constructed, by any method of project delivery, at least three projects of similar program and size;
- (8) Request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria; and
- (9) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Qualifications can be received and considered prior to the time set for receipt of qualifications.
- (b) Once the Director of Procurement Services has approved the Request for Qualifications, the Department of Procurement Services shall publish notice of the Request for Qualifications from potential offerors at least 30 days prior to the date set for receipt of qualifications by posting on the City's electronic procurement website, OpenGov and the Commonwealth of Virginia's central electronic procurement website (i.e., eVA). The Request for Qualifications must specify that qualifications submittals must be submitted only on paper or whether electronic submittals are acceptable.

50-7.2.5.2 Selection of Qualified Offerors. The evaluation panel shall evaluate each responding potential offeror's qualifications submittal and any other relevant information and shall select between three and five offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the Request for Qualifications. To the extent one or more of the offerors deemed fully qualified among those submitting their qualifications is a MBE/ESB as verified through the City's Office of Minority Business Development (a "Qualified MBE/ESB"), then at least one Qualified MBE/ESB must be selected as one of the three and five offerors selected pursuant to this section 50-7.2.5.2. An offeror may be denied prequalification only upon those grounds specified in City Code § 21-46(g). At least 30 days prior to the date established for the submission of proposals, the City shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified and whether that offeror is one of the between three and five offerors selected on the basis of the criteria set forth in the Request for Qualifications. In the event that an offeror is denied prequalification or is not one of the between three and five offerors selected on the basis of the criteria set forth in the Request for Qualifications, the written notification to such offeror shall state the reasons for such denial of prequalification or selection and the factual basis of such reasons.

50-7.2.6 Step 2—Competitive Negotiation.

50-7.2.6.1 Request for Proposals.

- (a) The using agency shall prepare a Request for Proposals for approval by the Director of Procurement Services. The Request for Proposals shall:
 - (1) Include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (e.g., HVAC), and electrical systems; and special telecommunications;
 - (2) Define the pre-design phase, design phase, bid phase, and construction phase services to be provided by the construction manager;
 - (3) Require the offeror's cost proposal to include the offeror's lump sum price for all requested pre-construction phase (e.g., the pre-design phase, design phase and bid phase) services;
 - (4) Provide for the establishment of a lump sum price or a Guaranteed Maximum Price for all requested construction services;
 - (5) Define the criteria to be used by the evaluation committee to evaluate each proposal;
 - (6) Include, for any Guaranteed Maximum Price construction management contract, contract terms providing that:

- a. Not more than ten percent of the construction work, as measured by the cost of the work, shall be performed by the construction manager with its own forces;
- b. The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by publicly advertised competitive sealed bidding to the maximum extent practical; and
- c. The construction manager shall provide documentation detailing the reasons any construction work is not procured by publicly advertised competitive sealed bidding, and such documentation is to be placed in the contract file. However, sections 50-7.2.6.1(a), (b), and (c) herein shall not apply to construction management contracts involving infrastructure projects.
- d. Unless the Director of Procurement Services has waived this requirement, the Guaranteed Maximum Price shall be established at the completion of working drawings.

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- (7) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Proposals can be received and considered prior to the time set for receipt of proposals; and
- (8) Define such other requirements, if any, as the Director of Procurement Services determines appropriate for that particular construction project.

- (b) At least 30 days prior to the date set for receipt of proposals, the City shall invite those potential offerors prequalified and selected under section 50-7.2.5.2 to submit sealed technical and cost proposals. The Request for Proposals must specify whether proposals must be submitted only on paper or whether electronic submittals are acceptable. An offeror’s cost proposal shall be sealed separately from its technical proposal. Upon receipt of an offeror’s technical and cost proposals, the City shall secure and keep sealed the offeror’s cost proposal until evaluation of all technical proposals is completed.

50-7.2.6.2 Selection of Construction Management Contractor.

- (a) The evaluation panel shall evaluate each of the technical proposals based on the criteria set forth in the Request for Proposals. As a part of the evaluation process, the evaluation panel may require presentations or discussions with offerors, as necessary, to clarify material in the offeror’s proposal. In its conversations with offerors, the evaluation panel shall exercise care to discuss the same City information with all offerors. In

addition, the evaluation panel shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to City Code § 21-5(f).

- (b) Based upon its review of each offeror's technical proposal, the evaluation panel shall determine whether any changes to the offeror's technical proposal should be made to clarify the proposal. If such changes are required, the Department of Procurement Services shall require each such offeror to provide the necessary revisions to its technical proposal within an appropriate period of time determined by the Director of Procurement Services.
- (c) Based on any revisions to the technical proposals, the evaluation panel shall evaluate and rank the proposals. Price must be a critical basis for award of the contract but need not be the sole determining factor. After ranking the proposals, the evaluation panel shall conduct negotiations with two or more offerors submitting the highest ranked proposals.
- (d) Should the Director of Procurement Services determine in writing 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.
- (e) After negotiations have been conducted with each offeror selected for negotiations pursuant to subsections (c) or (d) of this section, the evaluation panel shall make its recommendation on the selection of the construction manager to the Director of Procurement Services based on its evaluation and negotiations. The Director of Procurement Services shall select the offeror which the Director determines is fully qualified and has submitted the proposal providing the best value in response to the Request for Proposals.
- (f) The Department of Procurement Services will notify all offerors who submitted proposals which offeror was selected for the project by posting an intent to award the contract and, once awarded, a notice of award of the contract in accordance with the Department of Procurement Services' standard procedures for posting notices of intent to award and notices of award. Upon request, the Department of Procurement Services shall make available to the unsuccessful offerors documentation of the process used for the final selection.
- (g) Using the City's electronic procurement website, OpenGov, the Department of Procurement Services may post when and where the general contractor plans to advertise bid packages for subcontracting opportunities when appropriate.

50-8.0 Solicitation Language, Contract Language, and Forms.

50-8.1 General. The Office of the City Attorney will develop and, from time to

time, modify all language for solicitations of design-build contracts and construction management contracts pursuant to this Policy and Procedure. Each design-build contract and construction management contract must be approved as to form by the City Attorney or the designee thereof prior to its signature by the Director of Procurement Services.

50-8.2 **Guaranteed Maximum Price Contracts.** Each Guaranteed Maximum Price construction management contract shall include contract terms providing that:

- (a) Not more than ten percent of the construction work, as measured by the cost of the work, shall be performed by the construction manager with its own forces;
- (b) The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by publicly advertised competitive sealed bidding to the maximum extent practical; and
- (c) The construction manager shall provide documentation detailing the reasons any construction work is not procured by publicly advertised competitive sealed bidding, and such documentation is to be placed in the contract file. However, sections 50-8.2(a), (b), and (c) herein shall not apply to construction management contracts involving infrastructure projects.
- (d) The Guaranteed Maximum Price shall be established at the completion of working drawings, unless the Director of Procurement Services has waived this requirement.

50-8.3 **Forms.** The Director of Procurement Services may produce and require the use by Department of Procurement Services personnel, using agency personnel, potential offerors, and contractors of such forms and checklists related to the solicitation and administration of design-build contracts and construction management contracts pursuant to this Policy and Procedure as the Director deems appropriate.

50-9.0 **Responsibilities.**

50-9.1 **Using Agency.** The using agency is responsible for:

- (a) Identifying the architect or professional engineer to serve as professional advisor pursuant to section 50-6.3.
- (b) Preparing and submitting to the Director of Procurement Services the memorandum requesting and justifying the use of a design-build contract.
- (c) Preparing and submitting to the Director of Procurement Services Requests for Qualifications and Requests for Proposals.
- (d) Administering any resulting design-build contract or construction management contract.

(c) Reporting capital project data annually to the Commonwealth of Virginia's Department of General Services if required by Va. Code § 2.2-4383(B).

50-9.2 Director of Procurement Services. The Director of Procurement Services is responsible for:

- (a) Making the written determination that ~~competitive-sealed-bidding~~the design-bid-build project delivery method is either not practicable or not fiscally advantageous ~~to the public~~.
- (b) Appointing the evaluation panel for the procurement of each design-build contract and construction management contract.
- (c) Reviewing and approving Requests for Qualifications and Requests for Proposals prior to their issuance.
- (d) Reviewing and approving the selection of a design-build contractor or a construction management contractor based on the recommendations of the evaluation panel.

50-9.3 Contract Specialist. The Contract Specialist shall perform those responsibilities delegated by the Director of Procurement Services to the Contract Specialist for a particular procurement and shall ensure that the responsibilities assigned by this Policy and Procedure to the Department of Procurement Services are performed.

50-9.4 Office of the City Attorney. The Office of the City Attorney is responsible for:

- (a) Developing and modifying all language for solicitations of design-build contracts and construction management contracts pursuant to this Policy and Procedure.
- (b) Approving as to form each design-build contract and construction management contract prior to its signature by the Director of Procurement Services.
- (c) Providing legal advice to the Department of Procurement Services and the using agency throughout the procurement processes described in this Policy and Procedure.

50-10.0 Modification of Policy and Procedure. The Director of Procurement Services shall be responsible for modifications to this Policy and Procedure, subject to any legal requirements for City Council approval.

NO. 50 DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTING

50-1.0 **Scope.** This Policy and Procedure applies to all City construction contracts using the design-build or construction management methods of contracting. This Policy and Procedure does not apply to construction contracts procured by competitive negotiation pursuant to City Code § 21-67(a)(3)(b) or (3)(c).

50-2.0 **Purpose.** The purpose of this Policy and Procedure is to implement the authority granted by City Code § 21-44 to engage in design-build and construction management contracting.

50-3.0 **References.**

- (a) City Code § 21-4.
- (b) City Code § 21-5.
- (c) City Code § 21-44.
- (d) City Code § 21-46.
- (e) City Code § 21-67.
- (f) Va. Code § 2.2-4382.
- (g) Procurement Services Policy and Procedure No. 46.

50-4.0 **Definitions.** For purposes of this Policy and Procedure, the words and phrases set forth in this section have the meanings ascribed to them by this section unless the context clearly indicates that a different meaning is intended.

50-4-1 “*Complex project*” has the meaning set forth for that term in Va. Code § 2.2-4379.

50-4.2 “*Construction management contract*” means a contract in which a party is retained by the City to coordinate and administer contracts for construction services for the benefit of the City, and may also include, if provided in the contract, the furnishing of construction services to the City. City Code § 21-4.

50-4.2.1 “*Construction management agency*” means a construction project delivery method in which the City enters into contracts for the delivery of a construction project and the construction manager administers those contracts on the City’s behalf.

50-4.2.2 “*Construction management at-risk*” means a construction project delivery method in which (i) the construction manager is required to deliver the project within a Guaranteed Maximum Price and (ii) provides or is at-risk for all or a portion of the construction to be provided.

- 50-4.3** *“Design-bid-build”* means a project delivery method in which the City sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.
- 50-4.4** *“Design-build contract”* means a contract between the City and another party in which the party contracting with the City agrees to both design and build the structure, roadway or other item specified in the contract. City Code §21-4.
- 50-4.5** *“Guaranteed Maximum Price”* means a pricing arrangement in a construction management contract in which the construction manager is compensated for actual costs incurred plus a fixed fee subject to a ceiling price, the construction manager is responsible for cost overruns, and cost savings are returned to the City.
- 50-5.0** **Background.** Pursuant to Va. Code § 2.2-4382(A), the City Council adopted the current wording of City Code § 21-44 in order to authorize the use of construction management and design-build contracting for the delivery of construction projects. Pursuant to Va. Code § 2.2-4382(A) and City Code § 21-44, this policy and procedure is effective only upon the City Council’s adoption of a resolution adopting this policy and procedure.
- 50-6.0** **Policy.**
- 50-6.1** **General.** The process of competitive sealed bidding is the default method of construction procurement for the City. However, under certain circumstances, the City may use design-build contracting or construction management contracting, or both, for the delivery of specific construction projects in accordance with the requirements of this Policy and Procedure.
- 50-6.2** **Process to Be Followed.** In general, the procurement procedure for these types of contracts will consist of a combination of the procedure for prequalification of construction contractors set forth in City Code § 21-46 and the procedure for the procurement of goods and non-professional services set forth in City Code § 21-67, as modified by this Policy and Procedure. All procurement and contracting procedures for design-build and construction management contracts shall be as set forth in this Policy and Procedure.
- 50-6.3** **Professional Advisor.** Prior to making a determination as to the use of a design-build contract or a construction management contract for a specific construction project, the using agency shall have an architect or professional engineer with professional competence appropriate to the project who will advise the City regarding the use of design-build or construction management contracting for that project and who will assist the City with the preparation of the Request for Proposals and the evaluation of proposals submitted by interested offerors in response to the Request for Proposals for that project. The using agency shall have

(i) an architect or professional engineer meeting the requirements of this section in its employ, (ii) made arrangements with another City agency for the use of an architect or professional engineer meeting the requirements of this section employed with that other City agency or (iii) an architect or professional engineer meeting the requirements of this section under contract.

50-7.0 Procedures.

50-7.1. Procedures for Design-Build Contracting.

50-7.1.1 Criteria for Use of Design-Build Contracting.

Pursuant to Va. Code § 2.2-4382(E)(1), design-build contracts may be used for projects, provided that (i) the project is a complex project and (ii) the procurement method for the project is approved by the City Council. The approval by City Council must be provided on a “per project” basis in a public forum and prior to the City issuing a Request for Qualifications for the project. The written approval of the City Council shall be maintained in the procurement file.

50-7.1.2 Written Determination Required for Procurement of Design-Build Contract.
In order for a design-build contract to be procured for a particular construction project:

- (a) The using agency must submit a memorandum to the Director of Procurement Services requesting the use of a design-build contract.
- (b) The memorandum requesting the use of a design-build contract must:
 - (1) Justify and substantiate that the criteria for use of a design-build contract set forth in section 50-7.1.1 are met;
 - (2) Indicate how the City will benefit from using a design-build contract;
 - (3) Identify the architect or professional engineer meeting the requirements of section 50-6.3 for the project for which the design-build contract is sought and set forth the competency of that architect or professional engineer in the following categories:
 - a. Education, training and general experience;
 - b. Prior experience with projects of similar size, scope and complexity; and
 - c. Prior experience with design-build contracts or substantially similar experience; and

- (4) Include a written justification that the design-bid-build project delivery method is not practical or not fiscally advantageous, or both.
- (c) The Director of Procurement Services must determine and set forth in writing in advance of the commencement of any procurement of a design-build contract that the design-bid-build project delivery method is either not practicable or not fiscally advantageous, and such writing shall document the basis for the determination to utilize design-build, including the determination of the project's complexity.

50-7.1.3 Evaluation Panel. The Director of Procurement Services shall appoint an evaluation panel of not less than three voting members. If the architect or professional engineer identified pursuant to section 50-7.1.2(b)(3) is a City employee, that architect or professional engineer shall be a voting member of the evaluation panel. If that architect or professional engineer is not a City employee, the architect or professional engineer shall participate on the evaluation panel to the extent allowed for independent consultants by section 46-5.6 of Policy and Procedure No. 46.

50-7.1.4 Two-Step Selection Process. On projects approved for design-build contracting, procurement of the contract shall be a two-step competitive negotiation process. The first step shall consist of a prequalification based on an advertised Request for Qualifications, and the second step shall consist of a competitive negotiation based on a Request for Proposals issued to prequalified and selected offerors.

50-7.1.5 Step 1—Prequalification.

50-7.1.5.1 Request for Qualifications.

- (a) The using agency shall prepare a Request for Qualifications for approval by the Director of Procurement Services. The Request for Qualifications shall:
 - (1) Indicate in general terms that which is sought to be procured;
 - (2) Include the determination made by the Director of Procurement Services pursuant to section 50-7.1.2(c);
 - (3) Contain the using agency's facility requirements, the building and site data, and any available site and survey data;
 - (4) Require that each potential offeror have both a contractor appropriately licensed and in good standing as a Class A general contractor in the Commonwealth of Virginia and an architect or professional engineer registered in the Commonwealth of Virginia as part of its project team;

- (5) Include any unique capabilities or qualifications which will be required of the offeror;
 - (6) Specify the factors which will be used in evaluating the potential offeror's qualifications;
 - (7) Include an evaluation of the potential offeror's past ten years' experience to determine whether the potential offeror has constructed, by any method of project delivery, at least three projects of similar program and size;
 - (8) Request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria; and
 - (9) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Qualifications can be received and considered prior to the time set for receipt of qualifications.
- (b) Once the Director of Procurement Services has approved the Request for Qualifications, the Department of Procurement Services shall publish notice of the Request for Qualifications from potential offerors at least 30 days prior to the date set for receipt of qualifications by posting on the City's electronic procurement website, OpenGov. The Request for Qualifications must specify that qualifications submittals must be submitted only on paper or whether electronic submittals are acceptable.

50-7.1.5.2 Selection of Qualified Offerors. The evaluation panel shall evaluate each responding potential offeror's qualifications submittal and any other relevant information and shall select between three and five offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the Request for Qualifications. To the extent one or more of the offerors deemed fully qualified among those submitting their qualifications is a MBE/ESB as verified through the City's Office of Minority Business Development (a "Qualified MBE/ESB"), then at least one Qualified MBE/ESB must be selected as one of the three and five offerors selected pursuant to this section 50-7.1.5.2. An offeror may be denied prequalification only upon those grounds specified in City Code § 21-46(g). At least 30 days prior to the date established for the submission of proposals, the City shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified and whether that offeror is one of the between three and five offerors selected on the basis of the criteria set forth in the Request for Qualifications. In the event that an offeror is denied prequalification or is not one of the between three and five offerors selected on the basis of the criteria set forth in the Request for

Qualifications, the written notification to such offeror shall state the reasons for such denial of prequalification or selection and the factual basis of such reasons.

50-7.1.6 Step 2—Competitive Negotiation.

50-7.1.6.1 Request for Proposals.

- (a) The using agency shall prepare a Request for Proposals for approval by the Director of Procurement Services. The Request for Proposals shall:
 - (1) Include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (e.g., HVAC), and electrical systems; and special telecommunications;
 - (2) Define the criteria to be used by the evaluation panel to evaluate each proposal;
 - (3) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Proposals can be received and considered prior to the time set for receipt of proposals; and
 - (4) Define such other requirements, if any, as the Director of Procurement Services determines appropriate for that particular construction project.
- (b) At least 30 days prior to the date set for receipt of proposals, the City shall invite those potential offerors prequalified and selected under section 50-7.1.5.2 to submit sealed technical and cost proposals. The Request for Proposals must specify whether proposals must be submitted only on paper or whether electronic submittals are acceptable. An offeror's cost proposal shall be sealed separately from its technical proposal. Upon receipt of an offeror's technical and cost proposals, the City shall secure and keep sealed the offeror's cost proposal until evaluation of all technical proposals is completed.

50-7.1.6.2 Selection of Design-Build Contractor.

- (a) The evaluation panel shall evaluate each of the technical proposals based on the criteria set forth in the Request for Proposals. As a part of the evaluation process, the evaluation panel may require presentations or discussions with offerors, as necessary, to clarify material in the offeror's proposal. In its conversations with offerors, the evaluation panel shall exercise care to discuss the same City information with all offerors. In addition, the evaluation panel shall not disclose any trade secret or

proprietary information for which the offeror has invoked protection pursuant to City Code § 21-5(f).

- (b) Based upon its review of each offeror's technical proposal, the evaluation panel shall determine whether any changes to the offeror's technical proposal should be made to clarify the proposal. If such changes are required, the Department of Procurement Services shall require each such offeror to provide the necessary revisions to its technical proposal within an appropriate period of time determined by the Director of Procurement Services.
- (c) Based on any revisions to the technical proposals, the evaluation panel and an offeror may negotiate additive or deductive modifications, or both, to the offeror's cost proposal. In addition, an offeror may submit sealed additive or deductive modifications, or both, to its original sealed cost proposal which are not based upon revisions to the technical proposals.
- (d) At the conclusion of this process, the evaluation panel shall open and tabulate the cost proposals. The evaluation panel shall add to or deduct from the appropriate cost proposal any cost adjustments contained in amendments submitted by an offeror.
- (e) Based on any revisions to the technical proposals, the evaluation panel shall evaluate and rank the proposals. Price must be a critical basis for award of the contract but need not be the sole determining factor. After ranking the proposals, the evaluation panel shall conduct negotiations with two or more offerors submitting the highest ranked proposals.
- (f) Should the Director of Procurement Services determine in writing 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.
- (g) After negotiations have been conducted with each offeror selected for negotiations pursuant to subsections (e) or (f) of this section, the evaluation panel shall make its recommendation on the selection of the construction manager to the Director of Procurement Services based on its evaluation and negotiations. The Director of Procurement Services shall select the offeror which the Director determines is fully qualified and has submitted the proposal providing the best value in response to the Request for Proposals.
- (h) The Department of Procurement Services will notify all offerors who submitted proposals which offeror was selected for the project by posting an intent to award the contract and, once awarded, a notice of award of the contract in accordance with the Department of Procurement Services' standard procedures for posting notices of intent to award and notices of award. Upon request, the Department of Procurement Services shall make

available to the unsuccessful offerors documentation of the process used for the final selection.

50-7.2 Procedures for Construction Management Contracting.

50-7.2.1 Criteria for Use of Construction Management Contracting.

- (a) Pursuant to Va. Code § 2.2-4382(E)(1), construction management contracts may be used for projects, provided that (i) the project is a complex project and (ii) the procurement method for the project is approved by the City Council. The approval by City Council must be provided on a “per project” basis in a public forum and prior to the City issuing a Request for Qualifications for the project. The written approval of the City Council shall be maintained in the procurement file.
- (b) Pursuant to Va. Code § 2.2-4382(E)(3), the construction management contract must be entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions.

50-7.2.2 Written Determination Required for Procurement of Construction Management Contract. In order for a construction management contract to be procured for a particular construction project:

- (a) The using agency must submit a memorandum to the Director of Procurement Services requesting the use of a construction management contract.
- (b) The memorandum requesting the use of a construction management contract must:
 - (1) Justify and substantiate that the criteria for use of a construction management contract set forth in section 50-7.2.1 are met;
 - (2) Indicate how the City will benefit from using a construction management contract;
 - (3) Identify the architect or professional engineer meeting the requirements of section 50-6.3 for the project for which the construction management contract is sought and set forth the competency of that architect or professional engineer in the following categories:
 - a. Education, training and general experience;
 - b. Prior experience with projects of similar size, scope and complexity; and

- c. Prior experience with construction management contracts or substantially similar experience;
 - (4) Identify the specific type of construction management contract that the using agency desires to procure (i.e., construction management agency or construction management at-risk) and the reasons for selecting that specific type of construction management contract; and
 - (5) Include a written justification that the design-bid-build project delivery method is not practical or not fiscally advantageous, or both.
- (c) The Director of Procurement Services must determine and set forth in writing in advance of the commencement of any procurement of a construction management contract that the design-bid-build project delivery method is either not practicable or not fiscally advantageous to the public, and such writing shall document the basis for the determination to use construction management contracting, including the determination of the project's complexity.

50-7.2.3 Evaluation Panel. The Director of Procurement Services shall appoint an evaluation panel of not less than three voting members. If the architect or professional engineer identified pursuant to section 50-6.3 is a City employee, that architect or professional engineer shall be a voting member of the evaluation panel. If that architect or professional engineer is not a City employee, the architect or professional engineer shall participate on the evaluation panel to the extent allowed for independent consultants by section 46-5.6 of Policy and Procedure No. 46.

50-7.2.4 Two-Step Selection Process. On projects approved for construction management contracting, procurement of the contract shall be a two-step competitive negotiation process. The first step shall consist of a prequalification based on an advertised Request for Qualifications, and the second step shall consist of a competitive negotiation based on a Request for Proposals issued to prequalified and selected offerors.

50-7.2.5 Step 1—Prequalification.

50-7.2.5.1 Request for Qualifications.

- (a) The using agency shall prepare a Request for Qualifications for approval by the Director of Procurement Services. The Request for Qualifications shall:
 - (1) Indicate in general terms that which is sought to be procured;

- (2) Include the determination by the Director of Procurement Services made pursuant to section 50-7.2.2;
- (3) Contain the using agency's facility requirements, the building and site data, and any available site and survey data;
- (4) Require that each potential offeror provide:
 - a. Evidence that such offeror is appropriately licensed and in good standing as a Class A general contractor in the Commonwealth of Virginia;
 - b. Evidence that such offeror has the ability to obtain appropriate insurance coverage for the project;
 - c. Evidence that such offeror has the appropriate bonding capacity for the project;
 - d. A listing of experience of at least three projects of similar scope and complexity, including for each such project the construction cost, the construction schedule, and contact information for the owner or owner's representative; and
 - e. A list of at least three references, including contact information for each;
- (5) Include any unique capabilities or qualifications which will be required of the offeror;
- (6) Specify the factors which will be used in evaluating the potential offeror's qualifications;
- (7) Include an evaluation of the potential offeror's past ten years' experience to determine whether the potential offeror has constructed, by any method of project delivery, at least three projects of similar program and size;
- (8) Request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria; and
- (9) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Qualifications can be received and considered prior to the time set for receipt of qualifications.

- (b) Once the Director of Procurement Services has approved the Request for Qualifications, the Department of Procurement Services shall publish notice of the Request for Qualifications from potential offerors at least 30 days prior to the date set for receipt of qualifications by posting on the City's electronic procurement website, OpenGov. The Request for Qualifications must specify that qualifications submittals must be submitted only on paper or whether electronic submittals are acceptable.

50-7.2.5.2 Selection of Qualified Offerors. The evaluation panel shall evaluate each responding potential offeror's qualifications submittal and any other relevant information and shall select between three and five offerors deemed fully qualified and best suited among those submitting their qualifications on the basis of the selection criteria set forth in the Request for Qualifications. To the extent one or more of the offerors deemed fully qualified among those submitting their qualifications is a MBE/ESB as verified through the City's Office of Minority Business Development (a "Qualified MBE/ESB"), then at least one Qualified MBE/ESB must be selected as one of the three and five offerors selected pursuant to this section 50-7.2.5.2. An offeror may be denied prequalification only upon those grounds specified in City Code § 21-46(g). At least 30 days prior to the date established for the submission of proposals, the City shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified and whether that offeror is one of the between three and five offerors selected on the basis of the criteria set forth in the Request for Qualifications. In the event that an offeror is denied prequalification or is not one of the between three and five offerors selected on the basis of the criteria set forth in the Request for Qualifications, the written notification to such offeror shall state the reasons for such denial of prequalification or selection and the factual basis of such reasons.

50-7.2.6 Step 2—Competitive Negotiation.

50-7.2.6.1 Request for Proposals.

- (a) The using agency shall prepare a Request for Proposals for approval by the Director of Procurement Services. The Request for Proposals shall:
 - (1) Include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (e.g., HVAC), and electrical systems; and special telecommunications;
 - (2) Define the pre-design phase, design phase, bid phase, and construction phase services to be provided by the construction manager;
 - (3) Require the offeror's cost proposal to include the offeror's lump sum price for all requested pre-construction phase (e.g., the pre-design phase, design phase and bid phase) services;

- (4) Provide for the establishment of a lump sum price or a Guaranteed Maximum Price for all requested construction services;
 - (5) Define the criteria to be used by the evaluation committee to evaluate each proposal;
 - (6) Include, for any Guaranteed Maximum Price construction management contract, contract terms providing that:
 - a. Not more than ten percent of the construction work, as measured by the cost of the work, shall be performed by the construction manager with its own forces;
 - b. The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by publicly advertised competitive sealed bidding to the maximum extent practical; and
 - c. The construction manager shall provide documentation detailing the reasons any construction work is not procured by publicly advertised competitive sealed bidding, and such documentation is to be placed in the contract file. However, sections 50-7.2.6.1(a), (b), and (c) herein shall not apply to construction management contracts involving infrastructure projects.
 - d. Unless the Director of Procurement Services has waived this requirement, the Guaranteed Maximum Price shall be established at the completion of working drawings.
 - (7) Include or incorporate by reference a procedure whereby comments concerning specifications or other provisions in the Request for Proposals can be received and considered prior to the time set for receipt of proposals; and
 - (8) Define such other requirements, if any, as the Director of Procurement Services determines appropriate for that particular construction project.
- (b) At least 30 days prior to the date set for receipt of proposals, the City shall invite those potential offerors prequalified and selected under section 50-7.2.5.2 to submit sealed technical and cost proposals. The Request for Proposals must specify whether proposals must be submitted only on paper or whether electronic submittals are acceptable. An offeror's cost proposal shall be sealed separately from its technical proposal. Upon receipt of an offeror's technical and cost proposals, the City shall secure and keep sealed the offeror's cost proposal until evaluation of all technical proposals is completed.

50-7.2.6.2 Selection of Construction Management Contractor.

- (a) The evaluation panel shall evaluate each of the technical proposals based on the criteria set forth in the Request for Proposals. As a part of the evaluation process, the evaluation panel may require presentations or discussions with offerors, as necessary, to clarify material in the offeror's proposal. In its conversations with offerors, the evaluation panel shall exercise care to discuss the same City information with all offerors. In addition, the evaluation panel shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to City Code § 21-5(f).
- (b) Based upon its review of each offeror's technical proposal, the evaluation panel shall determine whether any changes to the offeror's technical proposal should be made to clarify the proposal. If such changes are required, the Department of Procurement Services shall require each such offeror to provide the necessary revisions to its technical proposal within an appropriate period of time determined by the Director of Procurement Services.
- (c) Based on any revisions to the technical proposals, the evaluation panel shall evaluate and rank the proposals. Price must be a critical basis for award of the contract but need not be the sole determining factor. After ranking the proposals, the evaluation panel shall conduct negotiations with two or more offerors submitting the highest ranked proposals.
- (d) Should the Director of Procurement Services determine in writing 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.
- (e) After negotiations have been conducted with each offeror selected for negotiations pursuant to subsections (c) or (d) of this section, the evaluation panel shall make its recommendation on the selection of the construction manager to the Director of Procurement Services based on its evaluation and negotiations. The Director of Procurement Services shall select the offeror which the Director determines is fully qualified and has submitted the proposal providing the best value in response to the Request for Proposals.
- (f) The Department of Procurement Services will notify all offerors who submitted proposals which offeror was selected for the project by posting an intent to award the contract and, once awarded, a notice of award of the contract in accordance with the Department of Procurement Services' standard procedures for posting notices of intent to award and notices of award. Upon request, the Department of Procurement Services shall make available to the unsuccessful offerors documentation of the process used for the final selection.

- (g) Using the City's electronic procurement website, OpenGov, the Department of Procurement Services may post when and where the general contractor plans to advertise bid packages for subcontracting opportunities when appropriate.

50-8.0 Solicitation Language, Contract Language, and Forms.

50-8.1 General. The Office of the City Attorney will develop and, from time to time, modify all language for solicitations of design-build contracts and construction management contracts pursuant to this Policy and Procedure. Each design-build contract and construction management contract must be approved as to form by the City Attorney or the designee thereof prior to its signature by the Director of Procurement Services.

50-8.2 Guaranteed Maximum Price Contracts. Each Guaranteed Maximum Price construction management contract shall include contract terms providing that:

- (a) Not more than ten percent of the construction work, as measured by the cost of the work, shall be performed by the construction manager with its own forces;
- (b) The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by publicly advertised competitive sealed bidding to the maximum extent practical; and
- (c) The construction manager shall provide documentation detailing the reasons any construction work is not procured by publicly advertised competitive sealed bidding, and such documentation is to be placed in the contract file. However, sections 50-8.2(a), (b), and (c) herein shall not apply to construction management contracts involving infrastructure projects.
- (d) The Guaranteed Maximum Price shall be established at the completion of working drawings, unless the Director of Procurement Services has waived this requirement.

50-8.3 Forms. The Director of Procurement Services may produce and require the use by Department of Procurement Services personnel, using agency personnel, potential offerors, and contractors of such forms and checklists related to the solicitation and administration of design-build contracts and construction management contracts pursuant to this Policy and Procedure as the Director deems appropriate.

50-9.0 Responsibilities.

50-9.1 Using Agency. The using agency is responsible for:

- (a) Identifying the architect or professional engineer to serve as professional advisor pursuant to section 50-6.3.

- (b) Preparing and submitting to the Director of Procurement Services the memorandum requesting and justifying the use of a design-build contract.
- (c) Preparing and submitting to the Director of Procurement Services Requests for Qualifications and Requests for Proposals.
- (d) Administering any resulting design-build contract or construction management contract.
- (e) Reporting capital project data annually to the Commonwealth of Virginia's Department of General Services if required by Va. Code § 2.2-4383(B).

50-9.2 Director of Procurement Services. The Director of Procurement Services is responsible for:

- (a) Making the written determination that the design-bid-build project delivery method is either not practicable or not fiscally advantageous.
- (b) Appointing the evaluation panel for the procurement of each design-build contract and construction management contract.
- (c) Reviewing and approving Requests for Qualifications and Requests for Proposals prior to their issuance.
- (d) Reviewing and approving the selection of a design-build contractor or a construction management contractor based on the recommendations of the evaluation panel.

50-9.3 Contract Specialist. The Contract Specialist shall perform those responsibilities delegated by the Director of Procurement Services to the Contract Specialist for a particular procurement and shall ensure that the responsibilities assigned by this Policy and Procedure to the Department of Procurement Services are performed.

50-9.4 Office of the City Attorney. The Office of the City Attorney is responsible for:

- (a) Developing and modifying all language for solicitations of design-build contracts and construction management contracts pursuant to this Policy and Procedure.
- (b) Approving as to form each design-build contract and construction management contract prior to its signature by the Director of Procurement Services.
- (c) Providing legal advice to the Department of Procurement Services and the using agency throughout the procurement processes described in this Policy and Procedure.

50-10.0 Modification of Policy and Procedure. The Director of Procurement Services

shall be responsible for modifications to this Policy and Procedure, subject to any legal requirements for City Council approval.