

SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH
REGULATION 3-40.1

BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

DESIGN-BUILD AND CONSTRUCTION MANAGEMENT PROJECT DELIVERY METHODS

The School Board is committed to the efficient use of public funds and the use of various construction delivery methods allowed by the Virginia Public Procurement Act. Therefore, the School Board adopts Design-Build (D-B) and Construction Management (CM) project delivery methods for use in Capital Improvement Program projects (CIP). Design-Build and Construction Management are project delivery methods used when competitive sealed bidding is determined not practicable, not fiscally advantageous, not efficient for a complex project or when accelerated project delivery time is needed. Both project delivery methods are intended to minimize the project risk and to reduce the delivery schedule by overlapping the design phase and the construction phase of a project.

A. Definitions

“Complex project” means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that warrants an alternative to the design-bid-build project delivery method.

“Construction Management” means a project delivery method in which a firm is retained by the School Board to coordinate and administer contracts for construction services for the benefit of the School Board.

“Design-Build” means a project delivery method in which the School Board awards a contract to both design and build the structure, or other item specified, to a Design-Build contractor (Design Builder).

B. Approval of the Use of Design-Build or Construction Management project delivery method

The School Board authorizes the Superintendent or designee to use Design-Build or Construction Management project delivery and contracting in accordance with this Policy, applicable law, the Virginia Department of General Services procedures for construction projects on a fixed price or not to exceed price, and School Division procurement procedures.

1. CIP projects \$40 million or less- Superintendent or designee approves use of D-B or CM

The Superintendent or designee is authorized to approve Design-Build or Construction Management for CIP projects that are \$40 million or less.

2. CIP projects over \$40 million- School Board approves use of D-B or CM

The School Board must approve the use of Design-Build or Construction Management for CIP projects over \$40 million.

3. Decisions regarding use of D-B or CM - not appealable

The decision to use Design-Build or Construction Management is not appealable.

4. Written justification for use of D-B or CM

Approval of Design-Build or Construction Management must be done in writing and include the following:

a. Explanation why D-B or CM is more advantageous than a competitive-sealed-bid construction method.

b. Determination that competitive-sealed-bidding is not practicable or not fiscally advantageous.

c. Determination that there is a benefit to the School Board by using D-B or CM.

d. The justification and approval will be included in the RFP and retained by the School Division in the construction and procurement records for the project.

C. Design-Build project delivery method

The Design-Build project delivery method shall be a two-step competitive negotiation process. The following procedures shall govern the selection, evaluation and award of Design-Build contracts:

1. Criteria for use.

Design-Build procurement is intended to minimize the project risk for the owner and reduce the delivery schedule by overlapping the design phase and the construction phase of a project.

2. Basis of award

The award of a Design-Build contract, after evaluation of technical and financial proposals, shall be on either: a) a fixed price, or b) a not-to-exceed price. Cost shall be a critical component of the selection process.

3. Evaluation Committee

The Chief Operations Officer or designee shall establish an Evaluation Committee ("Committee") to be responsible for evaluating the Request for Qualifications (RFQ) and Request for Proposals (RFP) of offerors of Design-Build approved projects and reviewing proposals submitted for such services. The Committee shall consist of a minimum of four (4) and a maximum of eight (8) voting members. The members of the Committee shall have expertise relevant to the project, with backgrounds in such areas as project design, construction, finance, contract review, and project management.

a) A procurement specialist from the Office of Procurement Services shall lead the process between offerors and the Committee in a non-voting capacity.

b) The Executive Director of Facilities Services or designee shall serve as the contract administrator and will chair the Committee.

c) A licensed architect or engineer with professional competence to the project must be employed or under contract with the School Board to provide advice and assist with the preparation of the RFP and evaluation of the proposals.

d) The Chief Operations Officer or designee shall appoint the Committee members.

e) The School Board may assign no more than two School Board Members to serve as non-voting liaisons for a Committee created for a CIP project over \$40 million and approved to use Design-Build project delivery. School Board Member liaisons may not have a conflict of interests related to the CIP project.

f) An owner advisor(s) may also be engaged to provide unbiased technical expertise and support in areas described in the Scope of Services.

4. Step 1 - Selection of Qualified Offerors Request for Qualifications (RFQ)

a. The School Division shall publish notice of its RFQ at least thirty (30) days prior to the date set for receipt of qualifications by posting to an electronic bid board, the School Division website or other approved locations in accordance with applicable law.

b. The RFQ shall provide a description of the project, the services required by the School Division, building and site criteria, site and survey data (if available), any unique capabilities to be required of the offeror, and the criteria to be used in evaluating the potential offeror's qualifications. All offerors, at minimum, shall have a licensed Class "A" contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the offeror's team.

c. The Committee shall evaluate each responding offeror's qualifications and any other relevant information and shall determine which offerors are fully qualified and suitable with respect to the criteria established for the project. Prior Design-Build experience or previous experience with the School Division shall not be considered as a prerequisite or factor for prequalification of a contract. However, the Committee shall evaluate an offeror's experience for a period of ten prior years to determine whether the offeror has constructed a project of similar size and complexity, by any method of delivery.

d. The RFQ shall establish procedures whereby comments concerning the provisions in the RFQ can be received and considered prior to the time set for receipt of qualifications.

e. The RFQ evaluation shall result in a short list of 2-5 qualified offerors to receive the RFP. An offeror may be denied prequalification only as specified in Virginia Code § 2.2-4317, but the short list shall also be based upon the RFQ criteria. If only one offeror submits a response or only one offeror is determined to be qualified, the Committee may proceed with evaluation and, when determined appropriate, recommendation regarding the one offeror.

f. At least thirty (30) calendar days prior to the date established for the submission of proposals, the School Division shall advise each offeror in writing as to whether that offeror has been prequalified. If an offeror is denied prequalification, the written notice shall state the reasons for the denial of prequalification and the factual basis for such reasons. Prequalified offerors that are not selected for the short list shall likewise be provided with reasons for such decision.

5. Step 2 - Selection of the Design-Build Contractor

a. The School Division shall prepare a Request for Proposal ("RFP") that includes:

1) the instructions for submitting the proposal, the criteria for evaluation and award, and the terms and conditions of the Design-Build contract.

2) a narrative description of the project requirements.

3) general conditions and technical specifications.

4) facility and site plans as appropriate for the project.

5) The RFP also may define such other requirements as the School Division determines appropriate for a particular project.

6) The RFP shall also include details regarding the project quality and performance requirements, concept design documents and information regarding the offeror's Contract Cost Limit (CCL) to determine the best value in response to the RFP.

7) The RFP will advise whether responses may be submitted electronically and/or via paper response.

b. The School Division shall send an RFP to the qualified Design-Build offerors on the short list for the project and request formal proposals from them. Offerors will have at least thirty (30) days to submit a proposal.

c. The Committee may grant each offeror an equal opportunity for direct and private communication with the Committee. Each offeror shall be allotted the same fixed amount of time. In its conversations with the offerors, the Committee shall exercise care to discuss the same owner information with all offerors. The Committee shall not disclose trade secrets or proprietary information for which the offeror has invoked protection in accordance with the procedure set forth in Code of Virginia § 2.2-4342, as amended.

d. The Committee will inform each offeror of any adjustments necessary to make its technical proposal fully compliant with the requirements of the RFP. In addition, the Committee may require the offerors to make design adjustments necessary to incorporate project improvements and/or additional detail information identified by the Committee.

e. Based on the adjustments made to the technical proposals, the offeror may amend its financial proposal. In addition, the offeror may submit cost modifications to its original sealed financial proposal which are not based upon revisions to the technical proposal.

f. The Committee shall make its recommendation for the selection of a Design Builder to the procurement specialist who will communicate that recommendation to the Chief Operation's Officer or designee.

g. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the RFP.

6. Progressive Design-Build- alternative procedure

a. When compensable design work is necessary to deliver a final guaranteed maximum price, the School Division may pursue Progressive Design-Build as an alternative procedure. Use of Progressive Design-Build must be approved by the Chief Operations Officer or designee.

b. The review of proposals for Progressive Design-Build shall be the same as described above. However, after the Committee's determination to recommend award of a contract, the execution of the award may include compensable design work.

c. The Design Builder that is awarded the Phase 1 Agreement shall be compensated at agreed upon intervals throughout the process of Phase 1 design work. The School Board must approve the Phase 1 Agreement for CIP projects over \$40 million.

c. The design collaboration process shall include representatives of the School Division and the Design-Builder who will advance the design of the project beyond the design included in the RFP. The goal of such design collaboration is to reduce contingencies and bridge any design discrepancies. At the end of the design collaboration in the Phase 1 Agreement, the Design-Builder shall present the School Division with a guaranteed maximum price.

d. At the School Division's (for projects \$40 million or under) or the School Board's (for projects over \$40 million) sole discretion, the School Division or School Board may: 1) agree to the guaranteed maximum price by entering into a Phase 2 Agreement for construction services; or 2) may choose not to proceed to a Phase 2 Design-Build Agreement; however, the Design Builder may complete any remaining Phase 1 Agreement work when the decision is not to proceed to a Phase 2 Agreement.

e. The Design-Builder shall be required to transfer to the School Board ownership and the right to use technical solutions, design concepts, and any other work product developed during the design collaboration.

7. Optional Proposal Compensation (Stipend)-Design-Build RFP proposers

For designated Design-Build procurement efforts and only when set forth in the RFP, short-listed firms that are not selected but have fully complied with all aspects of the RFQ and RFP may be provided with proposal compensation (stipend) under certain circumstances. The value of the proposal compensation will be determined on a case-by-case basis and shall be conditioned upon the proposer conveying to the School Division the right to use technical solutions or design concepts in the proposal. The Chief Operations Officer's or designee's approval, either by direct action or in the relevant project page of the Capital Improvement Program, shall be required for the provision of Optional Proposal Compensation.

D. Construction Management (CM) project delivery

Construction Management (CM) project delivery method shall be a two-step competitive negotiation process. The following procedures shall govern the selection, evaluation and award of CM contracts:

1. Criteria for use of Construction Management

Construction Management project delivery may be approved for use on projects where: a) fast tracking of construction is needed to meet School Division program requirements, or b) value engineering and/or constructability analyses concurrent with design are required.

2. When Construction Management Contract must be entered into

The Construction Management contract must be entered into no later than the schematic phase of design, unless prohibited by authorization of funding restrictions

3. Basis of award

The award of a CM contract shall be based on either: a) an acceptable technical proposal at the lowest fixed price, or b) not-to-exceed price basis. Cost shall be a critical component of the selection process. The basis of the award of the contract shall be in accordance with competitive negotiation for nonprofessional services, and the criteria for the award shall be submitted to the procurement specialist, in advance, for approval. Cost is a critical component of the selection process.

4. Evaluation Committee

The Superintendent or designee shall establish an Evaluation Committee ("Committee") to be responsible for evaluating the Request for Qualifications (RFQ) and Request for Proposals (RFP) of offerors of CM and reviewing proposals submitted for such services. This Committee shall consist of a minimum of four (4) and a maximum of six (6) voting members. The members of the Committee shall have expertise relevant to the project, with backgrounds in such areas as project design, construction, finance, contract review, and project management.

a) A procurement specialist from the Office of Procurement Services shall lead the process between offerors and the evaluation committee in a non-voting capacity.

b) The Executive Director of Facilities Services or designee shall serve as the contract administrator.

c) A licensed architect or engineer with professional competence to the project must be employed or under contract with the School Board to provide advice and assist with the preparation of the RFP and evaluation of the proposals.

d) The Chief Operations Officer or designee shall appoint the Committee members.

e) The School Board may assign no more than two School Board Members to serve as non-voting liaisons for those evaluation committees created for CIP over \$40 million approved to use Construction Management project delivery. School Board Member liaisons may not have a conflict of interests related to the CIP project.

5. Step 1 Selection of Qualified Offerors - Request for Qualifications (RFQ)

a. The School Division shall publish notice of its RFQ at least thirty (30) days prior to the date set for receipt of qualifications by posting to an electronic bid board or other approved locations.

b. The RFQ shall provide a description of the project, the services required by the School Division, building and site criteria, site and survey data (if available), any unique capabilities to be required of the offeror, and the criteria to be used in evaluating the potential offeror's qualifications. All offerors, at minimum, shall have a licensed Class "A" contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the offeror's team.

c. The Committee shall evaluate each responding offeror's qualifications submittal and any other relevant information and shall determine which offerors are fully qualified and suitable with respect to the criteria established for the project. Prior Construction Management experience or previous experience with the School Division shall not be considered as a prerequisite or factor for prequalification of a contract. However, the Committee shall evaluate a proposer's experience for a period of ten prior years to determine whether the offeror has constructed, by any method of delivery.

d. The RFQ evaluation shall result in a short list of 2-5 qualified offerors to receive the RFP. An offeror may be denied prequalification only as specified in Code of Virginia § 2.2-4317, but the short list shall also be based upon the RFQ criteria. If only one offeror submits a response, the Committee may proceed with evaluation and, when determined appropriate, recommendation regarding the one offeror.

e. At least thirty (30) calendar days prior to the date established for the submission of proposals, the School Division shall advise each offeror in writing as to whether that offeror has been prequalified. If an offeror is denied prequalification, the written notice shall state the reasons for the denial of prequalification and the factual basis for such reasons. Prequalified offerors that are not selected for the short list shall likewise be provided with reasons for such decision.

6. Step 2 Selection of a Construction Manager - Request for Proposals (RFP)

a. The School Division shall send an RFP to the qualified offerors on the short list and request submission of formal proposals from them. When only one offeror submits a response, the Committee may proceed with review of the one offeror. The criteria for award shall be included in the RFP.

b. Proposals as described in the RFP shall be submitted to the procurement specialist.

c. The Committee may grant each offeror an equal opportunity for direct and private communication with the Committee. Each offeror shall be allotted the same fixed amount of time. In its conversations with the offerors, the Committee shall exercise care to discuss the same owner information with all offerors. The Committee shall not disclose trade secrets or proprietary information for which the offeror has invoked protection in accordance with the procedure set forth in Code of Virginia § 2.2-4342, as amended.

d. The Committee will inform each offeror of any adjustments necessary to make its technical proposal fully compliant with the requirements of the RFP. In addition, the Committee may require the offerors to make design adjustments necessary to incorporate project improvements and/or additional detail information identified by the Committee.

e. Based on the adjustments made to the technical proposals, the offeror may amend its financial proposal. In addition, the offeror may submit cost modifications to its original sealed financial proposal which are not based upon revisions to the technical proposal.

f. The Committee will evaluate (and rank if technical rankings are to be considered as a criterion forward) the proposals. After evaluation of the proposals, the Committee shall conduct negotiation with one or more offerors.

g. The Committee shall make its recommendation on the selection of a construction manager to the Chief Operations Officer or designee based on its evaluation and negotiation. The contract shall be awarded to the offeror that is fully qualified and has been determined to have provided the best value in response to the RFP.

e. The Committee will notify all offerors that submitted proposals which offeror was selected for the project. The Notice of Intent to Award may be used to make this notification. When terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.

7. Required CM Contract Terms

Any Guaranteed Maximum Price construction management contract entered into will contain provisions requiring that:

a) not more than 10% of the construction work (measured by cost of the work) will be performed by the CM with its own forces.

b) that the remaining 90% (or more) of the construction work will be performed by subcontractors of the CM which the CM must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding.

c) The procurement specialist may modify these contractual requirements in whole or in part for projects after making a written determination that it would be fiscally advantageous to the public to increase the amount of construction work performed by the Construction Manager.

8. Guaranteed Maximum Price (GMP)

The GMP shall be established at the completion of the working drawings unless a waiver has been granted by the Chief Operations Officer or designee.

a. One-Step Solicitation: The Chief Operations Officer or designee may approve a one-step solicitation for a project if adequate written justification is provided.

Legal References

Code of Virginia § 2.2-4301, as amended. Definitions.

Code of Virginia § 2.2-4303 as amended. Methods of procurement.

Code of Virginia § 2.2-4378, as amended. Purpose; applicability.

Code of Virginia § 2.2-4379, as amended. Definitions.

Code of Virginia § 2.2-4382, as amended. Design-build or construction management contracts for local public bodies authorized.


Code of Virginia § 2.2-4383, as amended. Reporting requirements.

Adopted by School Board: November 2026

Policy and Regulation Approval page attachment

Regulation 3-40.1 DESIGN-BUILD AND CONSTRUCTION MANAGEMENT PROJECT
DELIVERY METHODS

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