

**CHELAN DOUGLAS REGIONAL PORT AUTHORITY
RESOLUTION NO. 2021-08**

**POLICIES AND PROCEDURES TO IMPLEMENT
DESIGN-BUILD CONTRACTING FOR PUBLIC WORKS PROJECTS**

The Port District enabling statute (Chapter 53 of the Revised Code of Washington) was passed in 1912. Since 1912, the authorizing statute provides two options to Port Districts for bid based contracting.

The first option provides authority to award a contract to the lowest responsible bidder "upon plans and specifications on file." Option one is the traditional "design-bid-build" process in which the Port designs the project before bidding and contracting for the construction of the project.

The Chelan Douglas Regional Port Authority (the "Port") is also authorized under RCW 53.08.130 to award a contract to a bidder submitting their own plans and specifications. In other words, the second option is a "design-build" process that authorizes the Port to award a contract to a party that agrees to both design and build the project.

This specific authorization to award a design-build contract contained in RCW 53.08.130 has not been limited or changed by other statutory contracting authority. Specifically, the Alternative Public Works Contracting Process of RCW 39.10 states, "...unless otherwise specifically provided for in law, public bodies may use only those alternative public works contracting procedures specifically authorized in this chapter..." Because Port Districts, and select other public entities, have authority to utilize a design-build process "otherwise specifically provided for in law," Port Districts are not bound by the alternative public works contracting procedures and requirements of RCW 39.10.

The Port's authority outside of RCW 39.10 to pursue "design-build" projects was more clearly stated in a past version of the law: "The authority granted to port districts in this section is in addition to and does not affect existing contracting authority under RCW 53.08.120 and 53.08.130." RCW 39.10.050, amended by 1997, ch. 376, § 3.

The Final Bill Report for the 1997 amendment (SHB 1425) explains:

The vast majority of public works projects use the traditional design-bid-build contracting method. Comparatively, design-build has been used to only a limited extent in Washington. Under explicit statutory authority, port districts have used design-build for over two decades to construct industrial buildings and equipment... During the 1994 legislative session, a consortium of state agencies and local governments requested that the use of GC/CM be expanded to other agencies and that design-build be explicitly authorized in statute for agencies other than ports.

SHB 1425-Final House Bill Report, C 376, Leg. 97 (emphasis added).

Although the express language identifying the separate authority of Port Districts was removed from the statute, currently there is no statutory mandate that Port Districts use the Alternative Public Works Contracting Process of RCW 39.10 in order to award design-build contracts.

The design-build contracting process has many potential benefits not achievable with the traditional design-bid-build method. The phases of design, advertisement, award, construction and completion of the design-build method offer potential savings in time over the design-bid-build method. Additional potential benefits of design-build include: cost savings, improved quality without sacrificing schedule and budget, creativity arising from multiple potential viewpoints, use of current construction and design means and methods, and improved coordination of efforts.

It is anticipated that the design-build process will save the Port time and money and ensure the use of innovative design and construction techniques.

In light of the foregoing, the Board of Directors for the Chelan Douglas Regional Port Authority hereby resolve and establish the following policies and procedures to implement the Design Build authority:

Section 1: Design Build Procedures

Compliance with Public Works Laws. All design-build contracting by the Port will follow the requirements for Public Works contracting contained in RCW 39.04 and the supplemental processes and methods presented in this Resolution for projects utilizing the design-build contracting process.

Compliance with Prevailing Wage Laws. All public works projects of the Port will comply with the Prevailing Wage requirements of RCW 39.12 regardless of the contracting process utilized.

Design-Build Project Development. The Commission shall consider the use of the design-build contracting process when a project is authorized. The Commission shall consider the potential benefits to the Port, as well as the ability of the process to be implemented in an open and fair process based on objective and equitable project-based criteria.

The proposal for use of the design-build process should outline the project specific information accounting for costs and resources required to develop, implement, and support the process. When necessary, aspects of quality assessment and quality control, document control, consultant support, co-location support, or legal support should be identified.

Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The award of all design-build projects shall be based on two foundational elements: Value and Technical Design. Together these two elements define the standard for selecting "the best bidder submitting his or her own plans and specifications."

Design Build Committee. The Port Commission may establish a Design Build Committee for purposes of overseeing all aspects of the Design-Build process and making recommendations to the Commission (the "Committee"). The Committee shall be made up of individuals who have knowledge, training, or experience pertinent to the project. The Committee may include the Engineer of Record and/or the Architect of Record for the Port. The composition of the Committee will be determined at the time the design-build process is identified for a particular project. Alternatively, in the absence of a creation of a Committee, the Executive Director will oversee all aspects of the Design-Build process and make recommendations to the Commission (references in this Resolution to the "Committee" shall also include the Executive Director when a Committee is not created for a particular design-build project).

Letters of Interest. As an initial step, the Port may publish a Letter of Interest prior to the filing of an approved project plan in order to communicate to industry professionals the preliminary concept for a project. This communication effort is intended to inform industry experts and professionals of the Port's intent, and it establishes a process and opportunity for the Port and industry to begin to exchange information, gain understanding, and measure industry interest.

Project Scope and Estimate: Prior to pursuing the design-build process set forth below, the Committee shall describe the project in reasonable detail and establish an estimate of the costs of the project. The project description and estimate shall be presented to the Port Commission for approval, and if approved the project description and estimate shall be placed on file for public inspection.

Request for Qualifications (RFQ). The RFQ process is the first phase of a two-phase procurement process and is used to identify interested and qualified parties. The RFQ typically includes, at a minimum, the following elements:

- a. A general description of the project that provides sufficient information for proposers to submit qualifications;
- b. The reasons for using the design-build procedure, including identification of the project characteristics that will be most informative in evaluating the proposer's qualifications;
- c. A description of the required qualifications of the proposer; and
- d. A description of the evaluation process for proposers' qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers.

Because the design-build process will often be used in order to best utilize the technical and design skills of a design-build team, RFQs prepared for design-build projects should articulate those unique, innovative, technical, or complex aspects of the project that will be weighed along with a parties' experience and expertise. The required qualifications shall be developed in order to best determine the proposer's fitness and ability to achieve the design and technical requirements demanded by the Project. An RFQ shall request information about a proposer's experience that can be evaluated in an objective manner. Responses will then be evaluated using the criteria, also identified in the RFQ. Specific requests for information may be included in the RFP if that information will be useful in determining a

proposer's qualifications. Examples of specifically requested information include, but are not limited to:

- Capabilities; ability to meet timeline
- Experience; prior design build projects
- Past performances
- Current work load on specific issues pertinent to the design-build project
- Project team organization,
- Key project team members
- Minimum qualification requirements for key members
- Key member resume
- Quality control approach
- Construction team member safety records
- Approach and understanding of the project
- Legal and Financial disclosure

The evaluation and scoring methods shall be disclosed in the RFQ. The RFQ is intended to allow the proposers to demonstrate their strengths, and permit the Committee to determine which of the design-build-teams are the most highly qualified.

Statement of Qualifications. Parties interested in participating in the design-build contracting process shall respond to a published RFQ with a Statement of Qualification (SOQ.) The SOQ must include all of the required information identified in the RFQ and should generally provide information to the Port identifying:

- a. Qualifications
- b. The Key personnel
- c. Information of the submitter's technical approach
- d. Other information required by the RFQ

SOQs may be limited in length, as set forth in the RFQ, and focus on the applicants' experience with those design and technical features specifically identified in the RFQ as aspects of the design-build project.

Evaluation of Qualifications and Short-Listing. Each SOQ will be evaluated using the criteria identified in the RFQ. The RFQ evaluation criteria shall, whenever possible, prioritize the objective characteristics and experience of parties in determining qualification for a project.

Criteria shall be selected in order to develop and maintain a level and uniform playing field. In addition to creating a uniform and fair selection process, the evaluation criteria shall focus on specialized capabilities required for the project. The actual criteria selected for use shall be applicable to the project and demonstrate the parties' ability to perform the work. Individual criteria shall be weighted according to their relative importance to the successful completion of the project. Evaluation factors for RFQs typically include, but are not be limited to:

- a. technical qualifications, such as specialized experience and technical competence;
- b. capability to perform;
- c. past performance of the proposer's team, including the architect-engineer and construction members; and

- d. the proposer's past performance in utilization of small business entities and disadvantaged business enterprises.

Examples of additional commonly used criteria include, but are not limited to:

- Individual experience of team members with Design-Build contracting
- Corporate experience with Design-Build contracting
- Experience in the execution of fast-track projects
- History of the proposed team working together
- Specialized design capability for the key project elements
- Specialized construction capability for the key project elements
- Experience with complex construction staging, traffic control, or site conditions
- Safety record
- Staff available (Project Manager, Design Manager, Construction Superintendent, Quality Manager, etc.)
- Quality performance
- Quality assurance/Quality control organization
- Bonding record or proof of bonding ability
- Past performance on awarded contracts (completion, liquidated damages, quality, claims, fines, schedule adherence)
- Financial capacity
- Experience with formal partnering activities
- Experience in similar types of work.
- History of performance (unsubstantiated claims, fines, suits, quality, accuracy, schedule)
- Understanding of local environment
- Resource capacity and availability
- Scheduling and control systems to track and manage project
- Specialized expertise that reduces risk and assures quality of work

Cost or price-related factors are not evaluated in the request for qualifications phase. The Committee shall recommend (short list) the qualified parties submitting SOQs to the Port Commission. If approved, then the identified parties shall be invited to respond to the RFP process outlined below.

Request for Proposals. The Request for Proposals (RFP) is the second phase of the two-phase procurement process for design-build proposals. The RFP should be issued as soon as practicable.

Proposals submitted in response to an RFP shall be in two parts: (i) Technical Design; and (ii) Price Proposal. The Technical Design shall respond to all information requested and requirements in the RFP. The Price Proposal shall include a price for the completed project, and a price for any individual project aspects or phases specified in the RFP, if any.

The Committee may elect to evaluate the Technical Design and Price Proposal separately (e.g. only after the Technical Design evaluation is completed will the Port open the Price Proposal). Evaluation factors for finalists' proposals typically include, but are not be limited to, the factors utilized in the RFQ evaluation, as well as:

- a. technical approach design concept;
- b. ability of professional personnel;

- c. past performance on similar projects;
- d. ability to meet time and budget requirements;
- e. ability to provide a performance and payment bond for the project;
- f. recent, current, and projected workloads of the submitter;
- g. location; and
- h. cost or price-related factors that may include operating costs.

The Port may also consider a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project. If the Port determines that all finalists will be capable of producing a design that adequately meets project requirements, the Port may award the contract to the party that submits the responsive proposal with the lowest price.

Awarding of Design-Build Projects. The award of all design-build projects must be based on the "best bidder" standard contained in RCW 53.08.130. The Committee shall recommend to the Port Commission one party for the project. If approved, then the Port shall provide a notice of award and proceed with the customary contracting and bonding requirements necessary for commencement of the project. The selection of a proposal shall be announced by written notice to the selected party. The Port shall also, at the same time, send the other parties a written notice that their proposals were not selected. Upon award of the contract, the bidder is solely responsible for the completion of the design necessary for obtaining any and all requisite permits at his or her sole cost.

Limitations; Rejections. All submittals must be received by the date and time stated in the RFQ or in the RFP. Proposals submitted after the submission deadline, or incomplete proposals will not be considered by the Design Build Committee. At all times the Port reserves the right to reject all proposals.

Section 2. Any prior Resolution(s) of the Port in related to design-build procedures are hereby repealed.

Section 3. If any section, sentence, clause, or phrase of this Resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Resolution.


Section 4. This Resolution shall be effective upon passage by the Board.

ADOPTED by the Chelan Douglas Regional Port Authority Board of Directors at a regular meeting thereof held on this 13th day of April, 2021.

CHELAN DOUGLAS REGIONAL PORT AUTHORITY



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