ODOT Project Delivery Guide

APPENDIX C: PROJECT DELIVERY PROCUREMENT

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"Procurement" means the act of purchasing, leasing, renting, or otherwise acquiring goods or services. "Procurement" includes each function and procedure undertaken or required to be undertaken by a contracting agency to enter into a public contract, administer a public contract and obtain the performance of a public contract under the Public Contracting Code. Reference ORS279A.010 (u).

Methods of contract administration vary, depending on the types of projects and depending on what phase the project is in. The only type of ODOT project that doesn't involve administration of a contract is an "In-House" project. "In House" projects are projects that are designed and constructed entirely by internal ODOT staff.

TYPES OF PROCUREMENT CONTRACTS FOR PROJECT DESIGN PHASE

Full Service

"Full Service" Personal Service contracts are used when a project is totally out-sourced to a consultant to provide design and construction oversight.

Discipline Specific
"Discipline Specific" contracts are used when hiring a consultant to provide services in specific discipline areas such as Environmental, Roadway Design, Geotechnical, etc.

Project Specific

"Project Specific" contracts are used when the Full Service and Discipline Specific contracts do not meet the needs of the project. A Request for Proposal (RFP) is prepared for solicitation of the project. This type of contract starts with the solicitation process, goes to evaluation and is then awarded to the best qualified consultant.

TYPES OF PROCUREMENT CONTRACTS FOR PROJECT CONSTRUCTION PHASE

Design-Build

Design-Build is a procurement method wherein ODOT contracts with a single entity with needed design and construction capability to perform the project, including all design, construction, and contract administration. The agency retains oversight of the Design-Build contract. This type of contracting can be advantageous in a number of instances, with one of its main strengths being its' ability to effectively implement schedule critical projects.

The agency invites contracting entities to submit proposals for the design and construction of the project. The agency will perform approximately 15-30% of the initial design, and may provide some conceptual plans in order to accurately relay the intent of the contract. The design-build proposers then submit proposals for design, construction, time, and cost to perform all aspects of the project. The proposals are evaluated based on quality and price, and the Best Value proposer is awarded the contract. The agency then provides oversight during design and construction.

ODOT uses a two-step procurement process for design-build contracts.

Step 1: Request for Qualification (RFQ). ODOT submits an invitation for any interested construction/design entities to submit their Statements of Qualification through the release of the Request for Qualification (RFQ). Qualification is based on items such as past performance, legal, financial, experience, and backlog/capacity.

After all Statements of Qualification (SOQ's) are evaluated by the agency, the number of proposers is narrowed down to the three highest scoring. This is termed the "Short-List." The proposers on the short-list are invited to submit proposals for the project.

Step 2: Request for Proposal (RFP). The Request for Proposal (RFP) is issued to all entities on the short-list. The RFP contains the general provisions applicable to design-build, as well as the project-specific special provisions. The Instructions to preparers will direct the proposers on how to prepare and submit their proposals, and provides guidelines to how the proposals will be evaluated and scored.

All proposals contain three separate parts: The Quality Proposal, the Price Proposal, and the Diversity Plan.

Once the quality proposals have been evaluated and scored, the agency will hold a public price opening. All price proposals are opened, read, and the Apparent Best Value proposal is determined utilizing a weighted value formula which is identified in the RFP. Typical weighted values are 60% for the Quality Proposal and 40% for the Price Proposal.

The agency will then begin negotiations with the Apparent Best Value proposer. If successful, the agency then enters into a contract for the design and construction of the project. Contract Award and Notice-to-Proceed is issued and the project moves from the procurement phase into the active construction phase.

Best Value Contracting

Best Value Contracting (BVC) (also known as source selection) is a procurement method that presents an alternative to the traditional low-bid method of contracting. BVC awards projects to the contractor offering the best combination of price and other factors, instead of solely to the contractor with the lowest bid. When properly designed and administered, BVC rewards high-performance contractors who have trained, skilled workers and other essential qualifications for performing high quality projects in a safe, timely and cost-efficient manner.

BVC is typically used in acquisitions for high risk projects. Public safety, minimal disruption, unusual technical complexity coupled with a need for specialized construction/expertise and highly coordinated work scheduling are issues that may justify the need for a best value contracting approach.

Under the BVC process, bidding is open to all qualified contractors who submit detailed information on their technical qualifications and any other factors required, through a Request for Proposal (RFP) process. A team of skilled procurement personnel then review submittals provided by contractor/subcontractor teams and score the submitted projects, personnel and other required information in accordance with the scoring system contained in the project specifications.

When using BVC, the factors, crucial to the success of the project, need to be identified (e.g., A=Cost, B=Time, C=Qualifications, D=Approach, E=Sustainability, and so on). These factors can be anything that impact the success of the project and may include, but are not limited to: cost; project approach; time; relevant project experience; project management; personnel and subcontractors; disadvantaged business participation; safety initiative; law compliance; and, other criteria unique to the specific project.

FHWA and ODOT have entered into an agreement, Special Experimental Project No.14 (SEP-14), that allows the use of BVC on some projects under very specific

circumstances. In order to let any project using BVC, ODOT must demonstrate that the project has:

- unique technical requirements (for example, a project which requires specialized knowledge, skills and abilities from the contractor, like the St. John's Bridge repair)
- substantial cost savings using the BVC approach
- an exemption from Oregon law requiring low-bid contracting (ORS 279C.335)

The BVC procurement method is very complex and requires additional staff time. Early in project development, a minimum of eight months and an additional $20,000 should be budgeted to account for the necessary extra staff work.

Ideally, BVC should begin at concept design or Type, Size and Location determination (TS&L); the scoring system, specifications, preliminary advertisement should be developed prior Advanced Plans; exemption and FHWA SEP-14 approval should be obtained by PS&E; and the scoring committee should be identified by advertisement.

When BVC is chosen for a project, direct consultation with FHWA and Office of Project Letting is required. The ODOT Director, Oregon Department of Justice, and FHWA must review and approve BVC for any project.

Design-Build-Finance-Operate (DBFO) Transaction

The most common type of Public-Private Partnership is called a Design-Build-Finance-Operate (DBFO) transaction, where the government grants a private sector firm the right to develop a new piece of public infrastructure. The private partner takes on full responsibility and risk for delivery and operation of the public project against pre-determined standards of performance established by ODOT. The private-sector partner is paid through the revenue stream generated by the project, which could take the form of a user charge (such as highway toll) or, in some cases, an annual government payment for performance (often called a "shadow toll" or "availability charge"). Any increases in the use charge or payment for performance are typically established in advance and regulated by a binding contract.

There are two phases to a Design-Build-Finance-Operate (DBFO) transaction:

Part 1 – Pre-Development Phase: The Pre-Development Phase of DBFO includes preparation of a pre-development plan, pre-development community outreach plan, financing plan, Implementation Plan and contribution towards ODOT activities related to CETAS, environmental approvals and public information, and related preliminary engineering. The Pre-development phase is governed by a "Pre-Development Agreement." The Pre-Development Agreement also governs any compensation to the Developer during the Pre-Development Phase.

Part 2 - Implementation Phase: The Implementation Phase of DBFO may include the management and performance of remaining Project Development, acquisition, financing, design, construction, operations and maintenance. The Developer under the Implementation Phase may be the same entity as under the Pre-Development Phase, or may be an affiliated entity acceptable to ODOT. The Implementation Phase is governed by an "Implementation Agreement."

The contract agreement for a DBFO transaction is often referred to as a concession contract or franchise contract, in which the government typically owns the infrastructure while the private-sector has a lease or a right (for a period of years) to use the infrastructure. The lease expires at the end of the contract agreement.

Benefits of Public-Private Partnerships:

Projects can be delivered years ahead of time, on time and within budget, thus shielding taxpayers from cost overruns and delays.

The private partner brings the efficiencies and innovations of the private sector to the job because funding is available up front, major infrastructure projects do not have to be phased in as funds become available, thus greatly reducing overall cost and time. Additionally, the design meets the performance standards at the lowest possible construction cost, and this can result in significant cost savings compared to traditional methods.

The Private Partner takes the responsibility and risk for interest rates and repayments, lifting that burden from taxpayers. The private partner is also responsible for all maintenance and operations in accordance with standards set by the government.

Users, rather than taxpayers, pay for what they use. Thus, those who benefit most from the project pay for it with tolls, thereby freeing up tax dollars for other projects and needs.

Incentives/Disincentives Contracting

Incentive/Disincentive (I/D) contracting is an industry standard practice typically used to maintain construction completion dates, encourage innovation in work sequencing and accelerate project delivery. The decision to accelerate a project involves the consideration of many factors, such as: political pressure; legal constraints, legislative priorities; community interests; project goals; context sensitivities; funding availability; staffing capacity; mobility issues; project complexity; social and physical environment; and, any other factors impacting scope, schedule and budget.

Some benefits to implementing I/D on projects are: reduced mobility impacts; ensured context sensitivity; improved public relations; reduced overall project costs; and, increased overall project delivery.

While the decision to use I/D provisions may be introduced at later stages, it is at the Project Initiation stage that the recommendation to use I/D/ will be most effective. I/D should be included when analyzing mobility considerations (see PD-16, Mobility Management).