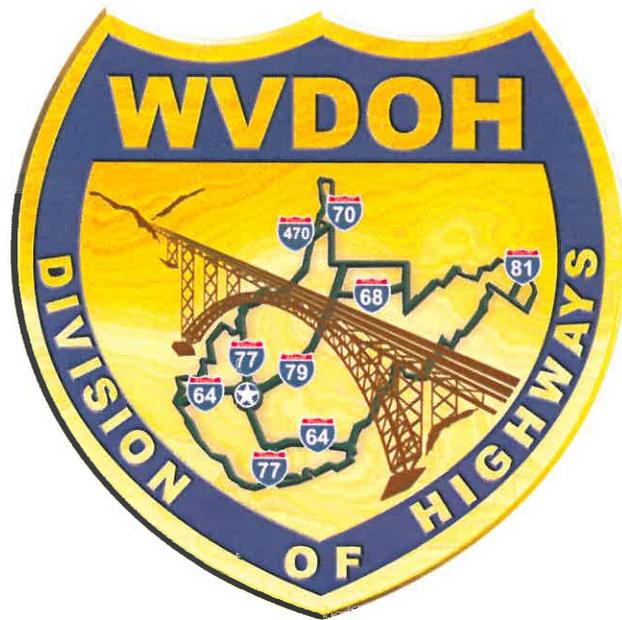


**Report to the Joint Committee on
Government and Finance**



**West Virginia Division of Highways
Design-Build Program Experience**

January 15, 2014



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

**1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505**

**Earl Ray Tomblin
Governor**

**Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways**

January 15, 2014

**The Honorable Roman Prezioso
West Virginia Senate
1900 Kanawha Boulevard, East
Building One, Room 465M
Charleston, West Virginia 25305**

**The Honorable Brent Boggs
West Virginia House of Delegates
1900 Kanawha Boulevard, East
Building One, Room 228M
Charleston, West Virginia 25305**

**Joint Committee on Government and Finance
1900 Kanawha Boulevard, East
Building One, Room 214W
Charleston, West Virginia 25305**

Dear Senator Prezioso, Delegate Boggs and Committee Members:

Please find enclosed a report on the Division of Highways' Design-Build Program to date.

I appreciate your continued support and interest in highway matters. Should you require additional information, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in blue ink that reads "Paul A. Mattox, Jr." in a cursive script.

**Paul A. Mattox, Jr., P.E.
Secretary of Transportation/
Commissioner of Highways**

PAM:JCMz

Enclosures

**Report to the Joint Committee on Government and Finance Division of
Highways Experience on Design-Build Projects
January 15, 2014**

This report has been prepared in accordance with West Virginia Code Chapter 17, Article 2D, Highway Design-Build Program (see Attachment A).

As per the legislation, “the Commissioner of the West Virginia Division of Highways may expedite the construction of projects by combining the design and construction elements of a highway or bridge project into a single contract as provided in this article. On or before January 15, 2014 and annually thereafter the commissioner shall prepare and submit to the Joint Committee on Government and Finance a report evaluating the experience of the Division of Highways with each project, including whether the division realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received and other issues the commissioner considers appropriate.”

We have let to contract 15 projects as per the legislation and as such are presenting the following information on each project let prior to 2014.

WVDOH Design-Build Program

Original Pilot Program (3 Projects)

1. US 35, Putnam County

The Project was let on March 14, 2007 and was awarded to Kokosing Co. for \$73,819,800. The Engineer of Record was E.L. Robinson Engineering. U.S. 35 was opened to traffic on June 15, 2009 and the three year warranty period ended January 1, 2013. Several change orders resulted in final construction cost of \$81,928,000.

2. WV 2, Marshall County

The Project was let on June 26, 2008 and was awarded to J.F. Allen for \$21,254,154. The EOR was RK&K Engineering. The Project was completed July 28, 2011. The original completion date was October 2010, but C.O. 3 added \$2,800,000 to the project cost and extra time to construct.

3. Six Bridges in WVDOH District Two

The Project was let on June 26, 2008 and was awarded to Bilco Construction Co. for \$5,791,000. The EOR was Wilbur Smith and Associates. The Project was completed November 9, 2011. Extra work and utility delays resulted in a final cost of \$7,134,000.

Second Generation Design–Build Projects

Pilot Project No. 4

Project Description: Shenandoah River Bridge and Approaches on WV 9 (two-step)

Reason for Utilizing Design–Build: This project had actually been designed and was on the shelf waiting funding. The construction industry was completing work on the cast-in-place segmental concrete bridge on I-64 and wondering why this couldn't be used as an option for this project. The as-designed bridge was a deck thru truss structure and would be the first of these constructed since the I-35 bridge collapse in Minneapolis (same type structure). The decision was made to utilize design–build as funding was available and DOH didn't want to use unnecessary time developing construction plans for the various options of bridges which would meet the purpose and need of the project.

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$47.4 M) and compare it to the low bid (\$39.9 M), which indicates a \$7.5 M savings. Relative to time, we would typically allot 18 months to design and 30 months to construct a project like this. We saved approximately one year.

Number and Cost of Change Orders: Three change orders (only one of which was monetary) in the amount of \$1.75 Million.

Quality of Work Performed: We note no difference from traditional design-bid-build contracting.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project: The project was advertised with a Request for Qualifications (RFQ) on October 14, 2009. Proposers were to submit their qualifications to the DOH on or before October 30, 2009, if interested in performing the work. The Selection Committee, as established by the Commissioner, met on November 3, 2009, and scored each of the RFQ packages on a 100-point scoring system as detailed in the advertisement. Solicitation was to limit bidding to the three highest scoring firms and anyone scoring within five points of the lowest score of the three firms. Six firms answered the solicitation and scoring was such that five were allowed to go to the Request for Proposal (RFP) step of the project. The RFP was made available to the firms on November 9, 2009. After various question and answer sessions and a mandatory pre-proposal meeting, both technical and cost proposals were submitted on December 14, 2009. Five proposals were received. These were reviewed by the Technical Review Committee, as established by the Commissioner, and all were deemed responsive. The cost proposals (bids) were opened on December 16, 2009 (letting date). Project was awarded on

January 5, 2010 to Trumbull Corporation, the low bidder. HDR is the Engineer of Record (EOR).

Current Status of Project: The project was opened to traffic (Substantially Complete) October 31, 2012.

Pilot Project No. 5

Project Description: Silver Creek and Whites Creek Bridge Replacements (one-step, no RFQ)

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$4.425M) and compare it to the low bid (\$3.749 M), which indicates a \$676 K savings. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. We saved approximately one year.

Number and Cost of Change Orders: Three change orders added approximately \$280,000 to the project costs. **Quality of Work Performed:** We note no difference from traditional design-bid-build contracting.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project: The project was advertised with a RFP on February 2, 2010. Proposers were to submit their technical proposals on or before March 16, 2010 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on March 19, 2010, and scored each of the technical proposals on a pass-fail scoring system. Six Proposals were received and all passed. The cost proposals (bids) were opened on March 23, 2010 (letting date). Project was awarded on March 29, 2010 to Orders Construction, the low bidder and the EOR is Wilbur Smith Associates.

Current Status of Project: The project was completed on November 9, 2011.

Pilot Project No. 6

Project Description: Annamoriah Bridge Replacement (one step)

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$8.7 M) and compare it to the low bid (\$4 M), which indicates a \$4.7 M savings. Relative to time, we would typically allot 12 months to design and 24 months to construct a project like this. We saved approximately six months.

Number and Cost of Change Orders: One to date, which resulted in a \$1,600 credit back to DOH

Quality of Work Performed: We note no difference from traditional design-bid-build contracting..

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project: The project was advertised with a RFP on September 16, 2010. Proposers were to submit their technical proposals on or before November 19, 2010 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on December 1, 2010, and scored each of the technical proposals on a pass-fail scoring system. Nine proposals were received and eight passed. Eight cost proposals (bids) were opened on December 7, 2010 (letting date). The project was awarded to Orders Construction Co. on January 4, 2011 and the EOR is Wilbur Smith Associates.

Current Status of Project: The project was completed August 28, 2013.

Pilot Project No. 7

Project Description: McQuain Brothers Bridge (one step)

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$8.642M) and compare it to the low bid (\$7.505M), which indicates a \$1.137M savings. Relative to time, we would typically allot 12 months to design and 24 months to construct a project like this. We saved approximately six months.

Number and Cost of Change Orders: Four to date, which added approximately \$21,000 to the project costs.

Quality of Work Performed: We note no difference from traditional design-bid-build contracting.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project: The project was advertised with a RFP on March 2, 2011. Proposers were to submit their technical proposals by April 8, 2011 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on April 14, 2011, and scored each of the technical proposals on a pass-fail scoring system. Six technical proposals were received and all passed. Six cost proposals (bids) were opened on April 19, 2011 (letting date). The project was awarded to Kokosing Construction Co. on and the EOR is E.L. Robinson Engineering Co.

Current Status of Project: The project was completed December 12, 2012.

Pilot Project No. 8

Project Description: Interstate 81 Widening (two-step)

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$ 31M) and compare it to the low bid (\$ 35.6M), which indicates no savings as the low bid is actually \$4.6 M more than the Engineer's Estimate. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. The project was substantially complete (open to traffic) on October 16, 2013, with a time savings of approximately one year.

Number and Cost of Change Orders: A value engineering proposal of \$612,500 and three lane penalties totaling \$47,500 have resulted in a net credit of \$660,000 back to the DOH.

Quality of Work Performed: We note no difference from traditional design-bid-build contracting.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project: The project was advertised with a RFQ on March 14, 2011. Proposers were to submit their Letters of Interest by April 1, 2011. The Selection Committee met on April 7, 2011 to review and score the LOI's submitted by the 11 prospective design-build teams who responded to the RFQ advertisement. Six teams were invited to respond to the RFP which was issued on June 1, 2011. Technical proposals were due on or before August 12, 2011.. The Selection Committee, as established by the Commissioner, met on August 18, 2011 and scored each of the technical proposals on a 100 point scoring system. Six proposals were received and all passed. Six cost proposals (bids) were opened on September 1, 2011 (letting date). The project was awarded to Kokosing Construction Co. on September 9, 2011 and the EOR is MS Consultants Inc.

Current Status of Project: The project was substantially complete (open to traffic) on October 16, 2013.

Pilot Project No. 9

Project Description: Coopers Creek Bridge (one-step)

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$1.5 M) and compare it to the low bid (\$2.3 M), which indicates no savings as the low bid is actually \$800 K more than the Engineer's Estimate. Relative to time, we would typically allot 12 months to design and 6 months to construct a project like this. We saved approximately 3 months.

Number and Cost of Change Orders: None

Quality of Work Performed: We note no difference from traditional design-bid-build contracting.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project: The project was advertised with a RFP on April 26, 2012. Proposers were to submit their technical proposals by May 10, 2012 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on May 11, 2012, and scored each of the technical proposals on a pass-fail scoring system. Six proposals were received and all passed. Three cost proposals (bids) were opened on June 5, 2012 (letting date). The project was awarded to Orders Construction Co. on and the EOR is CDM Smith.

Current Status of Project: This project was completed April 18, 2013.

Pilot Project No. 10

Project Description: I-64 Widening (two-step)

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$22.8 M) and compare it to the low bid (\$18.05M), which indicates a \$4.75 M savings. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. We anticipate saving one year.

Number and Cost of Change Orders: 3 Change Orders to date which total (-\$475,652.00).

Quality of Work Performed: NA

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project: The project was advertised with a RFQ on June 14, 2012. Proposers were to submit their Letters of Interest by July 6, 2012 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on July 12, 2012, and scored each of the LOI's on a 100 point scoring system. Eleven LOI's were received and six were selected to submit a proposal. Four Technical Proposals were received and all passed. Four cost proposals (bids) were opened on November 8, 2012 (letting date). The project was awarded to West Virginia Paving on November 15, 2012 and the EOR is Potesta.

Current Status of Project: The project is currently 57% complete with an original completion date of September 28, 2014 and a revised completion date of November 10, 2014

Pilot Project No. 11

Project Description: Hurricane Creek +2 Bridges (one-step). Replacement of three small structurally deficient bridges on WV 37 near Fort Gay in Wayne County.

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$ 2 M) and compare it to the low bid (\$2.39 M), which was approximately \$390 K over estimate. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. Relative to time, we would typically allot 12 months to design and 6 months to construct a project like this. The project is not yet delivered, but we anticipate saving approximately 3 months.

Number and Cost of Change Orders: Two changes orders resulting in a net credit to DOH (-\$239,400).

Quality of Work Performed: Work is ongoing.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project The project was advertised with a RFP on February 19, 2013. Proposers were to submit their technical proposals on or before April 19, 2013 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on April 25, 2013, and scored each of the technical proposals on a pass-fail scoring system. Six Proposals were received and all passed. The cost proposals (bids) were opened on April 30, 2013 (letting date). Project was awarded on May 10, 2013 to Orders Construction, the low bidder and the EOR is Wilbur Smith Associates..

Current Status of Project: The project is currently 65% complete with an original completion date of July 31, 2014 and a revised completion date of December 29, 2014.

Pilot Project No. 12

Project Description: Rodney Staton Bridge (one-step). Replacement of a structurally deficient bridge carrying CR 6/2 traffic over R.D. Bailey Lake in Wyoming County.

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$2.1 M) and compare it to the low bid (\$4.29 M), which was approximately \$2.2 M over estimate. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. The project is not yet delivered, but we anticipate saving approximately one year.

Number and Cost of Change Orders: Still preliminary.

Quality of Work Performed: Still preliminary.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project The project was advertised with a RFP on March 18, 2013. Proposers were to submit their technical proposals on or before May 3, 2013 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on May 9, 2013, and scored each of the technical proposals on a pass-fail scoring system. Five Proposals were received and all passed. The cost proposals (bids) were opened on May 14, 2013 (letting date). Project was awarded on May 28, 2013 to Brayman Construction, the low bidder and the EOR is Wilbur Smith Associates..

Current Status of Project: The project is still in its preliminary stages. The completion date is December 28, 2014.

Pilot Project No. 13

Project Description: Surface Drive Overpass Bridges +1 (one-step). Replacement or rehabilitation of the superstructure on Surface Drive Overpass Bridges and Eden's Fork Interchange bridges and approaches on I-77 in Kanawha County.

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$3.3 M) and compare it to the low bid (\$5.42 M), which was approximately \$2.1 M over estimate. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. Relative to time, we would typically allot 12 months to design and 6 months to construct a project like this. The project is not yet delivered, but we anticipate saving approximately 3 months.

Number and Cost of Change Orders: Still preliminary.

Quality of Work Performed: Still preliminary.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project The project was advertised with a RFP on April 11, 2013. Proposers were to submit their technical proposals on or before May 31, 2013 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on June 6, 2013, and scored each of the technical proposals on a pass-fail scoring system. Five Proposals were received and all passed. The cost proposals (bids) were opened on June 11, 2013 (letting date). Project was awarded on June 28, 2013 to Triton Construction, the low bidder and the EOR is E. L. Robinson.

Current Status of Project: The project is still in its preliminary stages. The completion date is September 25, 2015.

Projects let subsequent to the 2013 Legislation making the DOH Design-Build Program permanent:

Project No. 14

Project Description: Coalfields Expressway (two-step). Grade and drain a 1.59 mile section of the Coalfields Expressway from 0.15 mile east of CR 12/1 in Wyoming County to 1.0 mile west of Helen in Raleigh County

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$19.6 M) and compare it to the low bid (\$13.5 M), which indicates a \$6.1 M savings. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. Relative to time, we would typically allot 12 months to design and 6 months to construct a project like this. The project is not yet delivered, but we anticipate saving approximately three months.

Number and Cost of Change Orders: Still preliminary.

Quality of Work Performed: Still preliminary.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project The project was advertised with a RFQ on June 13, 2013. Proposers were to submit their Letters of Interest by July 19, 2013 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on July 29, 2013, and scored each of the LOI's on a 100 point scoring system. Four LOI's were received and all were selected to submit a proposal. Four Technical Proposals were received and all passed. Four cost proposals (bids) were opened on October 8, 2013 (letting date). Project was awarded on October 16, 2013 to Bizzack Construction, the low bidder and the EOR is TRC.

Current Status of Project: The project is still in its preliminary stages. The completion date is October 28, 2016.

Project No. 15

Project Description: Van Metre Ford Bridge (one-step). Replacement of the Van Metre Ford Bridge and approaches carrying CR 36 over Opequon Creek in Berkeley County.

Cost or Time Savings: The best way to quantify cost savings is to look at the Engineer's Estimate to do the work (\$4.1 M) and compare it to the low bid (\$2.95 M), which indicates a \$1.15 M savings. Relative to time, we would typically allot 18 months to design and 24 months to construct a project like this. Relative to time, we would typically allot 12 months to design and 6 months to construct a project like this. The project is not yet delivered, but we anticipate saving approximately 3 months.

Number and Cost of Change Orders: Still preliminary.

Quality of Work Performed: Still preliminary.

Advertising of Project, Scoring Potential Bidders, Number of Bids Received, Letting of Project, Awarding of Project The project was advertised with a RFP on September 11, 2013. Proposers were to submit their technical proposals on or before November 8, 2013 if interested in performing the work. The Selection Committee, as established by the Commissioner, met on November 21, 2013, and scored each of the technical proposals on a pass-fail scoring system. Three Proposals were received and all passed. The cost proposals (bids) were opened on December 10, 2013 (letting date). Project was awarded on December 16, 2013 to Orders Construction, the low bidder and the EOR is CDM Smith.

Current Status of Project: The project is still in its preliminary stages. The completion date is October 28, 2014.

Copies of the current Design-Build legislation and the WVDOH Policies and Procedures Concerning Design-Build Projects are provided on the following pages of this document.

Attachment A

**West Virginia Code
Chapter 17, Article 2D**

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 553

(SENATORS BEACH, MCCABE, MILLER AND STOLLINGS, *original sponsors*)

[Passed April 11, 2013; in effect from passage.]

AN ACT to amend and reenact §17-2D-2 and §17-2D-5 of the Code of West Virginia, 1931, as amended, all relating to the continuation of the Highway Design-Build Pilot Program; changing the name to the Highway Design-Build Program; removing the sunset date of the program; modifying limitations on design-build projects; requiring identification of design-build projects; modifying reporting requirements; and requiring annual reporting.

Be it enacted by the Legislature of West Virginia:

That §17-2D-2 and §17-2D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PROGRAM.

§17-2D-2. Highway Design-Build Program.

(a) Notwithstanding any provision of this code to the contrary, the Commissioner of the West Virginia Division of Highways may expedite the construction of projects by combining the design and construction elements of a highway or bridge project into a single contract as provided in this article.

(b) The Division of Highways may expend no more than \$50 million in each year in the program: *Provided*, That if any of the \$50 million is unused in one year, the remaining amount may be applied to the following year's amount: *Provided, however*, That the total aggregate amount to be expended may not exceed \$150 million in any one year.

(c) A design-build project may be let to contract only in accordance with the commissioner's established policies and procedures concerning design-build projects.

(d) Projects receiving funding above the amount of federal core funding as appropriated to the state by formula in a federal highway authorization, currently titled MAP-21, may utilize the program, but shall not be included in expenditure limits provided by subsection (b) of this section.

§17-2D-5. Report to the Legislature.

On or before January 15, 2014, and annually thereafter, the commissioner shall prepare and submit to the Joint Committee on

Government and Finance a written report evaluating the experience of the Division of Highways with each project completed during the prior calendar year, including whether the division realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received and other issues the commissioner considers appropriate: *Provided,* That the report submitted on or before January 15, 2014, shall contain such information as to all design-build projects that have been completed under the program prior to 2014.

Attachment B

**WVDOH Policies and Procedures
Concerning Design-Build Projects**

WEST VIRGINIA DIVISION OF HIGHWAYS

Policies and Procedures Concerning Design-Build Projects

Purpose.

- (1) This document has been prepared in order to comply with West Virginia Code § 17-2D-2. Design-Build seeks to provide one or more of the following: a savings of time, cost, and administrative burden; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses and improved coordination of efforts.

Authority.

These procedures are authorized pursuant to WV Code §§17-2D-1 through 17-2D-5

Policy.

- (1) WVDOH may use, where determined appropriate by the Commissioner of Highways (Commissioner), the Design-Build Method of Project Delivery. When Design-Build is used, WVDOH shall enter into a contract with a single entity to provide both engineering/design services and construction services. The Design-Build method may be determined by the individual needs and merits of the project. At the Commissioner's discretion, either a low bid process or a value-based selection process combining technical qualifications and cost may be utilized for selecting a Design-Build proposer.

Pre-qualification.

- (1) WVDOH may issue a Request for Qualifications (RFQ) soliciting qualification statements from design-build proposers wishing to submit proposals on a WVDOH Design-Build project. The RFQ shall state the minimum and maximum number of qualified proposers that will be invited to submit final proposals. In the event an RFQ is not issued, then proposals will only be accepted from firms on the WVDOH pre-qualified contractors list.
- (2) Pre-qualification shall be based on an evaluation of the criteria set forth in the RFQ, including, but not limited to, construction experience ; design experience; technical competence; capability to perform, including financial, manpower, and equipment resources; experience in other Design-Build projects; and past performance.
- (3) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number designated in the RFQ.

Request for Proposals (RFP).

- (1) The RFP shall include the information required by WV Code §17-2D-3.
- (2) The pre-qualified proposers shall be invited to submit proposals on the designated Design-Build project pursuant to an RFP. WVDOH may elect to ask for initial proposals followed by discussions and best and final offers, or may elect to award the contract without discussions or best and final offers. The RFP may ask for proposals based on a stipend.
- (3) WVDOH may award a stipend to the proposers who submit responsive proposals but who are not selected for contract award. The amount of the stipend (if any) shall be identified in the RFP.

- (4) The RFP shall require separate technical and price proposals, meeting requirements as stated in the RFP if the value-based selection process is utilized. The RFP may require proposals to meet a mandatory technical level, and may include a request for alternative proposals.
- (5) Technical solutions/design concepts contained in proposals shall be considered proprietary information unless a stipend is paid. If a stipend is paid, the WVDOH will become the owner of the technical solutions/design concepts as contained in the proposals.

Required Contract Clauses.

- (1) The Design-Build contract documents shall include the contract clauses set forth in West Virginia Administrative Code §17-2D-3, subject to such modifications as the Commissioner deems advisable. Any modifications shall be supported by a written determination of the Commissioner that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

Award and Contract.

- (1) The basis for award shall be stated in the RFP. Award may be based on any of the following approaches (all of which shall be deemed to constitute award to lowest responsible bidder as such term is used in West Virginia Code §17-2D-4 and §17-4-19):
 - (a) Award to the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, a proposal shall not be considered responsive unless it meets that level.
 - (b) Award to the responsible proposer whose proposal is evaluated as providing the best value to WVDOH.
 - (c) If the RFP provides for a stipend, award shall be to the responsible proposer whose proposal is evaluated as providing the best value to WV DOH, or best meets or exceeds a time restraint.
- (2) There is no requirement that a contract be awarded. Following award, a contract shall be executed and notice given to the successful Design-Build proposer to proceed with the work.

Definitions.

As used in this document:

- (1) "Engineering/design services" are those professional services within the scope of the practice of engineering.
- (2) "Best Value" same as Value-based; see below.
- (3) "Business" means any corporation, partnership, individual sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (4) "Change order" means a written order signed by the procurement officer, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the procurement officer to order without the consent of the contractor of any written alteration in specification, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (5) "Commissioner" refers to the Commissioner of the West Virginia Division of Highways.

- (6) "Construction" means the process of building, renovating, altering, improving, or repairing of any public highway.
- (b) "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (7) "Contract" means any state agreement for the procurement or disposal of supplies, services, design, or construction.
- (8) "Design-Build" means a project delivery method whereby the design and construction phases are combined into a single project. This method of design and construction can include the design-build provider acquiring the right of way as part of the contract.
- (9) "Maintenance" refers to a commitment to maintain a highway facility in an acceptable condition for an established period of time.
- (10) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, service, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.
- (11) "Request for Proposals" (RFP) means an advertisement requesting proposals for work in accordance with the requirements outlined in the design-build criteria package
- (12) "Request for Qualifications" (RFQ) means an advertisement requesting statements of qualifications. It contains at least the desired minimum qualifications of the design-builder, criteria for evaluation, a scope of work statement, and general project requirements.
- (13) "Responsive bidder or proposer" means an entity or person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.
- (14) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.
- (15) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end project other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.
- (16) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspection, testing, or preparing a supply, service, or construction item for delivery.
- (17) "Stipend" refers to the fee paid to unsuccessful firms for development of a responsive proposal.
- (18) "Supplies" means all property, including equipment, materials, and printing.
- (19) "Value-based" refers to a procurement process where price and other key factors are considered in the evaluation and selection process.
- (20) "WVDOH" refers to the West Virginia Division of Highways, a Division of the West Virginia Department of Transportation (WVDOT).