

Design-Build Manual

Office of
Construction and
Innovative
Contracting (OCIC)

Your Destination...Our Priority



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[ITP Form 2 Template.doc](#)

[ITP Form 3 Template.doc](#)

[ITP Form 4Template.doc](#)

[ITP Form 19 Template.doc](#)

Book 1 Template

[Exhibit A Template.doc](#)

[Exhibit B Template.doc](#)

[Exhibit C Template.doc](#)

[Exhibit D \(Cover Page\) Template.doc](#)

[Exhibit E \(Cover Page\) Template.doc](#)

[Exhibit F1 \(Cover Page\) Template.doc](#)

[Exhibit F1 template.pdf](#)

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Preface

Manual Purpose

This manual describes the processes and procedures for procuring design-build contracts. This manual does not include all of the processes necessary to deliver the project, such as environmental, right-of-way acquisition, and municipal consent. Except as noted within this manual, all other MnDOT project development guidelines and procedures follow standard processes.

Who will use this Manual

This manual is written primarily for MnDOT employees procuring design-build contracts. The manual focuses mainly on the responsibilities of MnDOT's Design-Build Program Manager and Design-Build Project Managers.

How was this Manual Developed

The development of this manual is a compilation of efforts and lessons learned from previous design-build projects. The manual was written by MnDOT Office of Construction and Innovative Contracting (OCIC) with input from MnDOT Districts and the Federal Highway Administration (FHWA).

MnDOT began using design-build in 1996 and constructed three projects using a low-bid approach. In 2001, MnDOT obtained legislative approval to use the design-build best value procurement process. Since 2001, MnDOT has awarded over \$1 billion in design-build projects. The design-build process has evolved and improved through the use of lessons learned. Some of the early history of best value design-build procurement can be viewed in the design-build white papers, which are available through MnDOT's design-build program manager.

How will the Manual be Updated

Design-build is an evolving process. This manual will be updated frequently to address lessons learned, evolving approaches, updates to federal, state, local laws, regulations, and policies. MnDOT's Design-Build Program Manager is responsible for updating the manual, with approval from the Director of MnDOT's Office of Construction and Innovative Contracting and the FHWA Minnesota Division Administrator.

Acronyms

ATC	Alternative Technical Concept
AGC	Association of General Contractors
CPPM	Capital Programs and Performance Measures
CFR	Code of Federal Regulations
CO	Central Office (MnDOT)
COI	Conflict of Interest
CLS	Contracts and Lettings Supervisor
DBPM	Design-Build Program Manager
DBE	Disadvantage Business Enterprise
FHWA	Federal Highway Administration
GEC	General Engineering Consultant
HPDP	Highway Project Development Process
ITP	Instructions to Proposers
LOI	Letters of Interest
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
OCR	Office of Civil Rights
OCIC	Office of Construction and Innovative Contracting
OJT	On-the-job training
PAE	Pre-Approved Element
POC	Process Oversight Committee
PM	Project Manager
RFC	Released for Construction
RID	Reference Information Documents
RLOI	Request for Letters of Interest
RFP	Request for Proposals
RFQ	Request for Qualifications
SOQ	Statement of Qualifications
TA	Technical Advisors
TRC	Technical Review Committee

Definitions

This section outlines some of the general design-build terms used within this document. The intent of this section is to provide a quick reference of commonly used terms for individuals with little or no design-build experience. This is not an all inclusive list of terms used within the design-build contract.

Addendum	An addition or modification to the RFQ or RFP made during the procurement process.
Alternative Technical Concept (ATC)	A confidential process in which design-build teams can propose equal or better alternatives to the RFP during procurement. The process is used to allow innovation and flexibility in the design and/or construction of a particular element of the project.
Award	The acceptance of the best-value or low price proposal, subject to execution and approval of the contract. The award is non-binding.
Best-Value	An alternative contracting method where price and other key factors are factors in the evaluation and selection process of the awarded contractor. In Minnesota, the formula for determining best-value is adjusted score equals proposed price divided by technical score. The lowest adjusted score is the best value.
Clarifications	MnDOT's written response to questions asked by design-build team during the procurement process.
Code of Federal Regulations (CFR)	Regulations that implement and carry out the provisions of federal law relating to the administration of federal aid for highway.
Conflict of Interest (COI)	A situation in which, because of existing or planned activities or because of relationships with other persons, the vendor appears, is unable, or is potentially unable to render impartial assistance or advice to the state, the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair advantage.

Conformed Contract	The documents used for award and execution of a design-build contract. The conformed contract incorporate the RFP, addendums, technical proposal, and commitments of the design-build team.
Contract Execution	The date at point at which a legal binding contract between the owner and the design-build team is signed and in effect.
Contracts and Lettings Supervisor (CLS)	Person in the OCIC responsible for project lettings and preparing project contracts.
Debriefing Meeting	A meeting in which the design-build teams is informed of specific details of the technical proposal and MnDOT discuss the scoring results of the design-build team's SOQ or Technical Proposal submissions.
Design-Build Program Manager (DBPM)	The person responsible for managing and overseeing the development and continued use of MnDOT's design-build program.
Design-Build Team	A combination of contractors, designers and other entities that have formed a contractual relationship and are interested in submitting responses to an RFQ or RFP.
General Engineering Consultant (GEC)	A consultant hired to help assist MnDOT with their design-build program.
Instructions to Proposers (ITP)	A section of the RFP that gives the design-build teams instructions on how to submit a technical proposal.
Letter of Interest	A firm's response to a Request for Letters of Interest (RLOI) to receive a RFQ for a proposed design-build project.
Letting	The day on which the price proposals are publically opened and the apparent best-value or low-bid design-build team is identified.
Low-Bid	A method of procurement in which the contract is awarded to the lowest cost responsive and responsible bidder.
Maximum Price Contracts	A contract with a maximum price that a design-build team shall not exceed with their price proposal. If design-build teams exceed this price, they will be deemed non-responsive and are not eligible to win the contract, but are eligible to receive a stipend (see also Stipend).

National Environmental Policy Act (NEPA)	The United States environmental law that established a U.S. national policy promoting the enhancement of the environment and also established the President's Council on Environmental Quality (CEQ). NEPA sets up procedural requirements for all federal government agencies in preparing Environmental Assessments (EA) and Environmental Impact Statements (EIS). EAs and EISs contain statements of the environmental effects of proposed federal agency actions.
One-on-One Meetings	Meetings with MnDOT and each shortlisted design-build team to discuss potential ATCs and PAEs during procurement.
Pre-Approved Elements (PAE)	An alternative contracting process that may be used in which design-build teams are required to submit elements for approval. PAE elements shall be approved in order for a proposal to be deemed responsive. Used on a case-by-case basis and with federal concurrence.
Process Oversight Committee (POC)	A committee consisting of FHWA, MnDOT, and the Dept. of Administration to oversee the procurement process.
Procurement	All stages of the alternative contracting process for acquiring project management, design, and construction services for a design-build contract.
Project Manager (PM)	The person responsible for managing the design-build project for MnDOT.
Proposer	Reference to design-build teams submitting a technical and/or price proposal in response to an RFP.
Reference Information Documents (RID)	Non-contractual documents provided to the design-build teams such as preliminary design, planning documents, studies, reports, CADD files, etc.
Released for Construction Documents (RFC)	Submittals provided by the design-build team prior to starting construction on a certain element of the project.
Request for Letters of Interest (RLOI)	A letter advertised by MnDOT requesting letters of interest from design-build teams and consultants to express their interest in a future design-build project.

Request for Proposals (RFP)	The documents advertised requesting bids/proposals from potential design-build teams. The RFP consists of Book 1, Book 2, Book 3, ITP, and RID.
Request for Qualifications (RFQ)	The document that contains instructions for submitting a SOQ, evaluation criteria, and minimum qualifications required of the design-build team.
Short-List	A list developed by the TRC and approved by the commissioner at the conclusion of the SOQ evaluation process that includes no more than five of the most highly qualified design-build teams that are eligible to respond to the RFP.
Statement of Qualifications (SOQ)	A document that is submitted by design-build teams in response to an RFQ.
Stipend	A fee paid to offset the procurement costs of unsuccessful proposers.
Submitter	Reference to a design-build team responding to an RFQ.
Technical Advisors (TA)	A group of individuals with specific technical expertise available to support the TRC during the SOQ evaluations and the Technical Proposal evaluations.
Technical Proposal	A document that is submitted by design-build teams in response to an RFP.
Technical Review Committee (TRC)	The committee responsible for evaluating SOQs, developing the short list, and evaluating Technical Proposals.

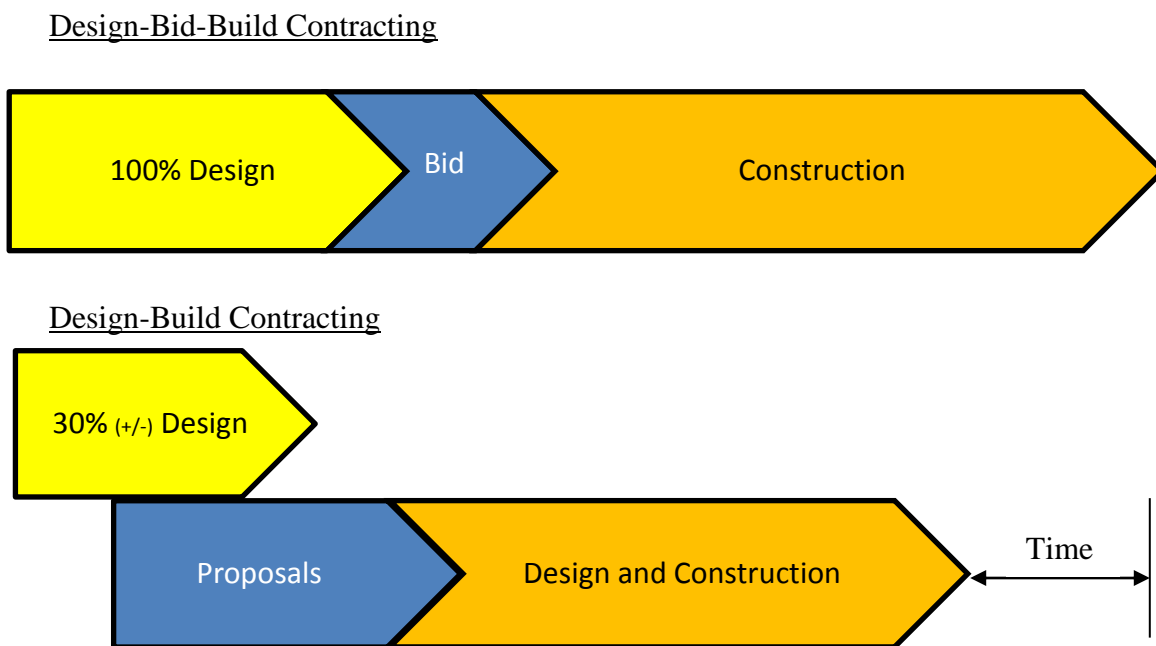
Section 1. Introduction

This section provides an overview of design-build.

1.1 What is Design-Build Contracting?

Design-Build is an alternative contracting method in which a single contract is awarded to provide design and construction goods and services. In this method of project delivery, contractors and consultant design firms form an integrated team and assume the responsibility for design and construction. Design-build allows the overlap of design and construction activities, often resulting in faster project delivery. The design is often broken into packages or segments, allowing construction to begin on portions of the project while other elements are still being designed. Figure 1.1-1 graphically shows the time difference between design-bid-build contracting and design-build contracting.

Figure 1.1-1 Time Savings Using Design-Build



Although time savings often occur, delivering a project using design-build contracting eliminates few steps when compared to traditional design-bid-build contracting. Sufficient preliminary engineering shall be performed before a design-build contract can be executed. Project scope needs to be clearly defined. Right-of-way limits and acquisition processes should be well underway to minimize delays to the contract. Municipal consent should be obtained prior to moving into the procurement process. MnDOT standard practice is to require the completion of the environmental processes such as NEPA prior to moving into the RFP stage of procurement.

1.2 How Does Design-Build differ from Design-Bid-Build?

Design-build differs from design-bid-build contracting in many ways. Listed below are the primary differences between the two procurement methods:

- **Design** – The design-build team is responsible for the design of the project. Any design errors or omissions discovered during construction and the warranty term are the responsibility of the design-build team to correct, thus transferring any design risk to the design-build team. This requires changes to MnDOT's design-bid-build contract administration procedures in that the Contractor, instead of MnDOT, is the Engineer of Record.
- **Construction** – Design-build allows fast-track of design/construction, where construction can begin as initial design packages are accepted rather than waiting until the complete set of Plans, Specifications and Estimate (PS&E) are completed and a contractor is awarded a contract.
- **Innovation** – Design-build allows designers and contractors to introduce new design/construction alternatives that are equal or better than the contract requirements while still adhering to all other contract requirements. It also allows contractors to optimize the design based on alternative means within their capabilities and equipment.
- **Procurement** – Design-build procurement differs is modified from standard design-bid-build procurement process but overall general procurement laws and regulations are still adhered to.
 - Short-Listing – The owner (MnDOT) is able to short-list the most highly qualified teams. Only short-listed teams have the opportunity to submit price and technical proposals.
 - Best-Value or Low-Bid – Design-build teams can be selected based on best-value or low-bid contracting (see [Section 1.4.3](#)).
 - Proposals – Design-build teams submit technical proposals in addition to price proposals.
 - In best-value contracting, the team's technical proposals are scored based on their approach to the project (see [Section 1.4.1](#)).
 - In low-bid, technical proposals are used to determine responsiveness (see [Section 1.4.2](#)).
- **Payment** – Design-build contracts are lump-sum contracts. Payment is based on percent completion for each activity.
- **Contracts** – Design-build contracts use a different set of documents. Plans and specifications used in design-bid-build to advertise the project for bids are

replaced by the RFP. The RFP defines the design, management and construction requirements.

1.3 When to Use Design-Build

Design-build is not suited for every project. It is best-suited for projects that require acceleration, projects that have unique opportunities to appropriately transfer risk to the design-build team, and on projects with opportunities for innovation. Innovation has the potential to significantly decrease contract time, reduce costs, and improve the safety and quality of the product. The decision to use design-build contracting should be based on the goals and risks of the project.

Design-build has been used on a large variety of highway and bridge projects throughout the world. MnDOT's design-build website (<http://www.dot.state.mn.us/designbuild/>) provides a one-page description of each design-build project procured using MnDOT's authority. These one-pagers provide an overview of the project, reasons for using design-build contracting, and the benefits of using design-build.

Typical design-build projects include:

- Accelerated Projects (primarily due to advances in funding)
- Large/Complex grading and reconstruction projects
- Major bridge projects
- Risk transfer projects
- Project streamlining (minimizing effort to compile bid-build plans)

1.4 Procurement Overview

Design-build can be used on up to 10% of the total number of projects in a state fiscal year (Minnesota Statutes §161.3412 (subd. 3)). MnDOT's authority also allows design-build contracts to be procured using either best-value or low-bid contracting. This section outlines the best-value and low-bid processes, provides guidance/requirements on when to use best-value or low-bid, and provides general procurement timelines.

1.4.1 Best-Value Design-Build Overview

Design-build best-value requires a two-step procurement process (see Exhibit 1.4-1). In step 1, MnDOT prepares a Request for Qualification (RFQ) outlining the minimum and desired design-build team qualifications. Interested design-build teams submit Statements of Qualifications (SOQ) in response to the RFQ. A Technical Review Committee (TRC) evaluates the SOQ's according to the criteria published in the RFQ and establishes a short-list of the most highly qualified design-build teams. By state statute (see Exhibit 1.4-1), the number of design-build teams cannot exceed five per short-list.

In step 2, the RFP is issued to short-listed design-build teams. Teams submit a technical and price proposal in response to the RFP. Prior to opening the price proposals, the TRC evaluates the technical proposals. The best-value is determined by dividing the design-builder's price by the technical score to obtain an adjusted score. Unless all bids are rejected, the contract is awarded to the responsive and responsible design-build team with the lowest adjusted score. Stipends are paid to the unsuccessful responsive and responsible design-build teams.

Best-Value contracting requires additional procurement time compared to low-bid design-build. Design-build teams need additional time and resources to prepare technical proposals. MnDOT needs additional time to evaluate the technical proposals. In addition, the stipends are often higher on best-value contracting due to the additional effort required by the design-build teams to submit technical proposals.

Figure 1.4-1 provides a general overview of the two-step process.

1.4.2 Low-Bid Design-Build Overview

Low-bid design-build can follow either a one-step or two-step process (see Exhibit 1.4-1). The two-step process generally follows the best-value process, except that the contract is awarded to the responsive and responsible design-build team with the lowest price proposal. The technical proposal generally consists of a cover letter and the required legal forms. Technical proposals are not scored; they are only used to determine responsiveness. If the two-step process is used, the district has the option of paying a stipend to the unsuccessful responsive design-build teams.

The single step low-bid design-build process does not include a short-listing process. All interested design-build teams have the opportunity to respond to the RFP. Design-build teams submit price and technical proposals. The technical proposal consists of a cover

letter and the required legal forms. Technical proposals are not scored; they are only used to determine responsiveness. Stipends cannot be paid using the single step process.

The single step process does not allow MnDOT to evaluate the qualifications of the team. This increases the risk of unsuccessful performance on the project. The single step process may also discourage design-build teams from responding to the RFP. Teams are less likely to invest in a design-build procurement without a stipend.

Figures 1.4-1 provides a general overview of the two-step low-bid process. Figures 1.4-2 provide a general overview of the one-step low-bid process.

1.4.3 Best-Value versus Low Bid

The following table provides requirements and guidance on when to use best-value or low-bid design-build contracting. The determination to use low-bid and best-value will be joint effort between the PM, District, DBPM and Innovative Contracting Director by assessing the project risks and assigning each risk to the group best able to manage that risk.

Table 1.4-1. Using Best-Value versus Low-Bid

Project Type	Best-Value	Low-Bid
Major Bridge Projects	Required	
Major Grading / Reconstruction Projects (over \$25,000,000)	Required	
Major risk transfer projects	Recommended	
Project with complex staging	Recommended	
Minimal risk transfer projects (unbonded overlays, mill/overlay, simple bridges)		Recommended
Non-complex projects with a value less than \$10,000,000		Recommended



Typical Two-Step design-build Process

(best-value low-bid projects)

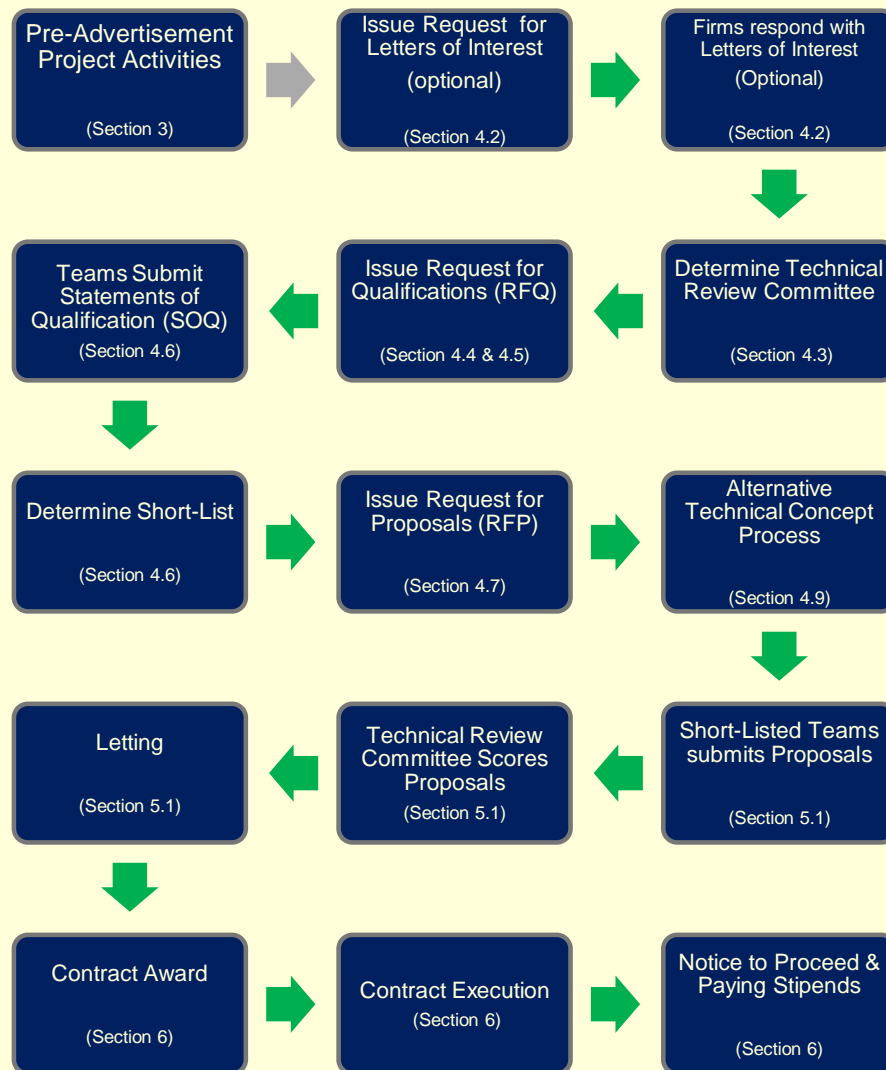


Figure 1.4-1

Note: Details on these processes can be found within the sections listed above. In addition, Section 2.1 identifies additional steps required on federally funded projects.



Typical One-Step design-build Process (low-bid projects)



Figure 1.4-2

Note: Details on these processes can be found within the sections listed above. In addition, Section 2.1 identifies additional steps required on federally funded projects.

1.4.4 Typical Procurement Timelines

Listed below are typical timeframes needed to perform each procurement item. These timeframes will vary based on project complexity and procurement type. Some items may be developed concurrently. Best-value procurements require additional time to evaluate Technical Proposals. A single step low-bid process will not require advertisement of the RFQ and development of the short-list. Clarifications and addendums will be addressed on an ongoing basis throughout the RFQ and RFP advertisement periods. ATCs will be addressed as they are received.

Procurement Item	Approximate Time
Advertise Request for Letters of Interest	2 to 3 Weeks
Advertise RFQ	3 to 4 Weeks
Score SOQ / Develop Short-List	2 Weeks
Develop RFP	2 to 3 Months
Federal Authorization (if applicable)	2 Weeks
RFP Advertisement Period	2 to 4 Months
Score Technical Proposals (best-value only)	2 to 3 Weeks
Contract Award and Execution	4 to 7 Weeks

Exhibits

1.1-1: MN Design-Build State Statutes

Forms

None

Section 2. General Procurement Activities

This section provides general procurement activities related to design-build contracting such as the role of the Design-Build Program Manager, design-build project managers, FHWA, conflicts of interest, the release of data to the public, time sheet coding for MnDOT employees, legislative reporting, and the use of a GEC to assist with the program.

2.1 Design-Build Program Manager

The Design-Build Program Manager (DBPM) is a MnDOT Central Office Employee primarily responsible for setting design-build programmatic decisions and overseeing the procurement of design-build contracts. The primary responsibilities of the DBPM include:

- Overseeing that design-build procurements are in accordance with state and federal laws
- Advertising the design-build projects
- Coordinating procurement steps with the Chief Engineer
- Managing the development of RFQ and RFP evaluation criteria
- Drafting Book 1 and the Instructions to Proposers
- Reviewing and approving RFPs, addendums, clarifications, Alternative Technical Concepts (ATCs) and Pre-Approved Elements (PAEs)
- Coordinating the letting, award and approval process
- Managing procurement and contract templates
- Managing legislative requirements
- Overseeing the General Engineering Consultant master contract.

The above list is not an all inclusive list. Specific tasks and responsibilities of the DBPM are listed throughout this manual.

2.2 Design-Build Project Managers

The Design-Build Project Managers are typically district employees responsible for the development and administration of design-build contracts. The duties of the Design-Build Project Managers include:

- Managing preliminary design and environmental approvals
- Developing the scope of the project
- Developing project estimates in coordination with the MnDOT Estimating Unit
- Managing third party agreements
- Managing work orders through the General Engineering Consultants
- Drafting Book 2 and Book 3 of the RFP

The above list is not an all inclusive list. Specific tasks and responsibilities of the DBPM are listed throughout this manual.

2.3 FHWA Involvement

Federal involvement is required on projects with federal funding. The Federal Highway Administration (FHWA) policies and procedures for approving design-build projects is defined in 23 CFR 636 (Design-Build Contracting). The FHWA and MnDOT also have a Letter of Agreement and Stewardship Plan which outlines the roles and responsibilities between the agencies on stewardship and oversight of federal projects.

Design-build projects will follow the processes and procedures outlined in the Letter of Agreement and Stewardship Plan and as described in this manual. Listed below are the processes and procedures for involving the FHWA on design-build projects.

2.3.1 Federal Reporting

When considering a design-build project, the DBPM will notify the FHWA as soon as possible. The DBPM will submit, on an annual basis (preferably December) a listing of all proposed design-build projects for the following calendar year.

2.3.2 Additional Federal Requirements

The following federal requirements supplement the CFR and Letter of Agreement and Stewardship Plan.

1. All MnDOT design-build projects will follow this manual.
2. All future modifications to this Design-Build Procurement Procedures Manual will be approved by the FHWA.
3. FHWA concurrence is required on individual design-build projects if non-standard activities are used prior to issuance of the RFQ. These activities include:
 - Pre-approved Element process (see [Section 4.10](#))
 - Design Exceptions (Interstate / NHS)
 - Sole source clauses (see [Section 3.1.6](#))
 - Special Experimental Projects (SEP-14 and SEP-15)
 - Emergency Relief
 - Other unique activities not stated in this manual

4. Table 2.3-1 below lists additional roles and responsibilities.

Table 2.3-1: Additional FHWA and MnDOT Oversight Roles and Responsibilities

Work Activity	FULL FEDERAL OVERSIGHT (FFO) PROJECTS		STATE ADMINISTERED OVERSIGHT (SAFO) PROJECTS ON/OFF THE NHS	
	MnDOT Action	FHWA Action	MnDOT Action ¹	FHWA Action
RFQ	Prepare	None ³	Prepare	None
RFQ Addendums	Prepare	None ³	Prepare	None
RFQ Clarifications	Prepare	None ³	Prepare	None
Short-List	Prepare	Concurrence	Prepare	None
RFP	Prepare	Approve (14 Days)	Prepare	None
RFP Addendums	Prepare	Approve (7 Days)	Prepare	None
RFP Clarifications	Prepare	None ³	Prepare	None
Alternative Technical Concepts (ATC)	Prepare	Approve ²	Prepare	None ²
Pre-Approved Elements (PAE)	Prepare	Approve	Prepare	None ²

- (1) Unless otherwise specified, state administered work activities will be prepared by the MnDOT District and Approved by MnDOT's Office of Construction and Innovative Contracting (OCIC).
- (2) Modifications to the Interstate and NHS geometric layout require approval from the FHWA and State Design Engineer.
- (3) MnDOT will send a courtesy copy to the FHWA.

2.4 Conflict of Interest

2.4.1 Organization Conflicts of Interest

State and federal rules govern organizational conflicts of interest in MnDOT procurements related to design-build contracting. An “organizational” conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, such as a vendor (e.g. consultant or design-build team) is unable, or potentially unable to render impartial assistance or advice to the state, or the vendor’s objectivity in performing contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage.

A Conflict of Interest Approach has been developed to assist in the determination of organizational conflicts of interest (See Exhibit 2.4-1). This approach is available to all potential design-build teams and should be referenced in both the RFQ and RFP.

When a potential conflict of interest approach arises, the following procedures apply:

1. When a consultant or design-build team member discloses a potential conflict of interest, these disclosures shall be forwarded to the DBPM. In addition, if a MnDOT staff member has reason to believe that a consultant or design-build team member has failed to disclose a potential organizational conflict, that staff member shall notify the PM, who will then notify the DBPM, FHWA, and MnDOT Director of Contract Management.
2. The Director of the Contract Management section will be responsible for conducting a review of the potential conflict, determining if an actual or perceived conflict exists, and determining appropriate avoidance or mitigation measures to be implemented by the department. All findings and measures to be implemented will be documented in writing. In performing these reviews, Contract Management section may consult with project staff, as well as with other resource offices as necessary.
3. The DBPM, PM, FHWA, Director of Contract Management may meet to determine any necessary actions or communication required with the MnDOT staff member, consultant or design-build team.

2.4.2 Consultant Contract Clauses

The risk for potential organization conflicts of interest can be reduced by proactively addressing these issues within consultant contracts. Consultants often want to know if work will preclude them from participating on a design-build team. MnDOT Conflict of Interest Approach (Exhibit 2.4-1) addresses many circumstances, but not all.

Listed below are suggested terms to include in consultant RFP’s or contracts for preliminary design work if a project is a potential design-build candidate. When

preparing these contracts, the PM should consult with the Director of Contract Management to determine if the consultant would have an organizational conflict of interest. Finally, if a consultant is allowed to perform work on the project under a consultant contract and participate on a design-build team, the consultant should be required to submit all final deliverables to MnDOT prior to joining or participating as an offeror on a design-build team.

Sample language to include in preliminary design service contracts:

MnDOT may elect to use design-build delivery method for this Project. The successful responder and all sub consultants to this request for services will not be allowed to participate as an offeror or join a design-build team for this Project.

Sample language to include in material subsurface exploration contracts:

MnDOT may elect to use design-build delivery method for this Project. If a contractor wishes to participate on a design-build team for this Project, the contractor shall adhere to the following:

- 1. Contractor will provide all notes relating to the field work and lab testing of soils to the States Project Manager.*
- 2. Contractor will retain soil samples for a period of one year. The soil samples will be made available for viewing upon request from design-build teams.*
- 3. Contractor's employees involved with drilling, note taking, sampling, lab testing, log writing, pavement determination, or foundation determination will not participate (in any manner) in the preparation of a response to a Request for Qualifications or Request for Proposals as part of a Design-Build Team for this Project. Such employees may work on the Project if the contractor is part of the selected Design-Build team, after the design-build contract has been awarded.*
- 4. Contractor shall adhere to MnDOT's Approach to Conflict of Interest found on the following website: <http://www.dot.state.mn.us/designbuild/>*

2.4.3 Internal COI Procedure

Potential conflicts of interest may arise internally to the design-build process. The mitigation or avoidance of potential conflicts of interests is extremely important as it relates to evaluating SOQ's and evaluating technical proposals. To identify and mitigate any real or perceived internal conflicts of interest, the following procedures have been developed:

1. Prior to working on the project, the PM will be responsible for collecting Conflict of Interest (COI) Forms from all MnDOT and external stakeholders involved with the development of the RFQ and RFP documents.
2. The PM will store all COI forms.
3. The PM will immediately notify the DBPM and Director of Contract Management of all COI issues.
4. The Director of Contract Management, in consultation with other MnDOT offices and state agencies, will make a determination on the conflict of interest and recommend steps to the PM and DBPM.
5. The PM or DBPM will notify FHWA of all COI issues on all federal projects.

Exhibits

2.4-1: Conflict of Interest Approach

Forms

Form 2.4a: Confidentiality Form

2.5 Data Practices (Public Information)

Design-build contracting often generates documents and information that are unique to MnDOT. Many documents are kept confidential during the procurement to protect ideas and concepts unique to each design-build team. The release and storage of documents shall be consistent with state data practices laws. These laws provide the legal requirements for releasing data generated by MnDOT (Minnesota state statute 13.72) and data generated by private businesses (Minnesota state statute 13.591).

To minimize the release of non-public data, each person involved with the preparation of the RFP and other contract documents, evaluation of SOQ's, and evaluation of technical proposals should complete the Confidentiality and Non-Disclosure Agreement, No Conflict of Interest Form. See [Section 2.4](#) (Conflict of Interest) for the distribution and storage of these forms.

Listed below are the procedures for releasing and disclosing data related to the procurement of design-build projects. Data generated outside of the procurement, such as preliminary design or work performed under the design-build contract, are subject to the same laws and rules as design-bid-build contracting.

2.5.1 General

1. Proprietary information exchanges between design-build teams and MnDOT during procurement are confidential. Specifically, ATC and PAE information should not be shared publically or with other teams during procurement.

2.5.2 Releasing Data Related to RFQs and SOQs

1. The DBPM is responsible for publicly releasing the data in consultation with MnDOT's Data Practices Unit.
2. Unless otherwise indicated below, SOQs are non-public until contract award.
3. MnDOT SOQ evaluation methodology (evaluation manual) and statement of qualification evaluations (scoring sheets and calculations) are public after MnDOT announces the short-list.
4. When releasing this information, the names of the TRC members are withheld until after contract award. This is necessary to minimize the potential of design-build teams having an unfair competitive advantage.
5. In the event that MnDOT has received SOQs, but the RFQ needs to be re-advertised within one year of the original SOQ due date, the following applies:
6. The SOQs are non-public until contract award.
7. The evaluation methodology and SOQ evaluations are non-public until contract award unless the short-list has been released (see #3 above).

8. In the event that MnDOT has received SOQs, but the RFQ will be re-advertised a year (or longer) since the original SOQ due date, the SOQs and evaluation methodology and SOQ evaluations are public one year after the original SOQ due date.
9. In the event that MnDOT has received SOQs, but no longer elects to use design-build contracting on the project, the SOQs, evaluation methodology, and SOQ evaluations are public at the time MnDOT elects to no longer use design-build contracting on the project.
10. For all other circumstances, the DBPM will consult with MnDOT's Data Practices Unit.

2.5.3 Releasing data related to Technical Proposal Evaluations

1. The DBPM is responsible for publicly releasing the data in consultation with MnDOT's Data Practices Unit.
2. Technical Proposals, scoring methodology and evaluations are non-public until award of the contract.
 - a. Items submitted to MnDOT during the procurement process such as ATCs and PAEs are also considered non-public until contract award.
 - b. ATCs and PAEs submitted to MnDOT during the procurement that are not included in the design-build team's technical proposal, are considered public information, however, MnDOT cannot use them during the contract administration of the project.
3. Upon contract award, the DBPM will post the Technical Proposals, scoring methodology (evaluation manual) and TRC evaluation sheets to the project FTP site.
4. The DBPM will notify (via e-mail) the PM and the Proposer's single points of contact that the information has been posted (include a link to the information).
5. In the event MnDOT elects to not award the contract, but will re-issue the RFP within a year of the letting, the Technical Proposals, evaluation methodology and evaluations are non-public until award.
6. In the event MnDOT elects to not award the contract, but will re-issue the RFP a year (or longer) after the letting, the Technical Proposals, evaluation methodology and evaluations are public a year after the original letting date.
7. In the event that MnDOT elects to not award the contract and not pursue the use of design-build contracting for the project, the Technical Proposals, evaluation methodology, and evaluations are public at the time MnDOT elects to no longer use design-build contracting on the project.
8. For all other circumstances, the DBPM will consult with MnDOT's Data Practices Unit.

2.6 Timesheet Activity Codes

Unique timesheet activity codes have been developed for design-build contracting. These codes listed below should be used during design-build procurement, design-build contract administration, and during warranty management.

All activities that are related to the development of the project, whether it is design-build or design-bid-build, should be charged to the normal project development charge ID (e.g. if working on the environmental document, charge to the appropriate environmental document activities) except development of contract documents (see below).

5910 DESIGN-BUILD PROGRAM MANAGMENT

CO staff development of the overall design-build program policies and procedures; and management of the overall program. Includes incidental efforts in developing and managing consultant agreements, but significant amounts of time should be coded to Design-Build Procurement, Design-Build Design Oversight, or Design-Build Construction Oversight, as appropriate.

5911 DESIGN-BUILD PROCUREMENT

All CO and district work associated with the preparation of the RFQ and RFP based on preliminary design work, and other tasks until contract award. (Technical Offices and district staff would not use this code for typical preliminary design activities).

5912 DESIGN-BUILD DESIGN OVERSIGHT

All work associated with reviewing the design activities of the design-build team.

5917 DESIGN-BUILD CONSTRUCTION OVERSIGHT

All work related to overseeing design-build construction activities.

5918 DESIGN-BUILD STIPENDS

Use on payment transactions for stipends to unsuccessful proposers on design-build projects. Not for use on timesheets.

5920 DESIGN-BUILD PROJECT SUPPORT

All support for a design-build project not covered by Activity Codes 5910, 5911, 5912, 5917, 5918 or 5930. For example, internal quality audits, RMS support, scheduling, document management, administrative support, and general project management not attributed to design or construction oversight.

5930 DESIGN-BUILD CONTRACT WARRANTY MANAGEMENT

All tasks and expenditures to monitor design-build warranty compliance and pursue remedies after completion of construction. Note: for design-build warranty management, see 1860.

2.7 PPMS Activities

The following unique PPMS activity codes have been developed for design-build contracting. The codes work with other standard PPMS activities, however, not all standard activities apply to design-build projects (e.g.: roadway plans). The PM should work with their district PPMS coordinator.

5040 D-B SCOPING

This activity assembles the Design-Build team, sets Design-build goals, performs risk allocation, and identifies permit, r/w, and agreement needs.

5942 D-B PROJECT ADVERTISEMENT

This activity prepares and distributes the request for letters of interest and conducts an informational meeting for contractors.

5944 D-B RFQ DEVELOPMENT

This activity develops and advertises a request for qualifications from Design-Build teams.

5946 D-B SOQ PREPARATION AND SCORING

This activity receives the Design-Build team's SOQ and culminates in a contractor short list to receive the Request for Proposals.

5948 D-B RFP DEVELOPMENT

This activity assembles the request for proposals which goes to the short listed teams who will produce a schedule, design, and estimate for the Design-Build construction project.

5950 D-B PROPOSAL PREPARATION & SCORING

This activity includes time for the State and the contractors to consider Alternative Technical Concepts (ATC), the State to develop a Selection Manual, the contractors to submit a proposal, and the State to perform a technical review of the proposals.

5952 D-B CONTRACTOR SELECTION

This activity includes opening the price portion of the contractor proposals and assigning a best value based on the price and technical score.

5954 D-B AUTHORIZATION

This activity includes all tasks necessary to obtain FHWA approval prior to distribution of the Final RFP to the short listed Design-Build teams.

5956 D-B SUBSURFACE UTILITY ENGINEERING

5958 D-B MASTER UTILITY AGREEMENTS

2.8 Legislative Notice – Yearly Report

State Statutes require a yearly report on the use of design-build contracting. Specifically, State Statute 161.3428 states:

Beginning September 1, 2002, and every subsequent year on September 1, the commissioner shall submit to the governor, the chairs of the house of representatives Ways and Means and senate finance committees, the chairs of the house of representatives and senate committees having jurisdiction over transportation policy and finance, and the Legislative Reference Library, a yearly listing of all executed design-build contracts. The report must identify the design-build team, contract amount, duration, and services to be provided. The list and summary must:

- (1) be sorted by design-build team;*
- (2) show the aggregate value of contracts issued by the commissioner of transportation and issued to each design-build team; and*
- (3) state the termination date of each contract.*

The DBPM is responsible for drafting the yearly report for the commissioner's signature. The process for completing the yearly report includes:

1. The DBPM will send the draft letter to MnDOT's Government Affairs staff for review. The letter should be sent no later than August 1, unless a contract will be executed in the month of August.
2. MnDOT Government Affairs will route the letter to the Commissioner's Office.
3. The DBPM will place a signed copy in the Project File.
4. The DBPM will provide FHWA with a signed copy.

Exhibits

2.8-1: Sample Legislative Notice – Yearly Report

Forms

None

2.9 General Engineering Consultant (GEC)

MnDOT employs a GEC to assist the DBPM and PM with various aspects of procuring design-build projects. The GEC master contract is managed by the DBPM, however the work orders issued under this contract necessary for performing work related to a specific design-build project are funded and managed by the district.

The GEC cannot join a design-build team as they are exclusive to MnDOT. Sub-consultants to the GEC that do not perform work on a design-build project may participate as an offeror or join a design-build team (see Exhibit 2.4-1).

Work orders may include:

- Tasks for pre-award project development of design-build projects (preparation of environmental documents, geometric layout preparation, preliminary bridge design, etc.)
- Developing RFPs
- Support of MnDOT's DB program management (updating contract documents, manuals, standards, etc.)
- Assisting MnDOT with the development of other innovative contracting methods.

The benefits to having the GEC perform preliminary work is the elimination of a potential conflict of interest between the consultant performing the preliminary work and desire to be on a design-build team (see [Section 2.4](#)).

Most of the work included in work orders issued under the GEC master contract consists of the development of RFPs for design-build projects and support of MnDOT's design-build program management. These items are eligible for federal funding. All work developing RFP documents for design-build projects shall go through the GEC contract, unless otherwise approved by the DBPM.

2.9.1 Development of a Work Order

1. The PM will consult with the DBPM to verify the scope of the work order is within the tasks defined in the GEC master contract.
2. The PM will fill out a requisition form and work with their district's contract manager to develop and execute the work order.

Exhibits

None

Forms

None

Section 3. Pre-Advertisement Activities

This section provides project development steps that are necessary to develop a design-build contract. This section also provides an overview on when to consider design-build contracting.

3.1 Project Development

The development of design-build projects is similar to traditional design-bid-build projects in many aspects. Planning, geometric layout, environmental approvals, and right-of-way generally follow traditional practices. The preliminary engineering aspects typically stop at the staff approved geometric layout, however the amount of design may vary on a project by project basis. Sufficient preliminary engineering should be done to determine right-of-way limits, obtain municipal consent, meet environmental and permitting requirements, and determine the project scope to define the project's requirements in the RFP. Progressing preliminary design too far potentially limits the innovation of design-build teams and may add risk to MnDOT.

Listed below are project development tasks that need to be addressed before issuing a Request for Proposals. The requirements will change based on the project.

3.1.1 Planning

Activity	Action
Planning Activities	MnDOT's system planning, pre-program scoping and project scoping activities identified in the MnDOT <i>Highway Project Development Process Handbook</i> (HPDP) are largely unaffected by the decision to use design-build delivery.
Municipal Consent	Municipal consent has been identified as a risk that should remain with MnDOT. As a result, MnDOT should obtain municipal consent prior to issuing a RFP.

3.1.2 Preliminary Engineering

Activity	Action
Geometric Layout	<p>The geometric layout is the basis for determining the basic configuration in the RFP. The basic configuration defines the parameters of the geometric layout in which the contractor must construct the project. For example, some design-build projects allow the preliminary horizontal and vertical alignments of the roadways to be modified as long as the construction limits remain within the rights of way. For other projects, specific limitations may be placed on how much the horizontal and/or vertical alignments may be changed without being considered a change to the basic configuration.</p> <p>On projects requiring a geometric layout, the layout shall be staff-approved prior to releasing the RFP. The PM should hold a basic configuration workshop before beginning preparation of the RFP to establish parameters for the basic configuration.</p> <p>Modifications to the geometric layout during the procurement and contract administration process need to be coordinated through CO Geometrics and may often require approval from the State Design Engineer and FHWA.</p>
Value Engineering	<p>A value engineering study for the project may be necessary depending on the value of the total project cost. If required, value engineering studies will follow current MnDOT value engineering guidelines and procedures. The incorporation of Alternative Technical Concepts cannot be used as a substitute for a Value Engineering study.</p>
Environmental Document	<p>The process followed to identify, complete, and obtain approvals for the appropriate environmental document (e.g., EA, EIS, etc.) for a design-build project is generally unchanged from the process for a traditional project. This process is discussed in the HPDP.</p> <p>Federal regulation (23 CFR 636.109) permits agencies to proceed with pre-qualifications, industry review, and a short listing process before the environmental study is complete.</p> <p>MnDOT standard practice is to release the RFP after the environmental process has concluded. All deviations from this practice require special FHWA approval.</p>

Permits	To reduce contractor risk, MnDOT should obtain as many permits as possible before accepting proposals. However, the design-build team will often need to obtain permits based upon their operations or design. In these cases, MnDOT should coordinate early with the regulator agency to outline the project's risks and anticipated environmental impacts. If necessary, it may be appropriate during procurement to obtain conditional permits outlining the anticipated impacts. In these cases, the design-builder would obtain the final permit based upon the final design. Exhibit 3.1-1 for information on the MOU for preliminary approval under the NPDES permit requirements.
Wetlands	MnDOT should identify all wetlands within the project area. Often, a preliminary permit will be obtained outlining the anticipated (often worst case) impact to the wetlands. The design-build team often is responsible for obtaining the final permit, based upon their design. If the design-build team impacts more wetlands than anticipated, the design-build team should assume the risk of obtaining the permit and mitigating the additional impacts.
Contaminated Materials	Contaminated materials investigation is required prior to releasing the RFP. Unless the risks can be quantified during procurement, the testing, handling and disposal of contaminated materials should not be included in the design-build team's price proposal. During the administration of the contract, MnDOT will be responsible for identification and testing of contaminated materials.
Noise Analysis	On projects requiring noise walls, preliminary noise analysis is required prior to releasing the RFP. If necessary, the RFP should include requirements that the design-build team update the noise analysis if the final design varies from the inputs used within the preliminary noise analysis.
Right-of-Way	Sufficient right-of-way shall be acquired to accommodate the basic configuration and drainage requirements of the project. The acquisition of right-of-way and easements are traditionally the responsibility of MnDOT. The design-build team often is responsible for all construction easements that may become necessary. It is not necessary to have all right-of-way acquired at the time the RFP is released. However, the RFP shall contain dates in which MnDOT will obtain title and possession. If the right-of-way is not acquired by authorization, a Public Interest Finding will be required on

	<p>federally funded projects.</p> <p>MnDOT will provide the design-build team with a right of way work map and parcel delivery status sheet. These items are included in the RFP and provide a guarantee that the basic configuration can be built within the right-of-way provided. To avoid delay claims, it is important to provide access to parcels by the dates indicated on the parcel delivery status sheet.</p> <p>Although not common, MnDOT may delegate responsibility for right of way acquisition to the design-build team. In this case, MnDOT will retain the authority of review and approval of all steps of the acquisition process. The design-build team will be required to develop a right of way work map and other pre-acquisition information necessary to complete a right of way package, as well as complete an appraisal of the parcels. Legal work related to condemnation shall be conducted by the Minnesota Attorney General's office. A sharing of responsibility for right of way acquisition is generally the least desirable option, as inconsistencies and unpredictable costs may occur due to different approaches used by private design-build teams versus those of MnDOT.</p>
Geotechnical Investigation	<p>MnDOT should conduct sufficient geotechnical investigation to minimize the risks to design-build teams. Prior to any borings being performed, an investigation plan should be developed under the direction of the Central Office Geotechnical Engineering staff and District Materials Office staff. The accuracy of the foundation borings is guaranteed to the design-build team. If feasible, design-build teams should be allowed to perform additional borings during procurement to further minimize the risk.</p> <p>MnDOT may provide additional information relating to the soil investigation, such as geological data, groundwater data reports, logs of previously completed nearby borings from past projects, memoranda, and fence diagrams, in the RID. Do not provide interpretive reports, except for the final pavement design.</p>

Pavement Design	<p>Pavement designs for all permanent roadways/ramps/shoulders/paths shall be designed by MnDOT in accordance with Pavement Design Manual and provided in the RFP. The pavement design should include minimum pavement section, pavement type, and subbase. Pavement designs for temporary work are the responsibility of the design-build team.</p> <p><u>The use of ATCs to modify permanent pavement designs is discouraged.</u></p>
Survey	<p>MnDOT will provide survey control and preliminary base mapping for the project. The level of mapping should be adequate to support completion of the environmental document and to support preliminary engineering. The mapping will ultimately be provided in the RID. The design-build team is responsible for all final design surveying and construction staking surveying.</p>
Design Exceptions	<p>Approval of the design exceptions is required by the State Design Engineer and the FHWA prior to releasing the RFP.</p>
Road Design	<p>Road design criteria shall be defined within the RFP, using the MnDOT <i>Design-Build Modifications to the Road-Design Manual</i> and other standards.</p>
Drainage	<p>Preliminary drainage should be conducted to determine right-of-way, cost estimate, and permit requirements.</p>
Structures	<p>Allowable structure types need to be determined. The approximate geometrics of the structure(s) should be established, which is done by providing a general, plan, and elevation (GP&E) drawing sheet of each structure identifying type, size, and location (included in RID documentation).</p>
Visual Quality	<p>Visual quality aspects should be clearly defined within the RFP. This includes identifying wall and bridge treatments, including colors and patterns. The requirements may include a visual quality manual or diagrams depicting desired features. The manual or diagrams should not include dimensions of features that will unnecessarily shift design risk back to MnDOT. The RFP may include visual quality alternatives to reduce costs and allow for innovation. Visual quality aspects need to be coordinated with the affected stakeholders prior to release of the RFP.</p>

Signals / Roundabouts	Traffic control (signal or roundabout) justification reports should be completed prior to releasing the RFP. If roundabouts are being used, the roundabouts should be reviewed by the roundabout layout review committee.
Signing	Determine the material requirements, special designs, and additional signs which vary beyond the requirements of the RFP template documents.
Pavement Markings	Determine allowable permanent and temporary pavement marking material requirements.
Traffic Management System (TMS)	Preliminary ITS layouts should be prepared prior to issuing the RFP.
Maintenance of Traffic	Although the design-build team is responsible for developing the staging and traffic control plans, sufficient preliminary engineering should be done to define the required minimum traffic control requirements.

3.1.3 Project Management

Activity	Action
Schedule Management	Critical Path Method (CPM) schedules are required on all design-build projects. The CPM schedule tracks the design-build team's progress and is also used to issue payments to the design-build team.
Quality Management (Design)	The design-build team is the engineer of record and is responsible for quality control and quality assurance of the design. MnDOT's role is to verify that the design meets the requirements of the contract, audit the design-builder's quality process, and accept each released for construction (RFC) package. Prior to submitting RFC packages for acceptance, the design-build team should conduct over-the-shoulder reviews with MnDOT staff. MnDOT will provide informal comments to the over-the-shoulder reviews. Formal comments will be provided on submitted RFC packages and other formal submittals.
Quality Management (Construction)	The role of the design-build team changes compared to traditional design-bid-build contracts. Design errors or ambiguities identified in the field are the responsibility of the contractor to correct. MnDOT is responsible for

	acceptance testing and inspection.
Cost Management	Design-Build contracts are typically lump sum, in which payments are made based on percent complete of activities defined within the cost loaded CPM schedule. The design-build team submits monthly invoices and progress reports that are used to determine progress payments based on the percentage of work complete for each schedule activity. MnDOT testing and inspection documentation must support that work on each paid activity has occurred.
Human Resources	Minimum requirements are established for key personnel within the RFQ and RFP. Design-build teams are not allowed to replace design-build firms or individuals identified within the RFQ or RFP without written approval of the commissioner. The written approval must document why the proposed replacement will be equal or better than the individual or firm listed in the RFQ or RFP. The DBPM will facilitate obtaining the commissioner's approval. The design-build contract should also include monetary deductions for the removal of key individuals during the course of the project.
Co-location	Co-location is encouraged on multi-year complex projects which require a large degree of coordination between the design-build team and MnDOT design oversight staff. On projects in which design is scheduled to last less than six months, alternative forms of design coordination are encouraged (e.g. regular scheduled meetings, MnDOT oversight staff with office space within designer office).
Public Information	Since the design, staging, and schedule are the responsibility of the design-build team, shifting additional public information responsibilities to the design-build team is encouraged. On complex projects with heavy public involvement, requiring the design-build team to have a highly skilled public relations expert on staff is encouraged. Press releases and direct contact with elected officials should remain the responsibility of MnDOT.
Engineering Estimate	See Section 3.2
Disadvantage Business (DBE), On-the-Job Training (OJT)	See Section 3.3

3.1.4 Third Party Agreements

Activity	Action
Municipal Agreements	<p>If municipal agreements are required, they are to be prepared and negotiated in accordance with MnDOT Guideline for the Policy and Procedures for Cooperative Construction Projects with Local Units of Government and the MnDOT Position Statement for the Policy and Procedures for Cooperative Construction Projects with Local Units of Government. A design-build contract will not be awarded until all agreements are signed.</p>
Utility Agreements and Coordination	<p>Utility coordination must be performed in accordance with <i>MnDOT Utility Manual, Design-Build Section</i>. Depending on the extent of utilities located within the project corridor, the preparation of utility agreements can be one of the more time-consuming processes of a design-build project. Consequently, MnDOT should contact utility owners during the early stages of the project to plan activities and arrange meetings.</p> <p>MnDOT's standard practice on design-build projects is to provide subsurface utility engineering (SUE) and to utilize master utility agreements (MUA) between MnDOT and impacted utilities. MnDOT conducts an initial SUE and prepares Utility Information Sheets (UISs) for each utility likely to be impacted by a project. The UISs are included in the RID and contain all information known to MnDOT at the time of issuance of the RFP, including descriptions of utilities expected to have conflicts, proposed relocation areas, and utilities not expected to have conflicts.</p> <p>MnDOT can follow one of two options for allocating the risk of any misidentified or unidentified utilities. If MnDOT conducts an extensive SUE prior to issuance of the RFP, MnDOT will guarantee the "reasonable accuracy" of the information provided in the RID for underground utilities, the relocation of which are included in the Design-build team's proposal price. If MnDOT does not conduct an extensive SUE, MnDOT will not guarantee the "reasonable accuracy" of the information provided in the RID for any underground utilities.</p>

	<p>MnDOT may enter into MUAs with utility owners to address utility issues on the project, including cost responsibilities. The design-build team is required to become a party to the MUA, which sets forth a work order process where MnDOT, the Utility Owner, and the design-build team agree to a cost and schedule for each relocation. The Notice and Order, which is issued by the Commissioner under the Minnesota utility relocation statutes, will be included as an attachment to the MUA. If a Utility Owner does not enter into a MUA with MnDOT, MnDOT's Notice and Order process will be required to relocate the utilities.</p> <p>More detailed information on the utility coordination process in design-build delivery is provided in the <i>MnDOT Utilities Manual, Design-Build Section</i>.</p>
Railroad Agreements	<p>Railroad agreements are similar to other third-party agreements, but often require long lead time to finalize. For this reason, discussions with railroads should be initiated as early as possible in the project, and agreements with railroads should be in place prior to issuance of the RFP. The design-build contract should recognize potential impacts to schedule and cost due to the unpredictability of railroad participation. Key railroad requirements, including the railroad's involvement, authority, and review times, should be identified in the RFP.</p>

3.1.5 Pre-Qualification Lists

MnDOT's Consultant Services unit maintains pre-qualification lists for various consultant work types. Although 23 CFR 636.208 allows the use of existing pre-qualification lists, the lists should only be used on highly specialized areas of design (e.g. complex roundabouts), technical assistance (e.g. environmental monitoring), and to improve the quality of designers on low-bid projects. The use of pre-qualification lists should not be used to unnecessarily limit competition or provide preferential treatment to local firms on federally funded projects.

Incorporating pre-qualification must follow the following procedure:

1. The PM will consult with the DBPM if pre-qualification lists are desired.
2. On full federal oversight projects, the DBPM will consult with FHWA to determine if the use of the pre-qualification list will limit competition.
3. The DBPM will include the pre-qualification requirement within the RFQ, with reference to the work type with a link to the MnDOT prequalification website.

4. The PM will include the requirements in Book 2, Section 2 of the RFP.
5. If the PM wants to add pre-qualification lists to the RFP, but did not include the requirements in the RFQ, the following apply:
 - a. The pre-qualification list cannot contradict the requirements for Key Personnel or firms identified in the RFQ or RFP. The use of pre-qualification firms should supplement, not replace, individuals in the SOQs.

3.1.6 Sole-Source Clauses

Sole-source clauses are used to ensure sufficient competition exists for the project. Sole-source clauses prevent design-build teams from obtaining resources which would result in only one (or limited number) of design-build firms available to meet the requirements of the contract.

Sole-source clauses should only be used in very limited situations and for very unique items. For example, if there are only one or two suppliers or designers for a special item, the clause will ensure that one design-build team is not able to procure all available resources and restrict competition.

The following procedures apply when incorporating sole-source clauses:

1. The PM will consult with the DBPM if sole-source clauses are to be used as part of the short-listing process.
2. If the DBPM agrees that sole-source clauses might be necessary, the PM will conduct a study to determine the availability of the item/service. The study needs to include a financial analysis showing how competition will be limited without a sole-source clause.
3. The DBPM will consult with MnDOT's Chief Council office on the results of the study to determine if sole-source clause needs to be included in the RFP.
4. If approved by MnDOT's Chief Council office, the DBPM will draft the RFP sole-source clause with input from MnDOT Director of Contract Management and obtain FHWA concurrence on federal aid projects.
5. If at all possible, include the sole-source clause in the original RFP release, not as an addendum.

3.1.7 Maximum Price Contracts

A maximum price contract specifies the maximum price in which a design-build team can bid. Design-build teams' price proposals over the price cap are non-responsive, but the design-build team may receive a stipend if they are responsive in all other areas of the RFP besides the price.

If all price proposals exceed the cap, MnDOT has the option to: 1) not pursue design-build procurement or 2) re-issue the RFP. To award the contract, the RFP must be re-issued and a second letting must occur. This may result in paying an additional stipend.

Maximum price contracts have the greatest potential for success on flexible scope projects. Flexible scope projects allow design-build teams to innovate and reduce costs without tight contract restrictions. Incorporating maximum price clauses on fixed scope projects limits innovation. This increases the probability that design-build teams will not meet the price cap.

Stipends are not eligible for federal participation on maximum price contracts.

The following procedures apply when incorporating maximum price clauses in design-build contracts.

1. The PM is responsible for determining the maximum price dollar amount based upon a detailed cost estimate.
2. The use of maximum price clauses must be conveyed to potential design-build teams in the procurement documents (RFQ and RFP) as follows:
 - a. Request for Letters of Interest – indicate that the project will likely include a maximum price clause, but do not specify amount.
 - b. Request for Qualifications – include in Section 2.2:

A maximum price proposal value will be included in the RFP. The estimated value of the maximum price proposal is listed in Section 6.2.2.

- c. Request for Qualifications- Include in Section 6.2.2 (RFP Requirements):

The maximum price proposal value that MnDOT will accept for the Project. Proposers that submit Price Proposals over the maximum price proposal value will be deemed non-responsive. See Section 6.6 for impacts to the stipend. The estimated value of the maximum price proposal value is \$XX million, and is subject to change as the scope of the project is finalized during the RFP development process.

- d. Request for Qualifications - Include in Section 6.6 (Stipends):

MnDOT will award a stipend of {\$XXXXXX} to each short listed, responsible Proposer that provides an unsuccessful proposal and a proposal that is responsive to all aspects of the RFP excluding the maximum price proposal value requirement.

- e. Request for Proposals - Include in ITP Section 5.3.2:

Proposers that submit Price Proposals that exceed {\$XXXXXX} shall be deemed non-responsive.

- f. Request for Proposals – Include in ITP Section 6.4 (Stipends):

MnDOT will award a stipend of {\$XXXXXX} to each short listed, responsible Proposer that provides an unsuccessful proposal and a proposal that is responsive to all aspects of the RFP excluding the maximum price proposal value requirement.

3. The DBPM will update the pass/fail requirements in the Technical Proposal Evaluation Manual to reflect that Price Proposals over the maximum price will be deemed non-responsive.
4. If the Price Proposal exceeds the maximum price, the adjusted score will not be calculated at the letting. The adjusted score box will read “non-responsive”.

3.1.8 Project Development Checklist

To aid in the development of the project, Form 3.1a provides a general checklist for the PM and DBPM to use throughout the procurement process. Listed below are the procedures for implementing the checklist.

1. When a potential design-build project is identified, the DBPM will meet with the PM to determine the status of the project.
2. The DBPM should track the status of the project using the Project Development Checklist (see Form 3.1a). The DBPM and PM should continue using the checklist as a guide during the development of the project.
3. The DBPM and PM should develop a project schedule using the guidelines listed in [Section 1.4.4](#). Once final, the project schedule should be included in PPMS.

Exhibit

3.1-1: NPDES Permit Requirements MOU

Forms

Form 3.1a: Project Development Checklist

3.2 Engineering Estimates

During the development of the project, project estimates should be developed and updated frequently as the scope is refined. For the purpose of design-build projects, estimates can be broken down into the following categories:

Planning, Scoping and Preliminary Estimates: These estimates are used to establish a baseline cost for budgeting and for conveying estimated costs within the procurement documents. State statutes require that the estimated cost of design and construction be included in the RFQ and RFP documents. The value published within the RFQ and RFP shall be listed as a range of values.

The PM is responsible for developing and updating planning, scoping and preliminary estimates as the scope of the project is refined. The development of these estimates should follow procedures and guidelines within MnDOT's Cost Estimation and Cost Management (CE/CM) Technical Reference Manual.

Design Estimates: These estimates are used to develop the engineer's estimate. The design estimates should reflect the project's cost according to the requirements of the RFP and staff approved layout.

The PM, with support from MnDOT specialty units, is responsible for developing the final design estimates using Form 3.2a Project Estimate Template while following the procedures and guidelines within MnDOT's CE/CM Technical Reference Manual.

Engineer's Estimate: This estimate is a confidential estimate used for multiple reasons such as to develop DBE goals and authorize funding on federally funded projects. This estimate is also used to analyze and justify all design-build team's price proposals during pre-award activities. This estimate is prepared as the RFP is being finalized and is updated, as necessary, throughout the procurement process up to the letting.

The engineer's estimate is primarily prepared by the MnDOT Estimating Engineer (Office of Technical Support), with input from the PM, bridge estimating unit, and other functional groups, as needed. The engineer's estimate shall be prepared using the following procedure:

1. Engineer's estimates need to be stored in a secure location and should not be stored electronically on shared network drives.
2. Access to the engineer's estimate should be limited to individuals directly preparing the estimate. The PM shall restrict access rights to cost information used to prepare the engineer's estimate.
3. The PM will hold a cost estimating kick-off meeting with the DBPM, MnDOT Estimating Engineer, FHWA (on federal funded projects) and other functional groups (e.g. Municipal Agreement, Utility Agreements), as needed, to discuss the cost estimating process, go over the current cost estimate, and coordinate the

- development of the engineer's estimate. The kick-off meeting will take place as soon as a project has been identified to use the design-build delivery method.
4. The PM will use the design estimate to prepare a draft engineer's estimate according to MnDOT's CE/CM Technical Reference Manual. The PM will use the Project Estimate Template (Form 3.2a) for the draft engineer's estimate. The template will be used to identify line items needed for bidding the project. The Project Estimate Template format under the construction heading follows the format of MnDOT's Standard Specifications for Construction. The PM may modify the Project Estimate Template as necessary to capture project costs.
 5. The engineer's estimate will include:
 - a. A quantity breakdown of major items, including line item references to MnDOT's Standard Specifications for Construction;
 - b. Separate line items for contingency/risk;
 - c. Funding groups for each line;
 - d. Assumptions documented for each line, as necessary; and
 - e. Supporting documentation.
 6. The PM will provide the draft engineer's estimate and supporting documentation (if necessary) to the MnDOT Estimating Engineer one month prior to federal authorization on full federal oversight projects (see [Section 4.7.6](#)) or at RFP release for all other projects. The MnDOT Estimating Engineer will use this information to develop the official MnDOT Engineer's Estimate.
 7. Immediately following the letting, the PM, Estimating Engineer, and DBPM will:
 - a. Adjust the engineer's estimate if any ATCs are included in the winning design-build team's technical proposal. The PM may have to investigate the cost savings of the ATCs.
 - b. Compare the design-build team's price proposal to the official engineer's estimate during the pre-award bid analysis.
 - c. Prepare the justification letter.
 - d. The Estimating Engineer will send the justification letter to the DBPM or CLS to include in the concurrence in award package.
 8. The official Engineer's Estimate is not public until award of the project. The DBPM is responsible for releasing this information in accordance with [Section 2.5](#).

Exhibits

None

Forms

Form 3.2a: Project Estimate Template

3.3 Civil Rights

The Office of Civil Rights (OCR) has several programs which often require the incorporation of special provisions within the design-build RFP. These programs include:

- Disadvantage Business Enterprise (DBE)
- Equal Opportunity Program (EEO)
- On-the-Job Training (OJT)

Early coordination with the OCR is recommended on every design-build project. The OCR has direct contact with DBEs and can facilitate communication with design-build teams. Increasing the communication between design-build teams and DBE contractors may increase DBE participation on federally funded projects.

DBE meet-and-greets are often used to foster this communication. The DBE meet-and-greets are formal meetings between design-build teams and potential DBE contractors. The meet-and-greets often begin with the MnDOT PM giving an overview of the project, followed by DBE and design-build teams introducing themselves. Often, each design-build team is given a conference room to meet individually with the DBEs. Unless otherwise approved by OCR, DBE meet-and-greets will be held on all federally funded design-build projects (see DBE Communication below).

Listed below are several procedures for communicating with OCR and procedures for preparing civil right contract clauses.

3.3.1 DBE Communication

1. On federally funded projects, DBE firms should be notified very early in the procurement process. At a minimum, the DBPM will notify the OCR when:
 - a. Any early design-build team communications are to take place (see [Section 3.4](#)).
 - b. A pre-RFQ meeting has been planned for a project.
 - c. A RFQ is advertised for a project.
 - d. A RFP is advertised.
2. Prior to the RFP being released, the PM will contact the OCR to schedule a DBE Meet and Greet.
 - a. OCR and the PM will mutually agree upon the time and place for the meeting. The meeting should be held one to three weeks after the RFP is issued.
 - b. OCR will arrange for the room and contact the DBE firms.
 - c. The PM will contact all short-listed design-build teams and invite the FHWA.

- d. The DBPM will publish the date and time in the ITP and on the design-build website.
3. The OCR and the PM will facilitate the Meet and Greet. The Meet and Greet should include an overview of the project by the PM, a review of the DBE goal by OCR, and opportunities for the DBEs to interact one-on-one with the short-listed design-build teams.

3.3.2 DBE Goals

1. DBE goals are only required on federally funded projects.
2. The OCR is responsible for setting the DBE goal.
3. At least one month before the RFP is to be issued, the PM will schedule a meeting with the DBPM and OCR to establish the DBE goal on the project.
 - a. The Engineering Estimate is the basis for setting the goal.
 - b. The role of the PM and DBPM is to assist OCR with understanding the estimate, types of work, provide and answer any questions/provide supplemental information to assist OCR with establishing the goal.
4. OCR will finalize the goal and provide a copy of the DBE Special Provisions to the DBPM for inclusion into the RFP.
5. The DBPM will incorporate the DBE Special Provisions into Book 1 and incorporate the goal in the ITP.

3.3.3 EEO Requirements Program

1. At least one month before the RFP is to be issued, the DBPM will contact OCR regarding EEO requirements.
2. The DBPM is responsible for incorporating the EEO requirements into Book 1 and the ITP.

3.3.4 OJT Requirements

1. At least one month before the RFP is to be issued, the DBPM will contact OCR to set the OJT requirements.
2. OCR will provide the DBPM with the OJT requirements.
3. The DBPM will incorporate the OJT requirements into Book 1 and the ITP.

Exhibits

None

Forms

None

3.4 Early Design-Build Team Coordination

Early coordination is defined as communication with prospective design-build teams or firms prior to the release of procurement documents such as an RFQ or RFP. Early coordination with potential design-build teams can be used to minimize project risk.

Examples of early coordination include:

Procurement Determinations	Assess the feasibility of different procurements (e.g. design-build, design-bid-build) for a specific project.
Constructability Reviews	Assess the feasibility of project aspects prior to advertisement
Pre-RFQ Meetings	Obtain input into the procurement and RFQ requirements.
Draft RFQs	Solicit feedback on draft RFQ's.
DBE Coordination	Allow design-build teams and DBE firms to meet before the formation of teams
RFQ Informational Meetings	Discuss the project and procurement with potential design-build firms.
Draft Request for Proposals	Obtain feedback on complex sections of the RFP.
Utility Coordination	Invite design-build teams to utility coordination meetings to assess schedule and utility relocation risks.
DBE Coordination	Allow design-build teams and DBE firms to meet and form relationships
Project Status Updates	Inform proposers of the status of the RFP and other developments.

Federal regulation 23CFR 636.115 encourages early information exchanges to, among other things, improve the understanding of the requirements and industry capabilities, identify and resolve concerns regarding the procurement strategy including contract types, terms and conditions and address feasibility of requirements.

Early design-build team coordination is encouraged, but opportunities should be advertised and offered consistently to all firms interested in the design-build project. Information obtained from any early design-build team coordination will be made to all potential offerors as soon as possible.

If early design-build team coordination is desired, the PM will contact the DBPM. The DBPM will be responsible for coordinating the advertisement on the MnDOT Design-Build Website and the MnDOT Bid Letting website if applicable.

The MnDOT Design-Build Website should contain the detailed early coordination information (date/locations for meetings, draft RFQ's, results of early communication for other offerors). Listed below are several examples:

Example 1: Pre-RFQ Meeting Notice

Notice to All Design-build teams (May 24, 2010)

TH 13/101 Design-Build Contract – MnDOT will be conducting a pre-Request for Qualification informational meeting for design-build teams interested in the design and construction of a new interchange at the intersection of TH 13/101 in the City of Savage (Scott County, MnDOT Metro District). The meeting will be held at the following time and location:

Date: June 10, 2010
Time: 8:00 to 10:00 am
Location: MnDOT Metro District
Waters Edge Building
1500 W County Road B2
Roseville, MN 55113
Conference Room A&C

Example 2: Constructability Review

Notice to All Design-build teams (date)

TH 61 Hastings Design-Build Contract – MnDOT will be conducting one-on-one constructability reviews with potential design-build teams interested in providing input into the development of this project. This design-build project includes the construction of either a cable-stay or tied-arch bridge on TH 61 over the Mississippi River. Items to be discussed at the constructability review include utility impacts, flood risk, and construction staging. The meetings will be conducted on {dates} at {location}. If interested, contact {PM, phone, e-mail} to schedule a meeting.

Additional information regarding this meeting can be found on the following website: [{insert website}](#)

When early coordination is desired, the following procedures apply:

1. Constructability Reviews: The PM will follow MnDOT's Contractor Constructability Review guidelines in consultation with the DBPM. The guidelines can be found on MnDOT's Innovative Contracting website (<http://www.dot.state.mn.us/const/tools/innovativecontract.html>).
2. Draft Solicitation Documents: The PM must obtain approval of the DBPM prior to releasing any draft solicitation documents (LOI, RFQ, RFP, etc.).
 - a. The PM is responsible for obtaining all comments on draft solicitation documents and providing a copy of the comments to the DBPM.
3. Coordination Meetings: The PM must obtain approval from the DBPM prior to scheduling any pre-RFP external coordination meetings (e.g. Utility, DBE).
 - i. Pre-RFP meetings must be optional to design-build teams. Meetings should be group meetings, not one-on-one.
 - ii. The PM will be responsible for setting up all meetings and notifying the proposer's single points of contact.
4. Project Status Updates: The PM will e-mail the design-build team's single point of contact and cc' the DBPM.
5. For all other types of early coordination concepts, the PM will consult with the DBPM prior to beginning any communication with design-build teams. The DBPM will consult with the FHWA on full federal oversight projects.

Exhibits

None

Forms

None

3.5 Legislative Notice – Project

State Statute 161.3412 and 161.3416 requires the Commissioner to notify the chairs of the Senate and House of Representatives committees with jurisdiction over transportation policy and transportation finance each time the commissioner decides to use the design-build method of procurement and explain why that method was chosen.

The following steps outline the legislative notification process.

1. After a project has been identified as a design-build contract, the DBPM will draft a letter to the senate and house of representative committees with jurisdiction over transportation policy and transportation finance for the commissioner signature (see example Exhibit 3.5-1).
2. The DBPM will send the letter to MnDOT's Government Affairs staff for review. MnDOT Government Affairs will route the letter to the Commissioner's Office.
3. The DMPM will place a signed copy in the Project File and send a courtesy copy to FHWA.

Exhibits

3.5-1: Sample Legislative Notice – Project Letter

Forms

None

Section 4. Advertisement Activities

This section outlines the procurement steps necessary for design-build contracting.

4.1 Websites and ftp site

Websites and ftp sites are used to advertise the project and relay project information to the design-build teams during the procurement process. During procurement, a variety of MnDOT web pages are used. These often include:

Project Specific Websites – These pages are developed and maintained by the district. These pages convey general project information and project timelines and are intended for the general public.

Design-Build Website – This website is maintained by the DBPM and contains information related to the procurement of design-build projects. The primary audience for this website is design-build teams, but all information is open to the public. This website contains solicitation documents (RFQ, RFP), procurement schedules, links to project data (CADD files, utility information), and other information on an ftp site. This website links back to the project specific website and a project specific ftp site.

MnDOT Bid Letting Website – This website is maintained by the Office of Technical Support. The bid letting website is the official advertisement site for construction projects, including design-build. The primary audience is design-build teams, suppliers, and subcontractors. The advertisement for design-build projects links to the MnDOT Design-Build website.

In addition to web pages, an ftp site is used for each design-build project. The ftp site provides information to design-build teams. Reference Information Documents (RID), RFQ, RFP, clarifications, and addendums are posted to this website.

Prior to any design-build solicitation, the following procedure apply to the creation and maintenance of website and ftp sites.

1. The PM is responsible for updating all Project Specific Websites.
2. The DBPM will update the Design-Build website (<http://www.dot.state.mn.us/designbuild/>) whenever a new design-build project is added.
3. Within the Design-Build website, the DBPM will create a procurement website for each project (See Example). The procurement website will:
 - a. Include the procurement schedule
 - b. Post all information for interested teams.
 - c. Have direct links to the RFQ, RFQ Addenda and RFQ Clarifications.



- *To be posted by the DBPM after award (See [Section 6.1.1](#)).

4.1-1: Design-Build Homepage
4.1-2: Sample Design-Build Project Specific Page

None

4.2 Request for Letters of Interest

A Request for Letters of Interest (RLOI) notifies design-build teams that an RFQ or RFP is forthcoming on a project. Although not required by state statute, most design-build projects issue RLOI. Responses to the RLOI are used to assist MnDOT with gauging industry interest in the project. Design-build teams do not have to respond to the RLOI in order to respond to the RFQ or RFP.

If requests for letter of interest are desired, the follow procedures apply.

1. After a project has been identified as a design-build contract, the PM will draft the RLOI using the format in Exhibit 4.2-1. The RLOI should contain:
 - location of project
 - highway number
 - approximate project limits
 - MnDOT district
 - general project scope
 - procurement method
 - Anticipated procurement and construction schedule
 - PM contact information
 - a listing of information to be contained in the LOI
 - due date and time of LOI
 - listing of any informational meetings about the project
 - procurement disclaimer
2. The DBPM and/or PM will review the draft RLOI.
3. The DBPM will review the RLOI and advertise the RLOI in accordance with [Section 4.1](#) and [Section 4.4](#).
4. The PM will keep a log of responses and will distribute the RFQ to all responders of the RLOI (see [Section 4.5.2](#)).

Exhibits

4.2-1: Sample Request for Letters of Interest

Forms

None

4.3 Technical Review Committee

The Technical Review Committee (TRC) evaluates Statements of Qualifications (SOQ) in response to a Request for Qualification (RFQ) and technical proposals received in response to a Request for Proposals (RFP).

State Statute 161.3420 requires that the Commissioner establish the TRC during step one (RFQ) and before solicitation. The statute also requires that the TRC be made up of at least five individuals, one of whom is an individual whose name and qualifications are submitted to the commissioner by the Minnesota chapter of the Associated General Contractors (AGC). Details of the minimum qualifications of the AGC representative are outlined in a Memorandum of Understanding (MOU) with AGC (see Exhibit 4.3-2).

The TRC is established according to the following procedure:

1. Prior to advertising the RFQ, the DBPM will contact Minnesota AGC requesting the name of the AGC representative. The contact shall be in writing (See Exhibit 4.3-1).
2. The PM will recommend all other TRC members to the DBPM. The TRC must:
 - a. Include at least five individuals (including AGC member). Five to seven members is preferred.
 - b. Include at least one MnDOT manager (Senior Administrative Engineer or higher).
 - c. Include Principal Engineer level (or equivalent) positions or higher.
 - d. Not include individuals that work for the MnDOT manager on the TRC.
 - e. Not include the PM, unless low-bid.
 - f. Not include individuals directly involved with the review and approval of PAEs, if the PAE has any impact on technical scoring.
3. The TRC may include non-MnDOT employees, such as city and county representatives. Non-MnDOT TRC members:
 - a. Should only be used when the city/county has a significant financial contribution to the project.
 - b. Must not be elected officials.
 - c. Must be a licensed professional engineer or hold a leadership position (e.g. Public Works Director) in a department with significant civil engineering roles.
4. The DBPM may request deviations to points 2 and 3 above from the Chief Engineer.

5. The DBPM will forward the list of TRC members to the Innovative Contracting Director and Chief Engineer for concurrence.
6. If the TRC needs to be changed, the PM will contact the DBPM. The DBPM will obtain concurrence on the change from the Innovative Contracting Director and the Chief Engineer.

Exhibit

- 4.3-1: Sample AGC TRC Request Letter
- 4.3-2: MOU with AGC
- 4.3-3: Process for Administering Design-Build Procurement

Forms

None

4.4 Project Advertisement

Design-build projects need to be advertised to ensure fair and open competition. MnDOT's standard practice is to advertise all design-build procurements on MnDOT's official bid letting website. Details on the official website and other websites used during procurement can be found in [Section 4.1](#).

The following table lists the advertising requirements depending on the procurement type used. Timelines for the advertisements can be found in [Section 1.4.4](#).

Table 4.4-1. Advertisement Requirements

	Best-Value (RFQ & RFP)	Low-Bid (RFQ & RFP)	Low-Bid (RFP Only)
Request for Letter of Interest (RLOI)	RLOI is Optional. Advertise if used.		
Pre-RFQ Meeting	Pre-RFQ Meeting is Optional. Advertise if used.		
Request for Qualification (RFQ)	Yes	Yes	No
Request for Proposal (RFP)	No (no advertisement required, RFP is given directly to short-listed teams)		Yes

Listed below are the project advertisement procedures:

1. The DBPM is responsible for posting procurement documents (RLOI, pre-RFQ meeting notice, RFQ, or RFP) on the MnDOT Design-Build website, providing a direct link to these documents. All postings should be dated.
2. The DBPM will contact the Office of Technical Support (OTS) to have the notice posted on the official MnDOT Bid Letting Website.
3. Listed below are sample advertisements::

Sample 1: Request for Letter of Interest (RLOI) Advertisement

Notice to All Design-build teams {date}

Elk Run Interchange (TH 52) Design-Build Contract - MnDOT will be soliciting Letters of Interest from design-build teams interested in the construction of a new interchange on TH 52 in Pine Island (15 miles north of Rochester). The Request for Letters of Interest and project information can be found on the following website: <http://www.dot.state.mn.us/designbuild/ElkRun/index.html>

Sample 2: Pre-RFQ Meeting Advertisement

Notice to All Design-build teams {date}

MnDOT will be conducting an informational meeting for all firms interested in pursuing a design-build contract for the construction of a new interchange on TH 52 in Pine Island (15 miles north of Rochester). The meeting will be held at the following time and location:

Date:

Time:

Location:

Attendance at this meeting is not required to submit a Statement of Qualifications in response to the design-build Request for Qualifications. More information can be found on the following website:

<http://www.dot.state.mn.us/designbuild/ElkRun/index.html>

Sample 3: Request for Qualification (RFQ) Advertisement

Notice to All Design-build teams {date}

Elk Run Interchange (TH 52) Design-Build Contract - MnDOT will be soliciting Statements of Qualifications (SOQ's) from design-build teams interested in the construction of a new interchange on TH 52 in Pine Island (15 miles north of Rochester). The Request for Qualification (RFQ) and project information can be found on the following

website: <http://www.dot.state.mn.us/designbuild/ElkRun/index.html>

Sample 4: Request for Proposal (RFP) Advertisement

Notice to All Design-build teams {date}

Elk Run Interchange (TH 52) Design-Build Contract - MnDOT will be soliciting technical and price proposals from design-build teams interested in the construction of a new interchange on TH 52 in Pine Island (15 miles north of Rochester). The RFP, addendums, clarifications and project information can be found on the following

website: <http://www.dot.state.mn.us/designbuild/ElkRun/index.html>

4.5 Request for Qualification (RFQ)

The Request for Qualifications (RFQ) is used to determine the list of the most highly qualified contractors on two-step best-value and two-step low-bid projects. The RFQ outlines the minimum and desired qualifications of the teams. The qualifications are tailored to each project based upon the goals and risks presented by the project.

State Statute 161.3420 defines the minimum requirements of the RFQ as follows:

The commissioner shall prepare or have prepared an RFQ. The RFQ must include the following:

- (1) the minimum qualifications of design-builders necessary to meet the requirements for acceptance;*
- (2) a scope of work statement and schedule;*
- (3) documents defining the project requirements;*
- (4) the form of contract to be awarded;*
- (5) the weighted selection criteria for compiling a short list and the number of firms to be included in the short list, which must be at least two but not more than five;*
- (6) a description of the request for proposals (RFP) requirements;*
- (7) the maximum time allowed for design and construction;*
- (8) the commissioner's estimated cost of design and construction;*
- (9) requirements for construction experience, design experience, financial, personnel, and equipment resources available from potential design-builders for the project and experience in other design-build transportation projects or similar projects, provided that these requirements may not unduly restrict competition; and*
- (10) a statement that "past performance" or "experience" does not include the exercise or assertion of a person's legal rights.*

Each interested design-build team must respond to the RFQ with a Statement of Qualifications (SOQ) to the RFQ.

The following sections outline the steps required to develop, publish, respond to questions, and issue addendums to a RFQ.

4.5.1 RFQ Development

1. The DBPM will maintain document control over the RFQ template. The DBPM will be responsible for ensuring that the RFQ meets the requirements of Minnesota state statutes and federal regulations.
2. The PM will set-up an RFQ Development meeting with the DBPM and other key individuals to determine the goals and scoring criteria for each project. All individuals attending this meeting must sign a confidentiality form. The PM will retain all copies of the confidentiality forms (see [Section 2.4](#)).

3. The scoring criteria should be based upon the following combination of concepts.

- a. Submitter Organization
- b. Key Personnel
- c. Project Understanding
- d. Project Approach

note – Besides firms and individuals listed in the SOQ, all other commitments to project approaches are non-binding. Project Approach should be general approaches on management techniques and not specific to project elements such as how a design-build team will maintain traffic.

4. The DBPM will draft the RFQ based on the template and the RFQ development meeting using the MnDOT Design-Build Program *Style Guide for Preparing Documents*.
 - a. If pre-qualification lists are being considered, see [Section 3.1.5](#).
 - b. If a maximum price is considered, see [Section 3.1.7](#).
 - c. If Pre-Approved Elements are being considered, see [Section 4.10](#).
5. The DBPM will electronically store the draft RFQ in a secure location.
6. The DBPM will provide a draft RFQ for the PM to review.

4.5.2 RFQ Publishing

1. Upon completion of the RFQ, the DBPM will advertise the RFQ (see [Section 4.5](#)).
2. If letters of interest have been received for the project, the PM will contact firms submitting letters of interest and inform them that the RFQ has been posted to the MnDOT design-build website. The PM will 'cc the DBPM on all correspondence with firms.
3. The DBPM will provide a courtesy copy of the RFQ to FHWA on full federal oversight projects.

4.5.3 RFQ Clarifications

The clarification process allows MnDOT to respond to design-build team questions during the RFQ advertisement period. Responses to clarification questions need to be carefully drafted for consistency and ensure fair competition. Clarification responses are meant to clarify the RFQ, but should not be used to materially change the RFQ. Material changes to the RFQ should be modified via the addendum process in [Section 4.5.4](#).

Listed below is the procedure for receiving and responding to RFQ clarification questions:

1. The PM will retain document control of the clarifications.
2. The PM will distribute (via e-mail) the clarification request form to each team with instructions to submit their clarifications using this form. Forms are available on the design-build website.

3. Clarification questions from teams need to be submitted in writing to the PM in accordance with the RFQ. MnDOT and the FHWA may also generate clarification questions based on items discussed at any meetings with the teams.
4. The PM will draft responses to the clarification questions. All responses need to be fact based (no opinions). Refer to the RFQ sections when drafting responses, as necessary. Refer to modifying the RFQ in future addendums when drafting responses, as necessary.
5. The PM will draft responses to the clarifications using the following format:
 - a. The PM will use the Clarification Response Form.
 - b. Clarifications will be numbered sequentially using the format Clarification No 1, Clarification No 2, Clarification No 3, etc:
 - c. Questions will be numbered as follows (Clarification No – Clarification Question No.). For example, 1-1, 1-2, 1-3 for questions responded to in Clarification No 1. 2-1, 2-2, 2-3 for questions responded to in Clarification No 2.
 - d. Do not disclose which team submitted the clarification question.
 - e. The PM will send a draft to the DBPM no later than 4:00 PM each Thursday. Any questions that cannot be answered by 4:00 PM each Thursday will move to the next clarification the following week or until they are answered.
 - f. The DBPM will review and approve the clarification.
 - g. The PM will post the clarification to the ftp site no later than 5:00 PM each Friday.
 - h. For teams which requested notification of all clarifications, the PM will send them an e-mail notifying them that a clarification has been posted to the ftp site.
 - i. The DBPM will send a courtesy copy of all clarifications to FHWA on full federal oversight projects.

4.5.4 RFQ Addendums

RFQ addendums are generated by clarification questions, but can also be generated by MnDOT to modify the contents of the RFQ. Design-build teams begin preparing SOQ's shortly after the RFQ is issued. Changes to the RFQ often have a major impact on the design-build SOQ. If an addendum needs to be issued less than one week before the SOQ due date, the PM and DBPM should consider extending the SOQ due date.

1. The DBPM will maintain document control of the RFQ.
2. All requested changes to the RFQ must be submitted to the DBPM. The DBPM will only accept requested changes from the FHWA or PM, or the PM's designee.
3. The DBPM will draft the addendums using the following format:

- a. Addendums will be numbered sequentially using the format Addendum No 1, Addendum No 2, Addendum No 3. etc:
 - b. The first addendum will be produced by tracking changes to the original RFQ issued.
 - c. For each subsequent addendum, accept all changes from the previous addendum prior to starting. Track all changes.
 - d. The title page shall list the addendum number and date of the addendum.
 - e. The footnote shall list the addendum number and date.
 - f. Save the addendum using the following naming convention: {SP #, Hwy #, Project Name, RFQ, Addendum #}. (e.g. 2505-48, TH 52, Elk Run Interchange, RFQ Addendum No 1.).
4. The DBPM will post the addendum in pdf format on the website or ftp site identified within Section 2.5 of the RFQ.
 5. The DBPM will notify the PM that an addendum has been posted.
 6. The PM will notify Submitters that an addendum has been posted if the Submitters requested the notification per Section 2.5 of the RFQ.
 7. The DBPM will send a courtesy copy of all addendums to FHWA on full federal oversight projects.

Exhibits

4.5-1: MnDOT Design-Build Program *Style Guide for Preparing Documents*

Forms

Form 4.5a: RFQ Template

Form 4.5b: RFQ Clarification Request Form

Form 4.5c: RFQ Clarification Response Form

4.6 Statement of Qualification (SOQ) Evaluation and Short-Listing

If an RFQ is issued for either a two-step best-value or two-step low-bid project, each interested design-build team responds with a Statement of Qualifications. The SOQs are evaluated by the TRC established by the commissioner (see [Section 4.3](#)). The TRC evaluations are used to determine a short-list of the most highly qualified design-build teams. The RFP is only issued to the short-listed teams. Normally, three to five teams are short-listed to ensure competition. State Statute 161.3420 Subd 4 and federal regulation 23 CFR 636.207 limits the short-list to a maximum of five teams.

Listed below are the procedures for receiving SOQs, evaluating SOQs, determining the short-list and notifying design-build teams of the short-list results.

4.6.1 Receipt of SOQ

1. The DBPM receives all SOQs. The DBPM will time stamp receipt of SOQs and provide a receipt to Submitter.
 - a. For hand-delivered proposals, use Form 4.6a.
 - b. For electronic delivery, the DBPM will send an e-mail to the Submitter single point of contact acknowledging receipt of the SOQ.
2. The DBPM will develop an SOQ distribution log using Form 4.6c (see also example Exhibit 4.6-7). The TRC evaluator number should be the same as the SOQ distribution number.

4.6.2 Evaluation Committee

The review and evaluation of SOQ is often performed by a team of experts, scoring members (TRC), legal staff, and process oversight experts. Although the TRC are the only ones to score the SOQs, technical advisors (such as the PM) are frequently used to provide input into the process. Technical advisors provide strengths and weaknesses to the TRC. The DBPM, FHWA and Department of Administration form the Process Oversight Committee (POC), which oversees that the procurement is conducted in accordance with this procurement manual, state laws, and federal regulations.

4.6.3 Short-Listing

1. The PM shall arrange the time/location for the SOQ Evaluation Kick-off Meeting.
 - a. The purpose of the SOQ Evaluation Kick-Off Meeting is to distribute the SOQs and review the process for evaluating the SOQs. All TRC members, technical advisors and process oversight committee members are required to attend unless approved by the DBPM. Note: FHWA oversight and legal advisors are not required to attend if they have attended a kick-off meeting for other projects.

- b. If a TRC member or advisor is not able to make the meeting, the DBPM will schedule a one-on-one kick-off meeting with the person to distribute the SOQ and review the SOQ evaluation process.
 - c. The DBPM will moderate the SOQ Evaluation Kick-off Meeting.
 - d. The DBPM will prepare and distribute evaluation packages to each member in attendance. The evaluation package will include (at a minimum):
 - Agenda
 - Copy of the Request for Qualifications (latest addendum)
 - Copy of Clarifications
 - Copy of Each SOQ
 - SOQ Evaluation Manual (add additional forms if needed)
 - Conflict of Interest Form
 - List of Key People and Firms listed in the SOQ (Form 4.6c)
 - e. The DBPM will review the SOQ Evaluation Manual in detail.
2. The PM shall arrange for a time/location for the short-list evaluations (except legal subcommittee). The PM shall notify all evaluators of the evaluation schedule.
3. The DBPM shall arrange the legal subcommittee meeting. The PM and TRC do not need to attend the meeting.
4. The DBPM and PM shall attend all SOQ evaluation meetings with the TRC. On full federal oversight projects, the PM will invite the FHWA to all SOQ evaluation meetings.
5. The DBPM will oversee the short-listing process in accordance with the SOQ Evaluation Manual and will record notes in a log (see Form 4.6c). The DBPM will take notes summarizing the TRC evaluations for use in the debriefing meetings.
6. The DBPM will conduct a hand calculation of the TRC scoring and check the scoring versus an electronic spreadsheet (see Form 4.6d).
7. The DBPM will collect all evaluation materials and SOQs from the evaluation team.
8. After the TRC has developed a recommendation for the short-list, the DBPM will prepare a short-list recommendation to the commissioner.
9. The DBPM and PM will meet with commissioner (or designee) to discuss and obtain concurrence on the short-list.
10. On federal aid projects, the DBPM will forward the short-list recommendation letter to the FHWA for concurrence.
11. After concurrence, the DBPM and PM will jointly call each design-build team with the results of the short-list.
 - a. Do not inform teams that they were unsuccessful via voicemail.
 - b. Offer each team a debriefing meeting (See [Section 6.3](#)).
12. The DBPM will post the short-list results on the design-build website after all design-build teams have been notified.

13. The DBPM or PM will draft a letter to each team with the short-list results. The DBPM or PM will e-mail the letter to each team and send a hard copy via mail. The DBPM will retain a copy in the project file.

4.6.4 SOQ Evaluation Materials Possession

1. At the conclusion of the SOQ Evaluation Process, the DBPM will retain at least two copies of the SOQs. One for the DBPM office file and one for the MnDOT Library. The copy for the MnDOT Library should be clean of any evaluator notes or comments. The PM will retain all the other copies until conclusion of the procurement process.
2. The DBPM will retain all SOQ evaluation materials in accordance with standard data retention practices.
3. The DBPM will release the SOQ and SOQ evaluation manual in accordance with [Section 2.5](#) Data Practices (Public Information) Procedure.

Exhibits

- 4.6-1: SOQ Evaluation Agenda (sample)
- 4.6-2: Short-list Posting for design-build website (sample)
- 4.6-3: Short-list Recommendation Letter (sample)
- 4.6-4: POC Log (sample)

Forms

- Form 4.6a: Receipt of SOQs Form
- Form 4.6b: SOQ Evaluation Manual Template
- Form 4.6c: SOQ POC Log Template
- Form 4.6d: SOQ Scoring and TRC Summary Template
- Form 4.6e: Short-List Recommendation Letter Template
- Form 4.6f: Short-list Letter – Successful Team Template
- Form 4.6g: Short-list Letter – Unsuccessful Team Template

4.7 Request for Proposal (RFP) Development

The Request for Proposal (RFP) outlines the contract requirements, project scope, project standards, and instruction on how to respond to the solicitation. The RFP is required on all design-build projects. State Statute 161.3422 outlines the minimum requirements that must be included in the RFP. These items include:

- Scope of Work
- Design-build qualifications
- Selection criteria, including weight
- Copy of contract documents
- Maximum allowable time to design and construct the project
- Estimated cost of design and construction
- Requirement that technical and price proposals be submitted as two separate packages
- Requirements for a schedule, critical path method, or bar chart
- Requirements that the price proposal contain all costs
- Date, time and location of the public opening
- Other information relative to the project

Listed below is an overview of the RFP documents and processes/procedures for developing, amending, and distributing RFPs.

4.7.1 RFP Template

Templates have been developed to maintain consistency between projects. The contents of the RFP will change based on the scope and risks of each project. However, the RFP is typically structured as outlined in the following table.

Table 4.7-1. Standard RFP Format:

RFP Section	Description
Instruction to Proposer (ITP)	The ITP is not a contract document, but it outlines the procurement process, evaluation criteria, and format for submitting technical and price proposals.
Book 1 (Contract Terms and Conditions)	Book 1 outlines the contract terms and conditions and becomes the contract on the project. Book 1 also contains contract definitions, prevailing wage requirements, DBE/EEO/OJT requirements, and warranty clauses.
Book 2 (Project Specific Requirements)	Book 2 outlines the project specific requirements and is tailored to each project. Book 2 is typically divided into the following subsections:

	<ol style="list-style-type: none"> 1. General 2. Project Management 3. Public Information 4. Environmental Compliance 5. Third Party Agreements 6. Utilities 7. Right-of-Way 8. Geotechnical 9. Land Surveying 10. Grading 11. Roadways 12. Drainage 13. Structures 14. Vegetation 15. Visual Quality Management 16. Signing, Pavement Marking, Signalization, and Lighting 17. Traffic Management System (TMS) 18. Maintenance of Traffic 19. Maintenance During Construction 20. Bicycle and Pedestrian Facilities 21. Railroad
Book 3 (Standards)	<p>Book 3 contains the standards that must be used on the project. Book 3 typically contains the following:</p> <ul style="list-style-type: none"> • Standards • Manuals • Technical Memorandums • Standard Specifications • Special Provisions
Reference Information Documents (RID)	<p>The RID is not a contract document, but includes background information to assist the contractor with designing the project.</p>

The order of precedence of the contract documents are listed above, with the exception that all change orders take precedence.

4.7.2 RFP Development

The development of the RFP is an accumulation of information gathered or created during preliminary engineering and other pre-advertisement activities. The RFP should be developed using the RFP template and the following procedure:

1. The DBPM will maintain document control over the RFP template.

2. The DBPM will be responsible for drafting and managing the development of the following sections of the RFP using the MnDOT Design-Build Program *Style Guide for Preparing Documents*:
 - a. Instructions to Proposers (ITP)
 - i. Best-Value Technical Proposal Scoring Criteria needs to be developed using the process outlined in [Section 4.7.3](#).
 - ii. Low-Bid Technical Proposal Evaluation Criteria needs to be developed using the process outlined in [Section 4.7.4](#).
 - iii. Stipend amount must be set according to [Section 6.2](#).
 - iv. The use of Alternative Technical Concepts (ATC) should be developed according to [Section 4.9](#).
 - v. The use of Pre-Approved Elements (PAE) should be developed according to [Section 4.10](#).
 - b. Book 1 and Book 1 Exhibits
 - c. Book 3 (Manuals, Technical Memorandums, Standard Specifications)
3. The PM will be responsible for drafting and managing the development of the following sections of the RFP using the template as a starting point and using the MnDOT Design-Build Program *Style Guide for Preparing Documents*:
 - a. Book 2
 - b. Book 3 (Special Provisions)
 - c. Reference Information Documents
4. The PM may utilize the GEC to assist in developing the RFP. The PM is responsible for developing the work order for the GEC contract.
5. During the development, the RFP will be stored in ProjectWise between the district design-build team and the DBPM. If the GEC will retain document control, the DBPM must have access rights to view the RFP within the GECs document management system.
6. The PM will consult with the DBPM on all changes to the RFP templates. If the changes to the template involve a MnDOT functional office, the PM will invite the DBPM to all meetings and 'cc the DBPM on all correspondence. The DBPM will approve all recommended changes from the functional offices.
7. The PM will conduct at least one meeting with the DBPM and FHWA to review the draft RFP prior to federal authorization.

4.7.3 Best-Value Technical Proposal Evaluation Criteria

Technical proposal evaluation may have a major impact on awarding the design-build contract. Development of the technical proposal evaluation criteria needs to be a systematic, thorough process which accurately outlines the goals and/or risks of the

projects. The following procedure outlines the steps necessary for developing and approving the evaluation criteria to be included in the ITP.

1. The PM is responsible for setting up at least one meeting to develop the evaluation criteria.
 - a. The DBPM must be in attendance.
 - b. The FHWA should also be invited on full federal oversight projects.
 - c. The PM should also invite technical experts or stakeholders to develop the evaluation criteria based upon the risks and goals of the project (e.g. if maintenance of traffic is a large risk item, invite the district traffic engineer.)
2. The DBPM will facilitate the meeting by soliciting a list of goals and risks from meeting attendees. The DBPM may elect to bring past evaluation criteria from similar projects.
3. Based upon the goals and risks identified, the attendees will rank the criteria based upon the value provided to the project. The evaluation criteria should:
 - a. Be clear, defensible, and easy for the proposers and public to understand.
 - b. Not overlap scoring criteria in the SOQ, especially with respect to Key Personnel which have already been evaluated in the SOQ.
 - c. Focus on items which bring measurable value to the project.
 - d. Be tailored to the individual project. Avoid/minimize recycling criteria from project to project.
4. Following the ranking of criteria, the attendees will assign points to criteria and sub-criteria. The total points to be assigned shall not exceed 50 points unless approved by the Chief Engineer.
5. Following the meeting, the DBPM will draft the criteria for inclusion in the ITP. The DBPM may also elect to have the PM draft the criteria and forward to the DBPM for review.
6. The PM may elect to schedule follow-up meetings with the DBPM, FHWA (full federal oversight projects) and technical experts to refine the criteria.
7. After the criteria have been developed, the DBPM will obtain Approval of the evaluation criteria from the MnDOT Innovative Contracting Director and Chief Engineer.
8. All material changes to the evaluation criteria must be approved by the Innovative Contracting Director and the Chief Engineer.

4.7.4 Low-Bid Technical Proposal Evaluation Criteria

Technical proposal evaluation on low bid project should be based on objective criteria. Typical evaluation criteria consist of a legal review of responsiveness based upon the

standard forms provided in the ITP. The following procedure outlines the steps necessary for developing and approving the evaluation criteria to be included in the ITP.

1. The DBPM will develop the evaluation criteria in coordination with the PM. The criteria will be based on pass/fail requirements.
2. After the criteria have been developed, the DBPM will obtain Approval of the evaluation criteria from the MnDOT Innovative Contracting Director.
3. All material changes to the evaluation criteria must be approved by the Innovative Contracting Director.

4.7.5 Funding Kick-Off Meeting

The sources of funding impact how the price proposal form is created and impacts the federal authorization process. To minimize delays to federal authorization and contract award, a funding kick-off meeting should be conducted at least one month prior to releasing the RFP and prior to federal authorization.

The following procedure outlines the steps and procedures associated with conducting a funding kick-off meeting.

1. The PM will schedule the funding kick-off meeting.
2. The PM will invite the DBPM, District PPMS coordinator, Estimating Engineer, Municipal Agreements Engineer, Utility Engineer, Finance Program Accounting, CPPM (Programming Section), FHWA (on full federal oversight projects), and others as necessary.
3. The PM will bring handouts of Form 3.2a (Project Estimate). (see [Section 3.2](#))
4. All participants need to discuss and understand the following, at a minimum:
 - a. Identify funding sources for the project
 - b. What funding sources cover which aspects of the project (bridges, grading, etc., stipends, ROW, design oversight, construction oversight, AGC TRC member compensation, etc.)
 - c. What utility agreements and municipal agreements are part of the project, if any
 - d. Are the bid items set up appropriately for the project
 - e. Identify any state furnished materials to be used on the project
 - f. Identify if project runs through multiple counties, road segments (control sections)
 - g. Identify associated state project (SP) numbers and percentage of work associated with each SP
 - h. Identify if separate authorization is required on ROW, stipends, and design/construction oversight

5. Stipends are not eligible for federal funds when using a maximum price clause (see [Section 6.2](#)).

4.7.6 Federal Authorization

The FHWA must authorize each full federal oversight design-build project before the RFP can be issued. Federal authorization requires an accumulation of various planning and pre-design activities. This procedure outlines the steps and procedures for obtaining federal authorization.

1. Unless otherwise authorized by the FHWA, the following items must be completed prior to requesting federal authorization:
 - a. Completion and approval of the NEPA process
 - b. All R/W is acquired or a Public Interest Finding (PIF) has been obtained
 - c. The DBE goal has been established
 - d. Funding sources have been identified
 - e. Engineer's Estimate is complete
 - f. Agreement numbers
2. The DBPM will contact the CPPM and the MnDOT Special Provisions Engineer and notify them at least one month prior to requesting federal authorization.
3. The PM will consult with the Special Provisions Engineer on the development of the federal authorization form. The PM will complete as much of the form as possible and then forward the federal authorization form to the MnDOT Special Provisions Engineer at least two weeks prior to requesting authorization. The PM will 'cc the DBPM on the request.
4. The MnDOT Special Provisions Engineer will process the federal authorization form and forward to CPPM.
5. The PM will provide CPPM with the utility and municipal agreement numbers and amounts. See [Section 4.7.5](#) for additional information that CPPM may require.
6. CPPM will complete the authorization form and send the information to the FHWA for authorization.
7. The FHWA will notify CPPM, Finance, the PM, and the DBPM that the project has been authorized.

4.7.7 RFP Distribution/Advertisement

The following outlines the process for obtaining RFP approval and the process for issuing the RFP to short-listed design-build teams or advertising the RFP on a single step low-bid process.

1. Prior to sending the RFP to FHWA for approval, the DBPM will review and approve the RFP. The DBPM needs a minimum of one week to review the RFP.
 - a. The PM may request that the RFP be issued prior to obtaining all permits, but the PM will need to provide a schedule to the DBPM and FHWA showing the permits will likely be obtained prior to letting.

- b. The PM may release the RFP prior to having utility agreements, master utility agreements, and municipal agreements signed. All agreements must be final before the project can be awarded.
2. On full federal oversight projects, the FHWA requires 14 calendar days for their review of the RFP. The RFP may be submitted to the FHWA for review prior to the federal authorization form. The PM will provide the FHWA with the following:
 - a. 2 Hardcopies of Book 1, ITP, and Book 2
 - b. 2 CD's of the complete RFP
3. The PM will discuss all FHWA comments with the DBPM prior to making changes to the RFP.
4. The PM will discuss with the FHWA and document how the FHWA comments were addressed.
5. When authorized by the FHWA and DBPM, the PM will post the RFP to the project ftp site (See [Section 4.1](#)).
6. On projects with a short-list (two-step), the PM will notify the short-listed design-build team single point of contact when the RFP is ready. The DBPM will notify OCR that the RFP has been posted to the ftp site.
7. On single step projects, the DBPM will advertise the RFP per [Section 4.4](#) and notify OCR that the RFP has been posted.
8. The PM will provide the following copies of the released RFP:

Table 4.7-2. RFP Distribution

Organization	Two-Step Process (Low-Bid or Best-Value)	Single Step Process (Low-Bid)
Design-Build Teams	One CD of the RFP One Hard Copy of the RFP	Posted to the ftp site
DBPM	One CD of the RFP One Hard Copy of the RFP	
FHWA (full federal oversight projects)	Two CDs of the RFP Two Hard Copies of the RFP	

4.7.8 RFP Clarifications

The clarification process allows MnDOT to respond to design-build team questions during the RFP advertisement period. Responses to clarification questions need to be carefully drafted for consistency and ensure fair competition. Clarification responses are meant to clarify the RFP, but should not be used for material changes to the RFP. Material changes to the RFP should be modified via the addendum process.

Listed below is the procedure for receiving and responding to RFP clarification questions:

1. The PM will retain document control of the clarifications.
2. The PM will distribute (via e-mail) the clarification request form (Form 4.7a) to each team with instructions to submit their clarifications using this form.
3. Clarification questions from teams need to be submitted in writing to the PM in accordance with the RFP. MnDOT and the FHWA may also generate clarification questions based on items discussed at any meetings with the teams.
4. The PM will draft responses to the clarification questions. All responses need to be fact based (no opinions). Refer to the RFP sections when drafting responses, as necessary. Refer to modifying the RFP in future addendums when drafting responses, as necessary.
5. The PM will draft responses to the clarifications using the following format:
 - a. The PM will use the Clarification Response Form (Form 4.7b).
 - b. Clarifications will be numbered sequentially using the format Clarification No 1, Clarification No 2, Clarification No 3, etc:
 - c. Questions will be numbered as follows (Clarification No – Clarification Question No.). For example, 1-1, 1-2, 1-3 for questions responded to in Clarification No 1. 2-1, 2-2, 2-3 for questions responded to in Clarification No 2.
 - d. Do not disclose which team submitted the clarification question.
 - e. The PM will send a draft to the DBPM no later than 4:00 PM each Thursday. Any questions that cannot be answered by 4:00 PM each Thursday will move to the next clarification the following week or until they are answered.
 - f. The DBPM will review and approve the clarification.
 - g. The PM will post the clarification to the ftp site no later than 5:00 PM each Friday.
 - h. For teams which requested notification of all clarifications, the PM will send them an e-mail notifying them that a clarification has been posted to the ftp site.
 - i. The PM will send a courtesy copy of all clarifications to FHWA on full federal oversight projects.

4.7.9 RFP Addendums

RFP addendums are generated by clarification questions, but can also be generated by MnDOT to modify the contents of the RFP. RFP addendums often have significant impacts to the design-build team price and technical proposals. If an addendum needs to

be issued less than one week before the Technical Proposal due date, the PM and DBPM should consider extending the technical and price proposal due date.

Addendums modifying the evaluation criteria are discouraged. However, if an addendum is necessary, it should be issued early in the process before design-build teams begin preparing their technical proposals.

Listed below are the processes and procedures for generating and publishing RFP addendums:

1. The PM will maintain document control of the RFP in ProjectWise. The PM may also choose to have the MnDOT GEC retain document control.
2. The PM will draft the addendums using the following format:
 - a. Addendums will be numbered sequentially using the format Addendum No 1, Addendum No 2, Addendum No 3, etc.
 - b. Addendum will be issued only for the sections of the RFP impacted (do not re-issue entire RFP). The first addendum will be produced by tracking changes to the original RFP issued.
 - c. For each subsequent addendum, accept all changes from the previous addendum prior to starting. Track all changes.
 - d. List the addendum number in the footnote.
3. The PM must not draft changes to Book 1 or the ITP without first consulting with the DBPM.
4. The DBPM is responsible for incorporating updated federal and state wage rates in each addendum.
 - a. Updated federal wage rates need to be added via addendum up to the letting date.
 - b. Updated state wage rates do not need to be added, except if a revision is made. (The wage rate website will show both an effective date and a revised date. A revised date means that a clerical change was made).
5. The PM will prepare the addendum cover letter using Form 4.7c. The cover letter should provide a brief overview of the changes to the RFP.
6. The PM will submit the draft addendum to the DBPM for review and concurrence.
7. The PM will send the proposed addendum changes to the FHWA on full oversight projects for review and approval at least 7 days prior to issuing the addendum.
8. After the PM has obtained concurrence from the DBPM and the FHWA, the PM will post the addendum to the ftp site identified within the ITP.
9. On two-step process, the PM will notify the design-build team single point of contact, DBPM and FHWA via e-mail that an addendum has been posted. No notification is required on single-step process.

10. The PM should contact Finance Program Accounting, MnDOT Estimating if major addendums (scope changes) occur.

Exhibits

- 4.3-3: Process for Administering Design-Build Procurement
- 4.5-1: MnDOT's Design-Build Program *Style Guide for Preparing Documents*
- 4.3.3: Process for Administering Design-Build Procurement

Forms

- Form 4.7a: RFP Clarification Request Form
- Form 4.7b: RFP Clarification Response Form
- Form 4.7c: Addendum Cover Letter Form

4.8 One-on-One Meetings

One-on-one meetings between MnDOT and design-build teams are used to improve communication during the procurement process. The primary purpose of these meetings is to allow design-build teams to discuss potential ATCs and PAEs with MnDOT prior to making a formal submittal. This minimizes effort on both MnDOT and design-build firms drafting ATCs and PAEs that have a limited chance of being approved.

The one-on-one meetings should not be used to discuss clarifications or have the design-build teams gain additional insight into the process. Clarification questions need to be submitted to MnDOT in writing via the clarification process outlined in [Section 4.7](#).

The number and frequency of the one-on-one meetings will depend on the size and complexity of the project. The PM and DBPM will jointly determine the number and frequency. Each design-build team will be offered the same one-on-one opportunity.

Listed below are the procedures and protocols for conducting one-on-one meetings. This procedure outlines the one-on-one meeting process with design-build teams.

1. The PM will schedule all one-on-one meetings. MnDOT staff should be limited to the PM, DBPM and a select group of key experts. On full federal oversight projects, the PM will invite the FHWA to all one-on-one meetings. The size of the MnDOT staff (total) should be limited to 3 or 4 individuals. Design-build teams may ask for key experts to attend certain one-on-one meetings to discuss draft ATC or PAE concepts.
2. The content of the one-on-one meeting are confidential to each design-build team and should not be discussed with other design-build teams.
3. The PM will instruct the teams that the purpose of the one-on-one meetings are to provide DB teams an opportunity to discuss draft ATC or PAE concepts.
4. After a team discusses the draft concept, the PM will inform the team if the ATC/PAE has potential to be accepted or if MnDOT will not entertain that concept.
5. If a team asks clarification questions beyond those related to an ATC or PAE, the PM will not answer the question and will inform the team that the question needs to be submitted as a written clarification.
6. No formal meeting minutes will be taken.
7. Do not provide any handouts.
8. If design-build teams provide handouts, return all handouts to them at the conclusion of each meeting.

4.9 Alternative Technical Concepts

Alternative Technical Concepts (ATC) allow for innovation and flexibility during the procurement process. The ATC process allows design-build firms to propose “equal or better” alternatives to the RFP requirements during the procurement process. The ATC process is a highly confidential process. Subject to Minnesota Government Data Practices Act, each ATC submitted during the procurement is kept confidential and not shared with the other design-build teams.

The ATC process starts after the RFP is issued and can be used on best-value and low-bid projects. Shortly after the RFP is issued, MnDOT offers one-on-one meetings (see [Section 4.8](#)) with design-build teams to discuss potential ATCs. Design-build teams submit ATC to MnDOT prior to submitting the technical proposals. Upon receipt of the ATC, MnDOT reviews each ATC and responds with one of the following determinations:

- a. The ATC is Approved
- b. The ATC is not Approved
- c. The ATC is Approved with Conditions
- d. The ATC does not qualify as an ATC, but may be included in the design-build team technical proposal (i.e. concept complies with baseline RFP requirements)
- e. The ATC does not qualify as an ATC and may not be included in the proposal.

ATC concepts should not be incorporated into the RFP as addendums. However, MnDOT reserves the right to correct errors in the RFP via an addendum if a team uses the ATC process to take advantage of the error.

Listed below are the procedures to identify ATC limits within the ITP and the process to accept, track and review ATCs submitted by design-build teams.

4.9.1 ATC limitations

1. The PM, in consultation with the DBPM and other MnDOT specialty offices, will determine which items will not be accepted as ATCs. Typical items that MnDOT does not consider ATCs include pavement type, pavement material and pavement thickness.
2. The PM and DBPM will determine the maximum amount of ATCs that a proposer may submit.
3. The DBPM will draft the ATC section of the ITP using the ITP template. The DBPM will incorporate the maximum number of ATCs and identify the items identified in Point 1 above.
4. Design-build teams need to submit each concept as a separate ATC. The concept may include multiple interrelated parts (e.g. major geometric layout change which

impacts alignments, profiles and intersection control). An ATC with multiple unrelated concepts should be rejected.

4.9.2 ATC Submittals/Document Control

1. Design-Build teams must submit ATCs in accordance with the ITP.
2. The PM will receive the ATC and log the ATC into the ATC Log.
3. The PM will track the status of all ATCs using the ATC log.
4. The PM will store all ATC documents (log, submittals, responses, etc.) in a secure directory. The PM shall limit access to the directory to the DBPM and other key individuals involved with the review and approval of the ATCs.

4.9.3 ATC Reviews

1. The review of ATCs needs to be kept to a small group of key individuals for confidentiality reasons. The PM will only distribute ATCs to these key individuals. The PM will verify that all key individuals have signed a confidentiality form.
2. The PM may request supplemental information from a design-build team at any time. Depending on the amount of supplemental information requested, the PM may require the design-build team to revise the ATC. Revised ATCs should be identified with a letter after the number (for example, ATC 1a).
3. The PM should make every attempt to respond to the ATC within one week.
4. The PM will prepare a draft response to the ATC using the ATC response form.
5. The PM will send the draft response to the DBPM for review. See [Section 2.3](#) for FHWA's involvement in the review and approval of ATCs.
6. The PM and DBPM will discuss and finalize the ATC.
7. The PM will send the ATC decision to the team via e-mail.
8. The PM will send a hard copy of the decision to the team.
9. If a team wants to resubmit/modify an ATC after a decision has been sent, they must submit a new ATC using a different ATC number.
10. The PM will update the ATC log.

Exhibits

None

Forms

Form 2.4a: Confidentiality Form

Form 4.9a: ATC Log Template

Form 4.9b: ATC Approval Form

4.10 Pre-Approved Elements

The Pre-Approved Element (PAE) process requires design-build teams to submit elements of the design during the procurement process. The PAE process is not required and should only be used on complex items which are difficult to properly assign the risk in the RFP. Design-build teams submit PAEs for MnDOT approval prior to submitting a technical proposal. A technical proposal that does not have Approved PAE(s) is deemed non-responsive.

PAE are used to reduce the risk to MnDOT and design-build teams during the procurement process. PAE should only be used on unique and complex high risk items that are difficult to quantify within the RFP documents. The PAE process requires additional time and resources for design-build teams to prepare and for MnDOT to review and approve.

The PAE process starts after the RFP is issued and can be used on best-value and low-bid projects. Shortly after the RFP is issued, MnDOT offers one-on-one meetings (see [Section 4.8](#)) with design-build teams to discuss potential PAEs. Design-build teams submit PAE to MnDOT prior to submitting the technical proposals. Upon receipt of the PAE, MnDOT reviews each PAE and responds with one of the following determinations:

- a. The PAE is Approved
- b. The PAE is Not Approved
- c. The PAE is Approved with Conditions

Similar to the ATC process, the PAE process is highly confidential. MnDOT does not disclose the contents of PAEs to other teams or reveal the identity of PAEs in clarifications or addendums. However, MnDOT reserves the right to correct errors in the RFP via an addendum if a team is using the PAE process to take advantage of the error.

Listed below are the procedures to identify PAE limits within the ITP and the process to accept, track and review PAEs submitted by design-build teams.

4.10.1 PAE limitations

1. If known prior to releasing the RFQ, the PM will consult with the DBPM (and FHWA on federally funded projects) if PAEs will be used within the RFP. If PAEs will be considered, the DBPM will include in the RFQ that the PAE process will be part of the RFP.
2. The PM will make recommendations on PAE items to the DBPM. The DBPM will approve all PAE items.
3. The DBPM will draft the PAE section of the ITP using the ITP template. The DBPM will incorporate the required PAE items identified in point 2 above.

4.10.2 PAE Submittals/Document Control

1. Design-Build teams must submit PAEs in accordance with the ITP.
2. The PM will receive the PAE and log the PAE into the PAE Log.
3. The PM will track the status of all PAEs using the PAE log.
4. The PM will store all PAE documents (log, submittals, responses) in a secure directory. The PM shall limit access to the directory to the DBPM and other key individuals involved with the review and approval of the PAEs.

4.10.3 PAE Reviews

1. The review of PAEs needs to be kept to a small group of key individuals for confidentiality reasons. The PM will only distribute PAEs to these key individuals. The PM will verify that all key individuals have signed a confidentiality form.
2. The PM may request supplemental information from a design-build team at any time. Depending on the amount of supplemental information requested, the PM may require the design-build team to revise the PAE. Revised PAEs should be identified with a letter after the number (for example, PAE 1a).
3. The PM and DBPM may conduct one-on-one meetings with Proposers to discuss PAE concepts. The PM and DBPM should be careful not to “coach” the teams during one-on-one meetings. Comments should not give guidance, but only indicate if items are acceptable or not acceptable.
4. The PM should make every attempt to respond to the PAE within one week.
5. The PM will prepare a draft response to the PAE using the PAE response form.
6. The PM will send the draft response to the DBPM for review. Full federal oversight projects with PAEs require review by FHWA.
7. The PM and DBPM will discuss and finalize the PAE. See Section 2.3 for the FHWA’s role in reviewing and approving PAEs on federally funded projects.
8. The PM will send the PAE decision to the team via e-mail.
9. The PM will send a hard copy of the decision to the team.
10. If a team wants to resubmit/modify a PAE after a decision has been sent, they must submit a new PAE.
11. The PM will update the PAE log.

Exhibits

None

Forms

Form 2.4a: Confidentiality Form

Form 4.10a: PAE Log Template

Form 4.10b: PAE Approval Form

4.11 Changes in Personnel and Firms Listed in SOQ

During the procurement process, design-build teams may request changes in personnel or firms listed within their SOQ. The requests often occur due to employees leaving the firm, additional RFP requirements, or other organizational changes.

State statute requires that design-build teams obtain written approval from the commissioner when requesting a change in personnel or firms listed in the SOQ. Since design-build teams are short-listed are based on the qualifications listed in the SOQ, changes in key personnel must be carefully evaluated. This requirement applies to all firms and individuals listed in the SOQ, whether or not the RFQ requested the names of these individuals or firms.

State Statute 161.3424

An individual or a design-build firm identified in a response to a request for qualifications (RFQ) or a request for proposals (RFP) may not be replaced without the written approval of the commissioner. The commissioner may revoke an awarded contract if an individual or a design-build firm identified in a response to an RFQ or RFP is replaced without the commissioner's written approval. To qualify for the commissioner's approval, the written request must document that the proposed replacement individual or design-build firm will be equal to or better than that described in the response to the RFQ or RFP. The

Listed below are the processes and procedures for reviewing and approving changes in personnel and firms listed in a proposer's SOQ.

4.11.1 Change in Personnel Prior to Technical Proposal Submittal

1. The design-build team must submit a written request to change key personnel or firms listed in their SOQ to the PM prior to submitting a technical and price proposal.
2. The PM will review the request and will consult with the DBPM to determine if the replacement is equal or better. If acceptable, the DBPM will request concurrence from the commissioner using Form 4.11a.
3. If the commissioner concurs, the DBPM will provide a copy of the approval to the PM and retain a copy in the project file.
4. The PM will provide a copy to the team requesting the change and will retain a copy in the project file.

4.11.2 Change in Personnel After Contract Award

1. The design-build team must submit a written request to change key personnel or firms listed in their SOQ to the PM prior to replacing the team member.
2. The PM will review the request and will consult with the DBPM to determine if the replacement is equal or better. If acceptable, the DBPM will request concurrence from the commissioner using Form 4.11a.

3. The PM, with assistance from the DBPM, will review the contents of the change and determine if a monetary deduction is necessary in accordance with the contract documents.
4. If the commissioner concurs, the DBPM will provide a copy of the approval to the PM and retain a copy in the project file.
5. The PM will provide a copy to the team requesting the change and will retain a copy in the project file.
6. If necessary, the PM will draft a Change Order for a deduction per the requirements of the contract.

Exhibits

None

Forms

Form 4.11a: Change In Personnel/Firm Form

4.12 Re-Issuing RFPs

If the commissioner rejects all proposals, MnDOT has the option to abandon the design-build procurement, re-advertise a RFQ, or re-issue the RFP. The decision depends upon the project schedule, modification of the scope, and quality of the short-listed teams. The PM should consult with the District, Chief Engineer, OCIC, and the FHWA (on full federal oversight projects) on which option is best-suited for the project.

If the decision is made to abandon the design-build procurement and change delivery methods, the PM will notify the teams. The DBPM will process any applicable stipends for payment (including the apparent best-value or low-bid).

If re-advertising the RFQ, the PM and DBPM should follow the preceding RFQ/RFP sections of this manual.

The following lists the procedures and processes for re-issuing the RFP during a two-step procurement and single-step procurement.

State Statute 161.3426

If the commissioner rejects all bids or does not execute the contract, the commissioner may reissue the request for proposals and allow only short-listed teams to resubmit proposals. The commissioner shall then pay a reasonable stipulated fee to each short-listed, responsible proposer who provides a responsive but unsuccessful proposal in response to the reissued request for proposals. When the reissued request for proposals specifies a maximum price, the stipend shall be awarded if the proposal is responsive in all other aspects but comes in above the maximum price.

1. The PM will consult with the DBPM, the chief engineer, and district management on whether to re-release the RFP if all bids are rejected.
2. On full federal oversight projects, the DBPM will consult with the FHWA on the reason to re-issue the RFP.
3. If the decision is to re-release the RFP, the PM and DBPM will modify the RFP and establish a reasonable stipend.
4. The PM and DBPM will modify the RFP and request FHWA approval of the revised RFP (for full federal oversight projects only).
5. On single-step low-bid projects, the DBPM will re-advertise the project per [Section 4.4](#).
6. On two-step projects (low-bid or best-value), the PM will re-issue the RFP per [Section 4.7](#).
7. On full federal oversight projects, the PM will consult with the OCR on the need for a goal change or for an additional DBE meet and greet.

Exhibits

None

Forms

None

4.13 Cancelling Procurements

The following steps outline the processes and procedures for cancelling the design-build procurement at any time during the procurement process.

1. The DBPM and PM will consult with the Chief Engineer and district management on whether to cancel the procurement of a design-build project.
2. On full federal oversight projects, the DBPM will notify FHWA in writing of MnDOT's decision to cancel the current procurement and request concurrence prior to moving forward with re-solicitation.
3. All SOQs and Technical Proposals received prior to the procurement cancellation are the property of MnDOT and are subject to data practice laws (see [Section 2.5](#)).
4. The DBPM will develop a procurement cancellation letter to send to all of the design-build teams notifying them of the cancellation. The procurement cancellation letter should be signed by the Chief Engineer.

Exhibits

4.13-1: Sample FHWA Notification of Cancellation Letter

4.13-2: Sample Procurement Cancellation Letter

Forms

None



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Section 5. Evaluation and Letting Activities

This section outlines the process for obtaining proposals, evaluation proposals, and project letting.

5.1 Receipt of Proposals, Evaluation and Letting

At the conclusion of the RFP advertisement period, design-build teams must submit a Technical Proposal and a Price Proposal on each project (best-value and low bid). If federal funds are used, design-build teams must also submit DBE/EEO Proposals prior to letting.

This procedure outlines the procedures for receiving proposals, evaluating proposals, and the process for conducting the letting.

5.1.1 Receipt of Technical, Price, and DBE/EEO Proposals

1. Prior to receiving proposals, the PM and DBPM will develop an evaluation schedule. The schedule needs to include ample time for a thorough review and discussion of each technical proposal. Additional time needs to be provided for developing interview questions and conducting the interviews. At least two days need to be added for the commissioner's review of the technical scores and potential re-evaluation by the TRC.
2. Prior to receiving technical proposals, the DBPM will develop a Technical Proposal Evaluation Manual using the Technical Proposal Evaluation Manual template. The evaluation criteria in the evaluation manual must match the evaluation criteria listed in the ITP. The Technical Proposal Evaluation Manual should be supplemented with a spreadsheet to assist in validating the technical scores.
3. At least 10 working days prior to the proposal due date, the DBPM will notify the Contracts and Lettings Supervisor (CLS), Office of Construction and Innovative Contracting (OCIC) of the proposal due date, bid letting date, and escrow documents due date.
4. The DBPM will notify the MnDOT Capital Programs and Performance Measures (CPPM) Office and MnDOT Finance Office at least 10 days before the letting date.
5. DBE/EEO proposals must be submitted at least 3 Working Days in advance of the letting in order for the Office of Civil Rights (OCR) to begin their evaluation. DBE/EEO submittals typically are submitted with the Price Proposals.
6. The DBPM receives technical proposals, DBE/EEO submissions, and Legal/Financial submissions. The DBPM will time stamp receipt of proposals and provide a receipt to each Proposer. Price Proposals will be received by the CLS through electronic Bid Express.

- a. For hand-delivered proposals, use Forms 5.1a and 5.1b.
 - b. For electronic delivery, the DBPM will send an e-mail to the Proposer's single points of contact acknowledging receipt of proposals.
7. Prior to distributing the Technical Proposals, the DBPM will:
- a. Conduct a cursory review of the technical proposals to ensure that no price information is contained within the technical proposal and review that the number of pages has not been exceeded.
 - b. Verify that the proposals were received on-time and each package contains the correct number of copies.
 - c. Store the CD's of the technical proposals in a secure location.
 - d. Prepare a technical proposal distribution log using Form 5.1c. The TRC evaluator number should be the same as the Technical Proposal evaluation number.
 - e. Prepare a Technical Proposal evaluation package which includes the following at a minimum:

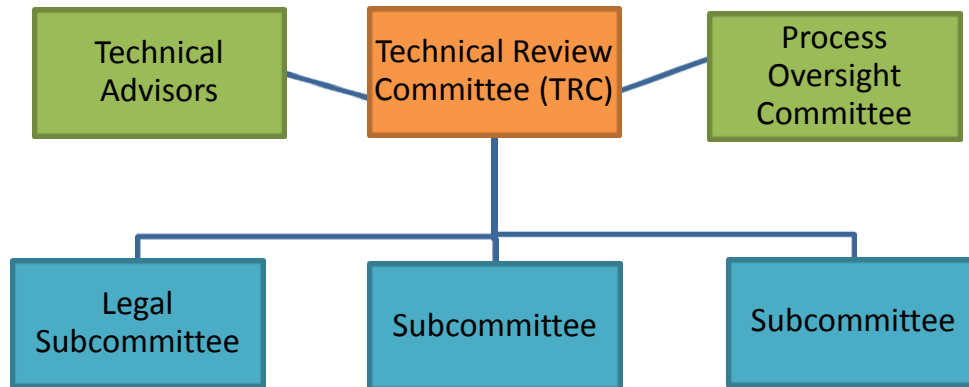
Best-Value	Low Bid
Agenda	
Copy of each Technical Proposal	
Technical Proposal Evaluation Manual	
Conflict of Interest and Confidentiality Form	
CD of the RFP (use latest addendum, but RID not required)	Hard copy of the ITP
Hard Copy of Book 2 and ITP for TRC	Note (1)
Hard Copy of pertinent sections of the RFP for Technical Advisors and Subcommittee members	
Copy of Clarifications	
Additional evaluation forms for TRC members	

Note (1): DBPM will make a hard copy of the RFP available to the TRC

8. The DBPM or CLS stores the Price Proposals in a locked area.
9. The DBPM distributes DBE documents to the DBE Specialist assigned to the project and obtains signature on receipt signoff form (see DBE proposal review process).

5.1.2 Evaluation Committee

The review and evaluation of technical proposals is often performed by a team of experts, scoring members, legal staff, and process oversight experts. Listed below is a typical evaluation committee organizational chart:



Although the Technical Review Committee (TRC) are the only members to score the technical proposals, technical experts are often used to assist with reviewing the technical proposals. Technical Advisors are subject matter experts and provide strengths and weaknesses to the TRC. Technical experts often form subcommittees, or can be technical advisors. The Process Oversight Committee (POC) oversees that the process is done in accordance with state statute, the evaluation manual and federal regulations. The POC includes the DBPM, FHWA, and the Department of Administration.

5.1.3 Best-Value Technical Proposal Evaluation

1. The PM will arrange the time/location for the Proposal Evaluation Kick-off Meeting.
 - a. The purpose of the Proposal Evaluation Kick-Off Meeting is to distribute the Technical Proposals and review the process for evaluating the Technical Proposals. All TRC members, technical advisors, subcommittees and process oversight committee members are required to attend unless approved by the DBPM. Note: FHWA oversight and legal advisors are not required to attend if they have attended a kick-off meeting for other projects.
 - b. If a TRC member or advisor is not able to make the meeting, the DBPM will schedule a one-on-one kick-off meeting with the person to distribute the technical proposals and review the technical proposal evaluation process.
 - c. The DBPM will moderate the Proposal Evaluation Kick-off Meeting.
 - d. The DBPM will prepare and distribute technical proposal evaluation packages to each member in attendance.
 - e. The DBPM will review the Technical Proposal Evaluation Manual in detail.

2. The PM will arrange for a time/location for the subcommittees and TRC evaluations (except legal subcommittee). The PM will notify all members of the evaluation schedule.
3. The DBPM will arrange the legal subcommittee meeting. The PM and TRC do not need to attend the meeting.
4. The DBPM and PM will attend all evaluation meetings with the TRC. On full federal oversight projects, the PM will invite the FHWA to all TRC evaluation meetings.
5. The DBPM and/or PM will attend all subcommittee meetings. On full federal oversight projects, the PM will invite the FHWA to the subcommittee meetings.
6. The DBPM will oversee the evaluation process in accordance with the Technical Proposal Evaluation Manual and prepare a log documenting any notes of the Process Oversight Committee. The DBPM will take notes summarizing the TRC evaluations for use in the debriefing meetings.
7. The DBPM will conduct a hand calculation of the TRC scoring and check the scoring versus an electronic spreadsheet.
8. The DBPM and/or PM will collect all evaluation materials and Technical Proposals from the evaluation team.
9. The DBPM or PM will prepare the Letter to the Chief Engineer prior to letting (Form 5.1d, see also example Exhibit 5.1-1).
10. The DBPM and PM will meet with the Chief Engineer to review and concur with the technical proposal scores in accordance with the Technical Proposal Evaluation Manual.
11. The DBPM and PM will keep the technical scores confidential until letting.

5.1.4 Low-Bid Technical Proposal Evaluation

1. The DBPM will arrange the time/location for evaluating the Technical Proposals. All TRC members must attend the evaluation meeting. The PM, if not on the TRC, may also attend the meeting. On full federal oversight projects, the DBPM will also invite the FHWA.
2. The DBPM will distribute Technical Proposal Evaluation package to attendees and will review the Technical Proposal Evaluation Manual prior to distributing the Technical Proposals.
3. The DBPM will oversee the evaluation process in accordance with the Technical Proposal Evaluation Manual and prepare a log documenting any notes from the Process Oversight Committee. The evaluation process is used to determine responsiveness only.
4. At the conclusion of the evaluation process, the DBPM will collect all evaluation materials and Technical Proposals from the evaluation team.
5. The DBPM will notify the CLS of the evaluation results.

5.1.5 Letting (Price Proposal Opening Date)

1. The DBPM will reserve a conference room for letting. On large projects, the DBPM will reserve the cafeteria through the Dept of Administration. If the cafeteria is reserved, contact MnDOT's External Partnering unit to set up a screen/table.
2. On best-value projects, the Commissioner, or designee, will post and read the Technical Scores before opening price proposals.
3. The Commissioner, or designee, will open the Price Proposals, read the lump sum bid price, and post the value.
4. On best-value projects, the Commissioner, or designee, will divide the Price Proposal by the Technical Score to determine the apparent best-value.
5. The Commissioner, or designee, will close the letting by identifying the apparent best-value or low bid contractor, depending on the procurement type.

Exhibits

4.3-3: Process for Administering Design-Build Procurement

5.1-1: Sample Technical Proposal Letter to Chief Engineer

Forms

Form 5.1a: Receipt of Technical Proposals Form

Form 5.1b: Receipt of DBE/EEO Proposals Forms

Form 5.1c: Technical Proposal Distribution Log Template

Form 5.1d: Technical Proposal Letter to Chief Engineer Template

Form 5.1e: Technical Proposal POC Log Template

Form 5.1f: Technical Proposal Evaluation Manual (Best-Value)

Form 5.1g: Technical Proposal Evaluation Manual (Low-Bid)



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Section 6. Post-Letting Activities

This section outlines the activities following the letting of a design-build project. These activities include awarding and executing the contract, paying out stipends, and conducting debriefing meetings with the contractors.

6.1 Contract Award and Contract Execution

The results of the letting must be analyzed to determine if the proposals are responsive and responsible prior to awarding and executing the contract.

Listed below are the processes and procedures for reviewing the letting results, awarding and executing a design-build contract. This process also includes steps necessary to review and store Escrow Proposal Documents.

6.1.1 Contract Award

1. The Estimating Engineer will prepare the bid abstract of the Price Proposals.
2. The Estimating Engineer will audit the Price Proposals.
3. The PM and Estimating Engineer will review the Price Proposal versus the estimate.
 - a. If the Price Proposal is within 10% of the engineer estimate, no justification to award the project is required.
 - b. If the Price Proposal is more than 10% over or less than 90% of the engineer estimate, the PM will prepare a letter describing the difference.
 - c. The PM will provide the DBPM with a letter/memo from the District Engineer or Assistant District Engineer concurring with the justification to award the contract (Form 6.1).
4. After review of the estimate and prior to award of the contract, the DBPM will set-up a meeting with Finance, PM, CPPM, Municipal Agreements, Utility Agreements, Automation Unit Supervisor, and district finance to review the design-build team Price Proposal. The purpose of this meeting is to begin the encumbrance process and finalize funding groups so the contract can be signed by Finance in a timely manner.
5. The DBPM will provide a copy of the lump sum cost (not the Engineer's Estimate) and winning technical proposal to the GEC for use in preparing the conformed contracts.
6. On full federal oversight projects, the DBPM will obtain the DBE Clearance Letter from the Office of Civil Rights.
7. The DBPM will compile the following information and provide it to the CLS:
 - a. Three copies of the conformed contract (via GEC), including bond forms.

- b. DBE Clearance Letter
 - c. District Concurrence Memo
 - d. Bid Item Breakdown (Abstract)
 - e. Project Cost Estimate
8. The CLS or DBPM will obtain clearances regarding right-of-way, permits, utility agreements, and municipal agreements.
9. On full federal oversight projects, the CLS will prepare and send the FHWA concurrence letter. The following items need to be included within the FHWA concurrence letter:
 - a. DBE Clearance Letter
 - b. District Concurrence Memo
 - c. Bid Abstract
 - d. Project Cost Estimate
 - e. Updates/adjustments in funding
 - f. STIP Amendments (if required)
10. The DBPM provides the CLS a list of items that must be included in the award package (from ITP Section 6.2).
11. The CLS will send the award package to the design-build team after the CLS has obtained FHWA concurrence (if applicable). The CLS will notify the DBPM of the contract award.
12. The DBPM posts the Technical Proposals including ITP forms, Technical Evaluations, Technical Evaluation Manuals, and abstract on an ftp site and notifies the design-build teams of the posting immediately after contract award.
13. In the event award is delayed beyond the time allowed in Book 1 Section 11.3.1 of the RFP, the CLS and DBPM will draft a Delay in Award Letter to be sent to the apparent best value winning design-build team to obtain their permission to retain their proposal bond and withhold award for an additional reasonable period of time (typically 30 days).

6.1.2 Contract Execution, Notice to Proceed, and Stipend Payment

1. The CLS receives contracts/bonds from design-build team. If the contracts/bonds are properly executed, the CLS signs them and forwards them to Finance for signature and final encumbrance.
2. Finance delivers contract/bonds to Contract Management Director.
3. Contract Management Director coordinates signatures from the Department of Administration and returns executed contracts and bonds to CLS.
4. CLS issues approval letter to design-build team **no earlier than seven days after award** and copies PM, DBPM, District Engineer, etc.
5. Project Manager issues Notice to Proceed 1 to the design-build team.
6. DBPM prepares stipend agreements with Consultant Services Unit and Finance.
7. The DBPM arranges debriefing meetings (See [Section 6.3](#)).

6.1.3 Escrow Proposal Documents

1. The design-build team will coordinate the review of Escrow Proposal Documents (EPD) with the MnDOT Estimating Unit and the CLS.
2. The MnDOT Estimating Unit or CLS will provide the DBPM the Escrow Proposal Documents (EPD) for storage during the life of the project.

6.1.4 RFP Distribution

1. Following execution of the contract, the PM will provide the following copies of the conformed RFP:

Table 6.1-1. Conformed RFP Distribution

Organization	Conformed RFP Distribution
Contractor	Two CDs Five Hard Copies
MnDOT Oversight	To be determined by the PM
DBPM	One CD Two Hard Copies
FHWA (full federal oversight projects)	Two CDs Two Hard Copies

2. The DBPM will place the conformed RFP on the design-build network drive.
3. The DBPM will provide a copy of Book 1 (with exhibits) to the CLS and labor compliance unit.

Exhibits

4.3-3: Process for Administering Design-Build Procurement

6.1-1: Sample Delay in Award Letter

Forms

Form 6.1: District Concurrence Memo Template

6.2 Stipends

A stipend (stipulated fee) is an amount paid to responsive, but unsuccessful, design-build teams submitting technical proposals on all best-value and some low-bid design-build projects. A stipend can only be paid on low-bid design-build projects if a two-step (RFQ/RFP) process is used. If the two-step low-bid process is used, MnDOT must declare in the RFP if a stipend will be paid.

Stipends are used to offset the procurement costs of the design-build teams. The stipend is not meant to cover 100% of their costs, but typically covers one-quarter to one-third of the costs. Listed below are several benefits to paying stipends:

- Increased Competition – The design-build team procurement costs are typically higher on design-build projects compared to design-bid-build projects. Design-build teams spend additional resources on preliminary design and project coordination. Paying a stipend encourages contractors to pursue design-build projects.
- Enhanced Quality / Lower Construction Costs – By investing time and resources into the design process, the design-build teams are able to optimize the design and bring innovation into the process. Innovation and design optimization lead to increased quality and lower construction costs.
- Intellectual Property – Design-build teams often bring a significant amount of innovation to each project. By paying a stipend, MnDOT has the right to use these ideas.

The stipend amount and requirements are outlined in Minnesota State Statutes (161.3426 Subdivision 3 and Subdivision 4). The stipend amount is based on the estimated cost of design and construction (estimated design-build contract value). The following table lists the required and recommended stipend amounts.

Table 6.2-1. Best-Value Stipend Requirements (State Statute 161.3426 Subd 3):

Design-Build Contract Value	Best-Value	Low-Bid (Two-Step)	Low-Bid (Single Step)
> \$50 million	0.2% Minimum 0.2% Recommended	0% Minimum 0.2% Recommended	No Stipend Allowed
< \$50 million	0.2% Minimum 0.4% Recommended	0% Minimum 0.2% Recommended	No Stipend Allowed

Listed below are the processes and procedures for determining the stipend and incorporating the stipend into the procurement documents.

1. The DBPM and PM must follow the requirements of statute 161.3426 when establishing stipends.
2. The PM will establish the stipend for the project in consultation with the DBPM and district management.
3. If the estimated cost is a range within the ITP, the stipend should be based upon the upper limit of the estimate.
4. To encourage competition, a stipend should be used on low-bid projects. Stipends can only be set if a two-step (RFQ/RFP) process is used.
5. The PM will identify the source of funding for the stipends and include the source in the federal authorization form. Stipends are eligible for federal funding (see CFR 636.113), except on contracts with maximum price clauses (see [Section 3.1.7](#)).
6. If known, include the stipend amount in the RFQ. If not known, the RFQ should include the minimum percentage of the anticipated design and construction costs (e.g. 0.2% or 0.4%).
7. The ITP should include a dollar figure for the stipend, not a percentage.
8. The RID must include a copy of the stipend agreement. The stipend agreement must not limit a person's legal rights.
9. If a design-build team elects to not accept a stipend, MnDOT cannot use the ideas contained within their technical proposal. However, the contents are public information unless the design-build team has requested that the information be deemed trade secret using the procedure set forth in the ITP. (see [Section 2.5](#))

Exhibits

None

Forms

None

6.3 Debriefing Meetings

Debriefing meetings provide feedback to design-build teams on their Statement of Qualifications and/or Technical Proposals. These meetings are informal one-on-one meetings that occur after the short-listing process (SOQ) and after contract award (technical proposal). Debriefing meetings should also be used to obtain feedback from the design-build teams on the procurement process.

All successful and unsuccessful design-build teams should be offered a debriefing meeting after each step of procurement. However, no team should be debriefed if any team protests or takes legal action against the procurement. If this occurs, debriefings should be delayed until the conclusion of the protest or legal process.

Listed below are the processes and procedures to debrief design-build teams following a short-listing process and technical proposal process.

1. The debriefing meetings should occur shortly after the short-list announcement, but not before the end of the protest period listed in the RFQ or ITP.
2. All teams will be offered a debriefing meeting, unless a team protests or files legal action against the procurement. In the event of a protest or legal action, no team will be debriefed until the protest/legal action has concluded.
3. The DBPM will be responsible for organizing and facilitating debriefing meetings.
4. The DBPM and PM should attend all debrief meetings. On full federal oversight projects, the DBPM will offer the FHWA the opportunity to attend the debriefing meetings.
5. Debrief meeting contents:
 - a. Approximately one-hour in length
 - b. Informal discussions between MnDOT and teams.
 - c. The DBPM will prepare a summary of the TRC comments. The DBPM and PM will review the TRC summary with the teams during the debriefing meeting.
 - d. The DBPM will provide a scoring breakdown by category.
 - e. If requested, the DBPM will provide a breakdown by category for the other teams.
 - f. Do not discuss the contents of another team's SOQ or Technical Proposal (see [Section 2.5](#)).
10. If allowed by data practices statute, the DBPM will provide scoring methodology and evaluations if requested by a team (see [Section 2.5](#)).

Design-Build Exhibits

1.1-1	MN Design-Build State Statutes
2.4-1	Conflict of Interest Approach
2.8-1	Sample Legislative Notice – Yearly Report
3.1-1	NPDES Permit Requirements MOU
3.5-1	Sample Legislative Notice – Project Letter
4.1-1	Design-Build Homepage
4.1-2	Sample Design-Build Project Specific Page
4.2-1	Sample Request for Letters of Interest
4.3-1	Sample AGC TRC Request Letter
4.3-2	MOU with AGC
4.3-3	Process for Administering Design-Build Procurement
4.5-1	MnDOT DB Program Style Guide for Preparing Documents
4.6-1	SOQ Evaluation Agenda (sample)
4.6-2	Shortlist Posting for Design-Build Website (sample)
4.6-3	Shortlist Recommendation Letter (sample)
4.6-4	POC Log (sample)
4.13-1	Sample FHWA Notification of Cancellation Letter
4.13-2	Sample Procurement Cancellation Letter
5.1-1	Sample Technical Proposal Letter to Chief Engineer
6.1-1	Sample Delay in Award Letter



Design-Build Forms

2.4a	Confidentiality Form
3.1a	Project Development Checklist
3.2a	Project Estimate Template
4.5a	RFQ Template
4.5b	RFQ Clarification Request Form
4.5c	RFQ Clarification Response Form
4.6a	Receipt of SOQs Form
4.6b	SOQ Evaluation Manual Template
4.6c	SOQ POC Log Template
4.6d	SOQ Scoring and TRC Summary Template
4.6e	Short-list Recommendation Letter Template
4.6f	Shortlist Letter – Successful Team Template
4.6g	Shortlist Letter – Unsuccessful Team Template
4.7a	RFP Clarification Request Form
4.7b	RFP Clarification Response Form
4.7c	Addendum Cover Letter Form
4.9a	ATC Log Template
4.9b	ATC Approval Form
4.10a	PAE Log Template
4.10b	PAE Approval Form
4.11a	Change in Personnel Firm Form
5.1a	Receipt of Technical Proposals Form
5.1b	Receipt of DBE EEO Proposals Form
5.1c	Technical Proposal Distribution Log Template
5.1d	Technical Proposal Letter to Chief Engineer Template
5.1e	Technical Proposal POC Log Template
5.1f:	Technical Proposal Evaluation Manual (Best-Value)
5.1g:	Technical Proposal Evaluation Manual (Low-Bid)
6.1	District Concurrence Memo Template



Design-Build RFP Templates

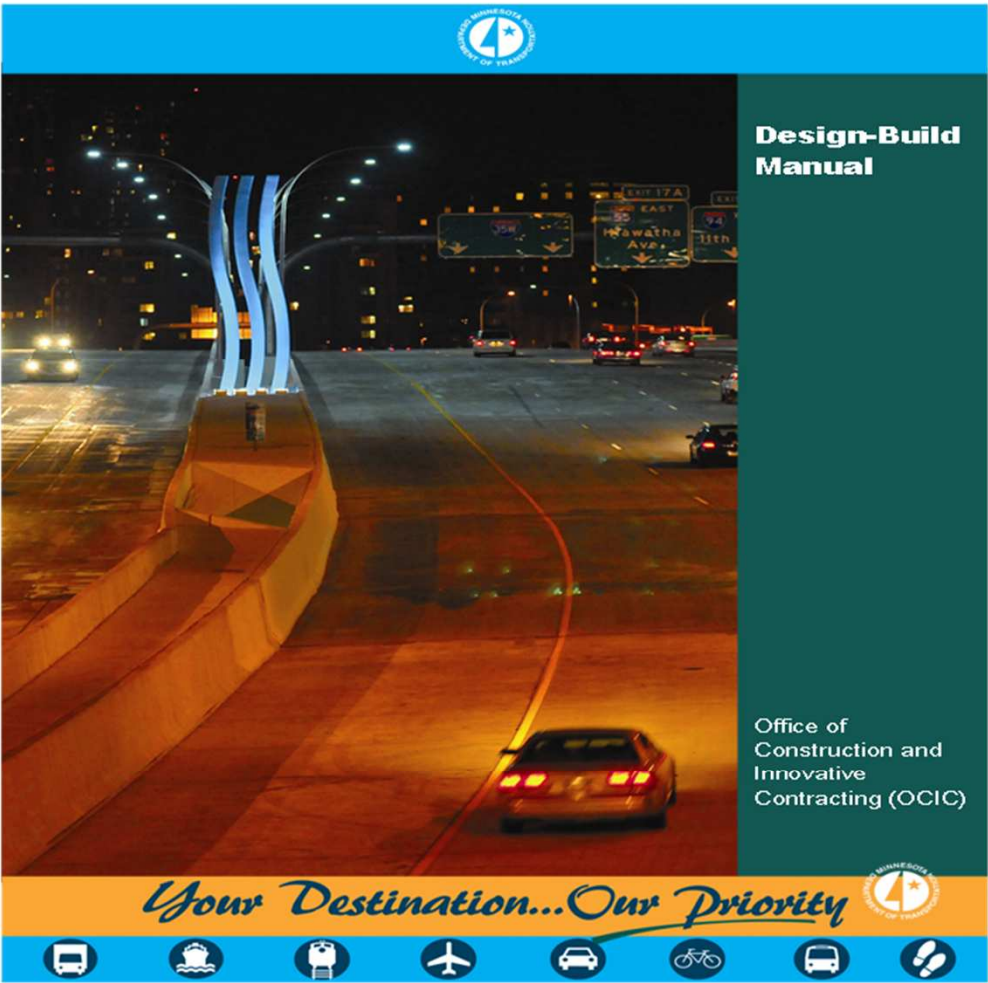


Book 1

Instructions to Proposers

Design-Build Manual





CD Cover

