

PROCEDURE NEW YORK STATE DEPARTMENT OF TRANSPORTATION	CODE: _____ DATE: _____ SUPERSEDES: _____
Approved: _____ Division Director	TITLE: Procedures for selection and award of construction contracts using Best Value selection
	Organization Responsible for Interpretation: Contract Management Bureau

I. INTRODUCTION AND OVERVIEW

This procedure explains how the Department can select and award specific construction contracts using Best Value selection, rather than the traditional method of award to the lowest responsible bidder. In a Best Value selection, the Department evaluates both bid prices and technical qualifications, and recommends award to the Bidder who provides the best combination of price and qualifications in accordance with the Best Value Selection Scoring Criteria.

Procurements under this procedure involve the preparation of an Invitation For Bids (IFB). The traditional construction plans, proposal, bid items and quantities make up one part of the IFB. A description of the technical evaluation factors, their relative weights, the weighting of price vs. technical evaluation factors and the instructions to Bidders make up the other part of the IFB.

The bidders approach to the project (technical qualification) are not publicly opened or read. Bid prices and technical qualifications are reviewed and scored separately, then the scores are combined in accordance with the Best Value Selection Scoring Criteria and the Best Value Bidder is recommended for award.

II. PROCEDURE DEFINITIONS

Regional Director/Main Office Group Director - A descriptive title for the Department employee who oversees and administers a Regional Office or Main Office Program Area.

Project Manager - A descriptive title for a Department employee who oversees and administers preparation of the bid documents for the construction contract.

Chief Engineer - The executive manager who oversees and directs the Engineering Division within the Department of Transportation.

Program Management Bureau - The Bureau within the Department responsible for approving and scheduling the Department's capital construction letting program.

Design Quality Assurance Bureau - The Bureau within the Department responsible for assembling the contract bid documents for the Department's capital construction letting program.

Contract Management Bureau - The Bureau within the Department responsible for the capital construction contract acquisition process.

Invitation for Bid - Describes the administrative process; defines specifications; establishes required delivery terms, bidder qualifications, method of award, and terms and conditions; and provides instructions for responding.

Bidder - The individual, firms, or corporation formally submitting a proposal for the work contemplated acting directly or through a duly authorized representative.

Best Value Special Note - Part of the Contract Documents that describe the technical qualifications and evaluation criteria associated with the proposed capital construction project.

Selection Committee - The committee of Main and/or Regional Office staff who evaluate and score technical qualifications. The selection committee is kept strictly separate from cost proposals and scoring.

III. PROCEDURAL GUIDELINES

The Department's policy is to acquire construction contracts through competitive selection to the maximum extent feasible, while complying with the requirements of the Department, Division of the Budget (DOB), Attorney General's Office (AG) and the Office of the State Comptroller (OSC).

Procurement systems and methods used for Department contract work shall be well defined, consistently applied, and follow good business practices appropriate for the requirement and value of procurement involved.

Under New York State's Infrastructure Investment Act and, for Federal Aid projects, a SEP-14 approval from the Federal Highway Administration (FHWA), procurement of selected construction contracts can be done using a Best Value selection process.

"Best value" means a procurement process that results in the most advantageous acquisition decision for the state, considering technical, price and other programmatic evaluation factors. Best value is determined through an integrated assessment and analysis among the identified evaluation criteria.

IV. STEPS IN THE PROCEDURE

REGIONAL DIRECTOR OR MAIN OFFICE GROUP DIRECTOR

1. Identifies a construction contract where a Best Value selection could be appropriate. This should be based on one or more of the following factors associated with the contract:
 - A type of work that has been problematic
 - Complex or specialized work
 - Work that is time-critical
 - High traffic volumes on which the work has a large negative impact
 - Complex staging of the work
2. Notifies Chief Engineer or designee(s), copying the Project Manager.

CHIEF ENGINEER OR DESIGNEE(S)

3. Approves or disapproves request and notifies the Regional Director or M.O. Group Director, copying the Project Manager.

PROJECT MANAGER

4. Develops proposed technical evaluation criteria, technical evaluation criteria weights, and the relative weight of technical evaluation criteria vs. cost. Technical evaluation criteria may include, but are not limited to:
 - Past experience and performance
 - Key personnel
 - Safety record
 - Schedule
 - Ability to meet D/M/WBE goals
5. Prepares Best Value Special Note to be included in the contract proposal. The Special Note should include the description and weights of each of the technical evaluation criteria, the relative weights of technical criteria vs. costs, and instructions to Bidders on submittal requirements.
6. Forwards proposed Best Value Special Note, Best Value Selection Scoring Criteria and justification memo to Chief Engineer or designee(s) for approval.

CHIEF ENGINEER OR DESIGNEE(S)

7. Reviews proposed Best Value Special Note, Best Value Selection Scoring Criteria and justification memo, and notifies Project Manager of approval, disapproval, or suggested changes.

PROJECT MANAGER

8. Modifies or deletes Best Value criteria and updates Special Note, and Best Value Selection Scoring Criteria as needed.

CHIEF ENGINEER OR DESIGNEE(S)

9. For contracts where FHWA approval is required, forwards proposed Best Value Special Note to FHWA.

FHWA

10. For contracts where FHWA approval is required, reviews proposed Best Value Special Note criteria and notifies Chief Engineer or designee(s) of approval, disapproval, or suggested changes.

PROJECT MANAGER

11. Modifies or deletes Best Value criteria and updates Special Note and Best Value Selection Scoring Criteria as needed.
12. Forwards Special Note and Best Value Selection Scoring Criteria to the Contract Management Bureau. Inserts Special Note in the Plans, Specifications & Estimate (PS&E) submittal to the Design Quality Assurance Bureau. Also notifies Program Management Bureau.

DESIGN QUALITY ASSURANCE BUREAU

13. Assembles Invitation For Bid documents and prepares advertisement noting that the contract will be selected using Best Value.

PROGRAM MANAGEMENT BUREAU

14. Approves advertisement and notifies the Design Quality Assurance Bureau and the Contract Management Bureau.

CONTRACT MANAGEMENT BUREAU

15. Publishes and distributes advertisement.
16. Publishes and distributes amendments, if any.
17. Working with the Chief Engineer or designee(s), develops list of Selection Committee members.
18. Notifies Selection Committee members, provides them with the Best Value Special Note and Best Value Selection Scoring Criteria and schedules the Selection Committee meeting.
19. On letting date, receives submittals from Bidders, reviews for completeness and any pass/fail criteria, and distributes all bid packages that pass the initial screening to the Selection Committee.

20. Reviews and scores cost section of the bid package.

SELECTION COMMITTEE

21. Individually score each technical evaluation criteria for each Bidder, and provide written comments as appropriate.

22. Meet as a group and agree on consensus scores for each technical evaluation factor for each Bidder. Also agree on consensus written comments as appropriate.

CONTRACT MANAGEMENT BUREAU

23. Oversees Selection Committee meeting.

24. Combines all technical evaluation criteria scores with respective cost scores and comments, and determines the Bidder that represents the best value to the Department.

25. Prepares memo to the Chief Engineer recommending approval of the Best Value Bidder.

CHIEF ENGINEER

26. Reviews Contract Management Bureau recommendation and backup. Notifies Contract Management Bureau of approval or returns the recommendation to the Contract Management Bureau with comments and directs the committee to reconsider its scoring in light of those comments (return to step 21). The Chief Engineer may also reject the recommendation and terminate the procurement process.

CONTRACT MANAGEMENT BUREAU

27. If Chief Engineer approves, notifies Project Manager, successful Bidder, unsuccessful Bidders and others as appropriate.

28. If unsuccessful Bidder(s) request a debriefing in writing, schedules and provides debriefing(s).

29. If protests are received, works with Department legal staff to resolve as appropriate.

30. Continues with the award recommendation and approval process as described in MAP sections 7.1-5 and 7.1-7. Note, wherever those MAP's say lowest responsible bidder or lowest responsible bid, interpret as best value bidder or best value bid.

V. ATTACHMENTS TO THE PROCEDURE

Attachment A - NYS Infrastructure Investment
Attachment B - Template Best Value Special Note including the sample Best Value Selection Scoring Criteria

VI. RELATED AUTHORITATIVE SOURCES

MAP 7.1-5 - Comparison and Evaluation of the Lowest Responsible Bid with the Department's Engineer's Estimate

MAP 7.1-7 - Procedures from Letting (Acceptance of Bids) to Award of Contract

INFRASTRUCTURE INVESTMENT ACT

Section 1. This act shall be known and may be cited as the "Infrastructure investment act".

S 2. The legislature hereby finds and declares as follows:

(1) Our state's aging infrastructure, the on-going economic crisis and the resulting increase in unemployment in the state have all contributed to a decline in our state's competitiveness and in a significant decrease in New York state tax revenues.

(2) Sufficient modern infrastructure is of paramount importance not only as a catalyst for job creation but also as a key driver for the state's economic performance and competitiveness and the health, safety, education and quality of life of our citizens and as the means to ensure the efficient movement of people and goods.

(3) Expediting the delivery of projects in New York state would lead directly to job creation and increases in the state's competitiveness.

(4) Businesses in New York state have extensive and diverse experience in alternative project delivery methods for the study, planning, design, development, financing, acquisition, installation, construction, reconstruction, improvement, maintenance and management of public infrastructure facilities. These alternative project delivery methods provide significant benefits to the public by:

(a) Reducing the public cost of delivering and obtaining services for infrastructure assets;

(b) Expediting project delivery;

(c) Encouraging life cycle efficiencies;

(d) Providing better use and leverage of public human and capital resources, and enhancing capital formation for large projects;

(e) Creating jobs;

(f) Promoting performance efficiencies; and

(g) Bringing additional innovative best practice contracting by the private sector to bear on public infrastructure needs within the state.

(5) For certain projects, the design-build project delivery method has the potential to achieve projects delivered on guaranteed or accelerated schedules, lower costs and risk shifting to the private sector generally retained in conventional design-bid-build projects as well as to accelerate capital investments throughout the state.

(6) Recognizing the need to repair the state's aging infrastructure and maximize job creation in New York, the Governor and Legislature seek to:

(a) accelerate capital investment in New York state's infrastructure;

(b) coordinate among New York state's agencies and authorities on capital investment;

(c) encourage private sector capital investment in New York;

(d) ensure that job creation benefits New York workers; and

(e) assist the use of the most efficient and effective procurement and project management for infrastructure projects in the transportation, energy, environment, public facilities, and economic development sectors.

S 3. For the purposes of this act:

(a) "authorized state entity" shall mean the New York state thruway authority, the department of transportation, the office of parks, recreation and historic preservation, the department of environmental conservation and the New York state bridge authority.

(b) "best value" shall mean the basis for awarding contracts for services to the offerer that optimize quality, cost and efficiency, price and performance criteria, which may include, but is not limited to:

1. The quality of the contractor's performance on previous projects;

2. The timeliness of the contractor's performance on previous projects;
3. The level of customer satisfaction with the contractor's performance on previous projects;
4. The contractor's record of performing previous projects on budget and ability to minimize cost overruns;
5. The contractor's ability to limit change orders;
6. The contractor's ability to prepare appropriate project plans;
7. The contractor's technical capacities;
8. The individual qualifications of the contractor's key personnel;
9. The contractor's ability to assess and manage risk and minimize risk impact; and
10. The contractor's past record of compliance with article 15-A of the executive law.

Such basis shall reflect, wherever possible, objective and quantifiable analysis.

(c) "capital project" shall have the same meaning as such term is defined by subdivision 2-a of section 2 of the state finance law.

(d) "cost plus" shall mean compensating a contractor for the cost to complete a contract by reimbursing actual costs for labor, equipment and materials plus an additional amount for overhead and profit.

(e) "design-build contract" shall mean a contract for the design and construction of a capital project with a single entity, which may be a team comprised of separate entities.

(f) "procurement record" means documentation of the decisions made and the approach taken in the procurement process.

S 4. Notwithstanding the provisions of section 38 of the highway law, section 136-a of the state finance law, section 359 of the public authorities law, section 7210 of the education law, and the provisions of any other law to the contrary, and in conformity with the requirements of this act, an authorized state entity may utilize the alternative delivery method referred to as design-build contracts for capital projects related to the state's physical infrastructure, including, but not limited to, the state's highways, bridges, dams, flood control projects, canals, and parks, including, but not limited to, to repair damage caused by natural disaster, to correct health and safety defects, to comply with federal and state laws, standards, and regulations, to extend the useful life of or replace the state's highways, bridges, dams, flood control projects, canals, and parks or to improve or add to the state's highways, bridges, dams, flood control projects, canals, and parks; provided that for the contracts executed by the department of transportation, the office of parks, recreation and historic preservation, or the department of environmental conservation, the total cost of each such project shall not be less than one million two hundred thousand dollars (\$1,200,000).

S 5. An entity selected by an authorized state entity to enter into a design-build contract shall be selected through a two-step method, as follows:

(a) Step one. Generation of a list of entities that have demonstrated the general capability to perform the design-build contract. Such list shall consist of a specified number of entities, as determined by an authorized state entity, and shall be generated based upon the authorized state entity's review of responses to a publicly advertised request for qualifications. The authorized state entity's request for qualifications shall include a general description of the project, the maximum number of entities to be included on the list, and the selection criteria to be used in generating the list. Such selection criteria shall include the qualifications and experience of the design and construction team, organization, demonstrated responsibility, ability of the team or

of a member or members of the team to comply with applicable requirements, including the provisions of articles 145, 147 and 148 of the education law, past record of compliance with the labor law, and such other qualifications the authorized state entity deems appropriate which may include but are not limited to project understanding, financial capability and record of past performance. The authorized state entity shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the authorized state entity shall list the entities that shall receive a request for proposals in accordance with subdivision (b) of this section. To the extent consistent with applicable federal law, the authorized state entity shall consider, when awarding any contract pursuant to this section, the participation of: (i) firms certified pursuant to article 15-A of the executive law as minority or women-owned businesses and the ability of other businesses under consideration to work with minority and women-owned businesses so as to promote and assist participation by such businesses; and (ii) small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law.

(b) Step two. Selection of the proposal which is the best value to the state. The authorized state entity shall issue a request for proposals to the entities listed pursuant to subdivision (a) of this section. If such an entity consists of a team of separate entities, the entities that comprise such a team must remain unchanged from the entity as listed pursuant to subdivision (a) of this section unless otherwise approved by the authorized state entity. The request for proposals shall set forth the project's scope of work, and other requirements, as determined by the authorized state entity. The request for proposals shall specify the criteria to be used to evaluate the responses and the relative weight of each such criteria. Such criteria shall include the proposal's cost, the quality of the proposal's solution, the qualifications and experience of the design-build entity, and other factors deemed pertinent by the authorized state entity, which may include, but shall not be limited to, the proposal's project implementation, ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed project, maintenance of traffic approach, and community impact. Any contract awarded pursuant to this act shall be awarded to a responsive and responsible entity that submits the proposal, which, in consideration of these and other specified criteria deemed pertinent to the project, offers the best value to the state, as determined by the authorized state entity. Nothing herein shall be construed to prohibit the authorized entity from negotiating final contract terms and conditions including cost.

S 6. Any contract entered into pursuant to this act shall include a clause requiring that any professional services regulated by articles 145, 147 and 148 of the education law shall be performed and stamped and sealed, where appropriate, by a professional licensed in accordance with such articles.

S 7. Construction for each capital project undertaken by the authorized state entity pursuant to this act shall be deemed a "public work" to be performed in accordance with the provisions of article 8 of the labor law, as well as subject to sections 200, 240, 241 and 242 of the labor law and enforcement of prevailing wage requirements by the New York state department of labor.

S 8. If otherwise applicable, capital projects undertaken by the authorized state entity pursuant to this act shall be subject to section 135 of the state finance law and section 222 of the labor law.

S 9. Each contract entered into by the authorized state entity pursuant to this section shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article 15-A of the

executive law or, for projects receiving federal aid, shall comply with applicable federal requirements for disadvantaged business enterprises.

S 10. Capital projects undertaken by the authorized state entity pursuant to this act shall be subject to the requirements of article eight of the environmental conservation law, and, where applicable, the requirements of the national environmental policy act.

S 11. If otherwise applicable, capital projects undertaken by the authorized state entity pursuant to this act shall be governed by sections 139-d, 139-j, 139-k, paragraph f of subdivision 1 and paragraph g of subdivision 9 of section 163 of the state finance law.

S 12. The submission of a proposal or responses or the execution of a design-build contract pursuant to this act shall not be construed to be a violation of section 6512 of the education law.

S 13. Nothing contained in this act shall limit the right or obligation of the authorized state entity to comply with the provisions of any existing contract, including any existing contract with or for the benefit of the holders of the obligations of the authorized state entity, or to award contracts as otherwise provided by law.

S 14. Alternative construction awarding processes. (i) Notwithstanding the provisions of any other law to the contrary, the authorized state entity may award a construction contract:

1. To the contractor offering the best value; or
2. Utilizing a cost-plus not to exceed guaranteed maximum price form of contract in which the authorized state entity shall be entitled to monitor and audit all project costs. In establishing the schedule and process for determining a guaranteed maximum price, the contract between the authorized state entity and the contractor shall:

- (a) describe the scope of the work and the cost of performing such work;

- (b) include a detailed line item cost breakdown;

- (c) include a list of all drawings, specifications and other information on which the guaranteed maximum price is based;

- (d) include the dates for substantial and final completion on which the guaranteed maximum price is based; and

- (e) include a schedule of unit prices; or

3. Utilizing a lump sum contract in which the contractor agrees to accept a set dollar amount for a contract which comprises a single bid without providing a cost breakdown for all costs such as for equipment, labor, materials, as well as such contractor's profit for completing all items of work comprising the project.

(ii) Capital projects undertaken by an authorized state entity may include an incentive clause in the contract for various performance objectives, but the incentive clause shall not include an incentive that exceeds the quantifiable value of the benefit received by the state. The authorized state entity shall establish such performance and payment bonds as it deems necessary.

S 15. Prequalified contractors. (a) Notwithstanding any other provision of law, the authorized state entity may maintain a list of prequalified contractors who are eligible to submit a proposal pursuant to this act and entry into such list shall be continuously available. Prospective contractors may be prequalified as contractors to provide particular types of construction, in accordance with general criteria established by the authorized state entity which may include, but shall not be limited to, the experience, past performance, ability to undertake the type and complexity of work, financial capability, responsibility, compliance with equal employment opportunity requirements and anti-discrimination laws, and reliability. Such prequalification may be by categories designed by size and other factors.

- (b) A contractor who is denied prequalification or whose prequalifica-

tion is revoked or suspended by the authorized state entity may appeal such decision to the authorized state entity. If such a suspension extends for more than three months, it shall be deemed a revocation of the prequalification. The authorized state entity may proceed with the contract award during any appeal.

S 16. Nothing in this act shall affect existing powers of New York state public entities to use alternative project delivery methods.

S 17. This act shall take effect immediately and shall expire and be deemed repealed 3 years after such date, provided that, projects with requests for qualifications issued prior to such repeal shall be permitted to continue under this act notwithstanding such repeal.

SAMPLE SPECIAL NOTE – BEST VALUE SELCTION

1.0 SUBMISSION CONTENT AND FORMAT

1.1 GENERAL REQUIREMENTS

Your written submission should include the information in the format outlined below and limited to no more than 30 pages in a secure envelope separate from the cost proposal. A page shall be defined as 8-1/2" x 11", single sided with a minimum font size equivalent to a size 10 font "Times New Roman". The CD ROM schedule submittal will not count against the 30 page limit. We recommend that you include concise, but complete information as requested emphasizing why you believe your firm is uniquely qualified for this project.

1.2 COVER LETTER

The cover letter shall be a maximum of two pages in length and will not count against the 30 page limit. Include the following elements of information in the letter as a minimum:

- Contract number and project name.
- Company Name, Street Address, Federal Identification Number
- Statement that the firm is qualified to perform the work.
- Certification that the information and data submitted is true and complete to the best knowledge of the individual signing the letter.
- Name, telephone number, e-mail address and fax number of the individual to contact regarding the submittal.
- The signature of an authorized principal, partner, or officer of the firm.

1.3 SUBMISSION CHECKLIST

The following is a checklist of information that shall be submitted. The submittal shall include all information required in this Special Note

- Cover Letter
- Submission Checklist
- Construction Schedule (including CD of schedule)
- Approach
- Past Experience and Performance
- Cost Proposal

1.4 SCHEDULE

Contractor shall provide a detailed schedule for the project with dates beginning with Award. The Department will place particular importance to the overall duration and the stage 2 duration. Indicate a complete understanding of the project through a detailed breakdown of each phase of the proposed work schedule. Indicate a clear methodology and approach to constructing the project. The schedule submitted shall meet the following requirements:

- The following milestone dates shall be described in the submission:
 - Contractor's First Day of work:
 - Stage 1:
 - Stage 2. The start and finish of Stage 2 is defined as follows. The start is when the northbound left lane is running on the southbound configuration. The end is when the NB traffic is running on the NB again. Refer to drawings # BSS-2 and BSS-3 (pages 141 and 142).
 - Stage 3:
 - Final completion (Contract complete). No submission will be considered that goes beyond the contract completion date.

Liquidated Damages - liquidated damages of \$7,000/day will be associated with each stage and the overall final completion, and will be based on the bidder's schedule milestones.

A Printed copy of the schedule may be submitted as a folded, large scale plot inserted in a pocket or sheet protector. The printed schedule will not count against the page limit.

1.5 APPROACH

Contractor shall provide a detailed presentation of the construction approach. This presentation should include written narrative, graphic inserts, charts, and tables as necessary to communicate effectively the approach to the work. This presentation should explain the phases, tasks and logic presented in the schedule. Address any potential issues that your firm foresees with this project and how you would make adjustments if encountered. Please also describe factors limiting schedule flexibility or acceleration and potential remedies.

1.6 PAST EXPERIENCE AND PERFORMANCE

The Department is interested in determining that the successful bidder has the necessary qualifications and resources to take on this project and insure timely completion. In this section, please submit the following information:

- A. Provide a brief history and overview of your company and its organizational structure, including number of years in business.
- B. Provide a description of your past experiences related to similar Bridge Construction.
- C. Provide a description of you past experience working in similar high volume corridors. Include the client's name, contact person, address and phone number for each project listed.
- D. Provide a summary of your safety record and corporate safety progress and initiatives.

1.7 COST PROPOSAL

Cost proposal shall be submitted in accordance with the Standard Specifications and the Important Bidder Instructions in the contract proposal.

2.0 EVALUATION CRITERIA

The evaluation will be completed using the criteria, elements, and weighting as described in the “Best Value Selection Scoring Criteria” below.

Price								70.0%	
		Description	Weight - 1	Weight - 1 x Technical	Description	Weight - 2	Final Weight of Tech&Cost	Quality Ranking Points	Quality Ranking Points
Quality Based	30.0%	Schedule and Approach	60.0%	18.0%	Schedule Overall Duration	33.3%	6.0%	20.0%	20
					Schedule Stage 2 Duration	33.3%	6.0%	20.0%	20
					Construction Approach	33.3%	6.0%	20.0%	20
		Past Experience and Performance	40.0%	12.0%	Bridge Construction	50.0%	6.0%	20.0%	20
					Work in High Volume Corridor	33.0%	4.0%	13.2%	13
					Safety Record	17.0%	2.0%	6.8%	7
			100.0%	30.0%		30.0%	100%	100	

Note 1. Cost score shown is derived by dividing the Contractor's bid into the lowest responsible bid and uses a 100 point score.

Note 2. Any bidder that does not receive at least 70 Quality Based ranking points out of 100 will be disqualified.

3.0 BEST VALUE SELECTION

A Selection Committee will evaluate all submissions under the direction of the Department's Contract Management Bureau. Submittals will be scored according to Best Value Selection Scoring Criteria, as outlined above and using the scoring elements identified. After submittals are scored individually, the Selection Committee will meet to discuss and resolve any outlying scores. Submittals will then be ranked by total score.

4.0 AWARD OF CONTRACT

The Department reserves the right to award this Contract to the Contractor that through the evaluation process is determined to be the “Best Value”. This means the firm who is evaluated using the criteria above that has demonstrated their ability to meet all the contract requirements in a manner that is most beneficial to the Department.

The anticipated award date is