ODOT DESIGN-BUILD VALUE-BASED SELECTION POLICY

POLICY STATEMENT:

The Department has established a program to expedite the sale and construction of special projects by combining the design and construction elements of a project into a single contract commonly referred to as “design-build.” As part of the design-build program, the Department has authority to use a value-based selection process, combining technical qualifications and competitive bidding elements, including consideration for minority or disadvantaged businesses that may include joint ventures, when letting design-build contracts.

It is the policy of the Department to utilize a value-based selection process for specific design-build contracts and to ensure that when used, the process is transparent and the contract is procured in a fair, equitable and competitive manner.

AUTHORITY:

Ohio Revised Code 5525 et seq., 5526 et seq., 5517.011 § 756.35, 2009 Am. Sub. HB 2, eff. 7-1-09
FHWA Policy 23 CFR 636.116

REFERENCES:

Paragraph 2.12, Specifications for Consultant Services
ODOT Design Manuals

SCOPE:

In 1995, the General Assembly enacted Section 5517.011 of the Ohio Revised Code permitting the Department to establish a design-build program. In July of 2009, the General Assembly enacted Section 756.35 of Am. Sub. HB 2 which allowed the Department to use a value-based selection process in the award of a design-build contract. The purpose of a value-based selection process is to provide an alternate method of delivery for transportation projects through which contractors and designers
collaborate to expedite design and construction, enhance innovation and constructability, and/or reduce costs. The goal is to select a proposal with the best value to the Department and the public, in which the combination of technical, quality, schedule, operating, and pricing factors meet or exceed the Department’s requirements. This policy is applicable to all ODOT Districts, Divisions, and Offices that are involved in contracting or preparing documents for an ODOT-let value-based design-build project.

**DEFINITIONS:**

*Advisory Group:* a group, including sub-groups, that may be established by the Department for each value-based design-build project which may be charged with reviewing various qualifications or proposals as needed.

*Alternate Technical Concepts ("ATC"): A change to the Project Scope submitted by a design-build team which provides a solution that is equal to or better than what is required by the scope as determined by the Department. The use of Alternative Technical Concepts allows for innovation, flexibility, time reductions and cost savings to ultimately obtain the best value for the public.

*Contract:* The assemblage of all contractual documents that include the Request for Qualifications, Selection Criteria, Request for Proposals, all addenda, the Design-Build Team’s Technical Proposal and Price Proposal, ODOT Standard Specifications and Drawings, and other documents as referenced in the Request for Proposals.

*Design-Build:* The project delivery method which combines the design and construction elements of a transportation project into a single contract.

*Design-Build Team ("DBT"): Any company, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice engineering, architecture, and construction contracting, as appropriate.

*Non-Responsive:* Any submission that does not meet the criteria identified in the RFQ or any Technical Proposal that does not comply with the criteria defined in the RFP.

*Payment For Preparation Of Responsive Preliminary Design Concept ("PPRPDC"): An amount determined by the Department on a project-by-project basis that is offered to prospective design-build teams who qualify to submit a Request for Proposal, but are not awarded a contract. Compensation for the proposal may be paid up to the specified amount or the Design-Build Team’s actual costs of preparing the preliminary design concept, whichever is less.

*Project:* The project to be designed and constructed in accordance with the Contract.
**Price Proposal:** The sealed bid that constitutes the Design-Build Team’s price to complete the preconstruction and construction activities required by the Request for Proposals and the Design-Build Team’s Technical Proposal.

**Request for Proposals ("RFP"):** The procurement process which provides the scope of services for the project, and is used by the DBT to submit their Technical and Price Proposals. The RFP forms the basis for the Contract.

**Request for Qualifications ("RFQ"):** A part of the design-build selection process that contains the desired minimum qualifications of the firm, a draft scope of work statement, project requirements, amount of payment for the preparation of responsive preliminary design concept, and the selection criteria.

**Statement of Qualifications ("SOQ"):** The process that establishes criteria for evaluating interested design-build teams setting forth the qualifications of members of the firm and providing any other information required by the announcement of the project.

**Technical Proposal:** The proposal as set forth by the Design-Build Team that conveys their design, construction approach, schedule, and other items as required by the RFP. The Technical Proposal is made a part of the Contract.

**VALUE-BASED DESIGN-BUILD SELECTION PROCESS:**

The value-based selection process for a design-build contract may be used to select the proposal with the best value to the Department and the public, in which the combination of technical, quality, schedule, operating, and pricing factors meet or exceed the Department’s requirements identified in the RFP. The Department may assess the project risks, project complexity, size, traffic management, and project schedule requirements in determining whether a value-based selection process should be used for a particular design-build project. The Department may establish a multi-disciplined project development team to develop the RFQ and RFP documents identifying the project team members for any Advisory Groups and sub-groups. The team will identify, among other things, the project goals, develop the preliminary design and construction scope of work, develop a detailed description of the project, identify the required design elements, identify environmental permitting requirements, and identify right-of-way needs. FHWA approval of the RFQ and RFP is required on FHWA oversight projects.

The value-based selection process may contain the following elements:
**A. PAYMENT FOR PREPARATION OF RESPONSIVE PRELIMINARY DESIGN CONCEPT:**

The decision to pay prospective design-build teams, who submit a responsive Request for Proposal but are not awarded a contract, for the preparation of responsive preliminary design concept will be at the discretion of the Department. The primary value the Department receives by pledging to pay for PPRPDC is in the quality of proposals submitted for review. Making partial payment to teams for PPRPDC increases the investment those teams are willing to make in preparing those proposals. Payment for a portion of the documented costs prospective teams have incurred incentivizes them to invest more time and resources in their proposals which should result in an overall decrease in cost and risk to the Department.

The issue of payment for the preparation of the responsive preliminary design concept needs to be addressed up front by the Department’s project development team so that funds are made available. Federal funds may be considered to reimburse short-listed design-build teams for their effort in the preparation of the technical proposal. The Department will consider whether a project is significant in size or sufficient in complexity to benefit from value-based design-build contracting before offering PPRPDC. The types of projects that may be considered include: major/signature bridges, multi-phase maintenance of traffic schemes, roadway reconfigurations, and/or unique design or construction challenges. If the project is relatively small and not complex, the Department may consider not offering a payment.

It is the policy of the Department to pay from ¼ of one percent to 1% of the total projected construction cost of a project as a reasonable value for a PPRPDC. If a District or Division proposes to deviate from the standard percentage, written justification shall be submitted to the Director for approval and must include an analysis of similar projects in Ohio or other states in which a payment for PPRPDC has been made and any other supporting documentation for the suggested percentage. PPRPDC payments will be subject to Controlling Board approval.

The notice of the availability of Payment for the Preparation of a Responsive Preliminary Design Concept will be made after the award of the design-build contract. The eligible design-build teams who submit a responsive Request for Proposal will be paid upon the submission and review of complete and acceptable documentation of all actual costs of preparing a responsive preliminary design concept. A DBT shall be given an option to opt-out of receiving the payment.

Except for that intellectual property developed apart from or prior to the DBT commencing work on the Technical Proposal for the project, the Department shall retain an undivided joint interest in all rights and intellectual property submitted with the Technical Proposal including any intellectual property derived in the ATC(s) submitted to
the Department for use on the specific project for which the preliminary design concepts were created or for future ODOT projects. If the DBT opts-out of receiving the payment, the DBT will retain all rights in their intellectual property submitted in their proposal and ATCs.

A design-build team’s costs may be incurred by both design and construction personnel. Design costs will be submitted in accordance with ODOT’s specifications for consultant services in place at the time as well as Federal regulations set forth in the Federal Acquisition Regulations Part 31 or other applicable federal and state accounting practices. Contractor costs will be submitted in accordance with the procedures set forth in the version of the ODOT Construction and Materials Specifications in effect at the time. A design-build team whose Technical Proposal is deemed non-responsive will not be eligible to receive the PPRPDC. Criteria for determining non-responsiveness will be set forth in the project scope of work.

B. STATEMENTS OF QUALIFICATIONS:

The value-based selection process will include a requirement for the submission of a Statement of Qualifications from each prospective design-build team. After the Statements of Qualifications are received, the Department will select a short-list of teams. The short-list consideration factors will be as outlined in the Request for Qualifications.

C. REQUEST FOR PROPOSALS:

The value-based selection process will include a requirement that the Request for Proposals will be advertised and distributed to the short-listed DBTs. The Department may issue addenda to the RFP as needed to further refine the requirements of the Contract. Also, the Department may accept ATCs that would change either the project scope or other contract terms.

D. TECHNICAL PROPOSALS AND PRICE PROPOSALS:

The value-based selection process will include a requirement that requires the short-listed DBTs to submit a Technical Proposal and Price Proposal for the project. The Technical Proposal shall be submitted concurrently with the Price Proposal. The Technical Proposal shall be submitted in a sealed package or other secure method as determined by the Department. The Price Proposal shall be submitted electronically via Bid-Express or other bidding software or other secure method as determined by the Department. All information submitted by the DBTs shall remain confidential until the award of the Contract.
E. **DBE, EDGE OR OTHER GOALS AND REPORTING REQUIREMENTS:**

It is the policy of the Department to assure participation of Disadvantaged Business Enterprises and EDGE participants on each design-build value-based project. To assure participation, the Department will assess the need for community and industry outreach as early as possible in the project development phase of the project. The Department will utilize other programs such as on-the-job training, supportive services, and mentorprotégé to assure the highest level of participation. Through goal-setting, the Department will establish DBE and EDGE goals for each design-build value-based project based on the complexity and characteristics of the project.

F. **DETERMINATION OF THE “BEST-VALUE” DESIGN-BUILD TEAM:**

The Department may develop scoring criteria for the Technical Proposals during preparation of a project’s bidding documents that focus on areas critical to the specific project’s overall success. The scoring criteria may include scoring of each bidder’s Technical Proposal by an Advisory Group. The scoring criteria should allow the Department to receive the best overall project, not necessarily based on the lowest price.

The value-based selection process will include a requirement that the Department determine the basis on which it will evaluate the best-value that combines the total Technical Score with the Price Proposal. The combination should balance the quality of a Technical Proposal with a bid price to create a best-value solution for a project.

The value-based selection process will include a requirement that at a time and date specified in the RFP or as amended, the Department will first announce the Technical Proposal scores, then open the Price Proposals and calculate the percentage difference between the Price Proposals submitted and the Engineer’s Estimate. The Department will then determine whether to proceed to evaluate the Price Proposals and the Technical Proposals to calculate a score for evaluating the DBT bids, or to reject all bids. The Director shall have the final authority to determine the best interest of the Department in awarding or not awarding a design-build contract.

**TRAINING:**

All persons involved with the value-based selection process may need additional training to be determined on a case-by-case basis.