

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3 □

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FILED
MAR 23 3 36 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: W.Va. Code § 5-22A-1, et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

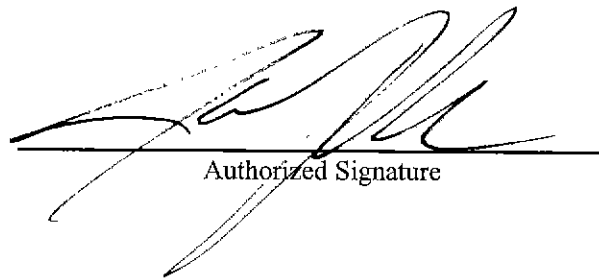
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

TITLE OF RULE BEING PROPOSED: Rules For Selecting Design-Builders Under Design-Build Procurement Act

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

12060

TITLE 148
SERIES 11

FILED

MAR 23 3 47 PM '00

RULES FOR SELECTING DESIGN-BUILDERS UNDER THE
DESIGN-BUILD PROCUREMENT ACT

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 148-11-1. General.

- 1.1. Scope. This Legislative Rule sets forth the operative procedures for agencies to follow in selecting Design-Builders to provide combined design and construction services for projects authorized as Design-Build projects by the West Virginia Design-Build Board that is constructed and owned, potentially owned or ultimately owned by any Agency.
- 1.2. Authority.-W.Va. Code § 5-22A-1, et seq.
- 1.3. Filing Date.
- 1.4. Effective Date.

§ 148-11-2. Definitions.

- 2.1. "Agency" means all state departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts and the individual representative of the Agency appointed to oversee or supervise the Project.
- 2.2. "Awarding Authority" means the entity having authority to issue and sign the purchase order for the construction or lease-purchase of the Project.
- 2.3. "Board" means the Design-Build Board established pursuant to § 5-22A-4 of the West Virginia Code, whose purpose is to determine whether a public project can be constructed under the Design-Build method of construction.
- 2.4. "Design-Build" is defined as providing responsibility within a single contract for design, construction or alteration of a building or buildings, together with incidental approaches, structures and facilities to be constructed, where services within the scope of the practice of professional engineering or architecture, as defined by the laws of the State of West Virginia, are performed by an engineer or architect duly registered in the State of West Virginia; and where services within the scope of construction contracting, as defined by the laws of the State of West Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The Design-Build method of construction may not be used for any other construction projects, such as highway, water or sewer projects.
- 2.5. "Design-Build Contract" means the contract between an agency and a Design-Builder to furnish the architecture, engineering, and related services as required for a given public project, and to furnish the labor, materials and other construction of services for the same

public project. A Design-Build contract may be conditional upon subsequent refinements in scope and price, and may permit the Agency to make changes in the scope of the project without invalidating the Design-Build contract.

- 2.6. "Design-Builder" means the entity (whether natural person, partnership, joint venture, corporation, professional corporation, business association or other legal entity) that proposes to design and construct any public project governed by the procedures of W.Va. Code §§ 5-6-7 and 5-22A-1, et seq., and all rules promulgated thereunder.
- 2.7. "Firm" means any individual, firm, partnership, corporation, limited liability company, limited liability partnership, association, joint venture, or other legal entity permitted by law to practice engineering, architecture or construction contracting in the State of West Virginia.
- 2.8. "Performance Criteria" means the requirements for the public project, including as appropriate, aesthetics, capacity, durability, production standard, ingress and egress requirements, or other criteria for the intended use of the public project, expressed in performance-oriented drawings and specifications suitable to allow the Design-Builder to make a proposal.
- 2.9. "Performance Criteria Developer" means an architect or engineer duly licensed and registered in accordance with the laws of this State, including any state employee having such certification, and such architect's or engineer's employer, company, partners, joint ventures, affiliates or subcontractors retained by the Agency to develop performance criteria.
- 2.10. "Project" means that Project described in the public announcement.
- 2.11. "Proposal" means an offer to enter into a Design-Build contract, as further defined in W.Va. Code § 5-22A-1, et seq.
- 2.12. "Request for Proposals" means the document or publication whereby an agency solicits proposals for a Design-Build contract.
- 2.13. "Substantial completion" means the stage in the process of the work when the work or designated portion thereof is sufficiently complete in accordance with the Design-Build contract so that the agency can occupy or utilize the work for its intended use.
- 2.14. "Work" means the construction and services required by the Design-Build contract, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builders obligations. The Work may constitute the whole part or a part of the project.

§ 148-11-3. Applicability.

- 3.1. This legislative rule applies to all agencies, except those statutorily exempted from its application.

§ 148-11-4. Minimum Qualification Requirements for Firms Providing Design-Build Services and Qualification for Design-Build Projects.

- 4.1. Architects, contractors, and engineers will satisfy qualification requirements as defined by W.Va. Code § 5-22A-1, et seq., and the applicable regulations.
- 4.2. Any project which an Agency desires to have constructed using the Design-Build process must first receive the approval of the West Virginia Design-Build Board. Upon receipt of the Board's determination that the Project is appropriate as a Design-Build project, then the following procedures will be followed.
- 4.3. Due to their public project nature, all Design-Build projects must comply with the prevailing wage requirements of W.Va. Code § 21-5A-1, et seq.
- 4.4. Under the state's vendor debarment program, state and local government entities may not solicit bids, award contracts or consent to subcontracts with debarred vendors. Design-Builders must disclose all subcontractor relationships in the bid process.

§ 148-11-5. Public Announcement Procedures.

- 5.1. Except in emergency situations, the Agency shall obtain by public notice, through any advertising medium the Agency deems advisable, an advertisement setting forth a general description of the Project requiring Design-Build services and defining a time frame and procedures for interested qualified Design-Builders to apply for consideration.

§ 148-11-6. Technical Review Committee.

- 6.1. There shall be a Technical Review Committee comprised at a minimum of a representative of the Agency, the Performance Criteria Developer as a non-voting member, a representative of the facility user(s), and, at the discretion of the Secretary of Administration, the Secretary of Administration or his/her designee. The Technical Review Committee will have responsibility for rating and scoring Qualitative Proposals as provided in Section 10 of these regulations.

§ 148-11-7. Procedures for Selection of Performance Criteria Developer and Preparation of the Performance Criteria.

- 7.1. Selection of Performance Criteria Developer.

- 7.1.1. Upon receipt of the Design-Build Board's approval that a Project is appropriate as a Design-Build project, the Agency shall employ a registered architect or engineer, to be known as the Performance Criteria Developer. Such architect or engineer may be an employee of the Agency. In the event said architect or engineer is not an employee of the Agency, he shall be selected in accordance with W.Va. Code § 5G-1-1, et seq.
- 7.1.2. The Agency shall consider the following factors when selecting the Performance Criteria Developer:
 - 7.1.2a. Education, training and general experience;
 - 7.1.2b. Prior experience with projects of similar size, scope and complexity; and
 - 7.1.2c. Prior experience with Design-Build contracts, as appropriate, or substantially similar experience.
 - 7.1.2d. Once selected, the Performance Criteria Developer shall be retained by the Agency through final completion of the Project to monitor adherence to the Performance Criteria.
- 7.2. Preparation of the Performance Criteria.
 - 7.2.1. A performance Criteria package shall be prepared by the Agency with the aid of the Performance Criteria Developer. The Performance Criteria package shall set forth the Agency's needs with sufficient clarity to assure that there is comprehensive understanding of program requirements, project scope and business requirements. The Performance Criteria shall include, at a minimum:
 - 7.2.1a. Program statements of the facility that describe space needs, design goals, and objectives.
 - 7.2.1b. Requirements for performance bonds, payment bonds and insurance.
 - 7.2.1c. Detailed material quality standards.
 - 7.2.1d. Other pertinent criteria such as energy use or accommodations for future use or adaptation.
 - 7.2.1e. When a site is being developed, site survey and soil boring report describing subsurface conditions or stated criteria in sufficient detail such that accurate foundation designs can be developed.
 - 7.2.1f. Stated responsibility and fees for all permits, if any.
 - 7.2.1g. Stated criteria regarding all site utilities and fees regarding connection of same.
 - 7.2.1h. All environmental reports, if any, that have been prepared.

- 7.2.1i. Specific project budget parameters, including budget parameters for any and all alternates.
- 7.2.1j. Source of funding and available funding.
- 7.2.1k. Project schedule.
- 7.2.2. The Performance Criteria package shall be included as part of the contents of the Request for Proposals.
- 7.2.3. The basis of scoring and any restrictions on the proposals submitted in response to the Performance Criteria package shall be part of the Request for Proposals.

§ 148-11-8. Preparation and Contents of the Request for Proposals.

- 8.1. The Agency shall then develop along with the Performance Criteria Developer a Request for Proposals [RFP]. The RFP shall consist of, but is not limited to: the Performance Criteria package; a description of the areas of qualification to be evaluated, including experience, management resources and financial capability; and instructions to bidders, bid proposal forms, bid security requirements, provisions for contracts, general and special conditions and basis for evaluation of Proposals.
- 8.2. The purpose of the Performance Criteria package and the RFP is to furnish sufficient information so that Design-Builders may prepare both qualitative and cost proposals. The Design-Builder to whom the contract is awarded will be responsible for development of a detailed design based on the criteria in the Performance Criteria package and for construction of the facility in compliance with the Performance Criteria package.
- 8.3. The RFP will address: the Performance Criteria package, instructions to bidders, bid proposal forms, bid security requirements, provisions for contracts, general and special conditions, and basis for evaluation of Proposals. The RFP will be used in accordance with Section 10 below.

§ 148-11-9. The Procedure for Preparing and Submitting Proposals.

All Proposals must comply with § 5-22A-11 of the West Virginia Code.

§ 148-11-10. Evaluation of Proposals.

- 10.1. A response to an RFP received from Design-Builders will be segmented into two parts:
 - (a) Qualitative Proposal. A qualitative proposal will include response to the RFP, except the cost proposal, as set forth in subparagraph (b) below.
 - (b) Cost Proposal. The cost proposal will be submitted in a separate sealed

package. The package will indicate clearly that it is the cost proposal and will clearly identify the Design-Builder's name, Project description, or any other information required by submission of Proposals. The cost proposal will be secured until the time provided in Section 12, paragraph (1).

Cost proposals will include one cost for all design and construction of the proposed Project. Attached to the cost proposal shall be a five (5) percent bid security.

- 10.2. The Technical Review Committee will review the qualitative proposal submitted by each Design-Builder and will establish a rating for each Design-Builder's proposal based upon the performance criteria established in the RFP for the Project. Such criteria may utilize the following format, but shall be adjusted for the particular characteristics of the Project which will clearly be set forth in the RFP. An example of the criteria and rating system format is as follows:

EXAMPLE OF RATING SYSTEM*

1.	Technical Criteria	Maximum Score: 45
a.	Structural System	
b.	Exterior Finish Materials	
c.	Roofing Systems	
d.	Site Layout and Features	
e.	Landscape Provisions	
f.	Mechanical System	
g.	Plumbing System Materials	
h.	Interior Finish Materials	
i.	Interior Hardware and Fixtures	
j.	Interior Door Units / Wall Systems	
k.	Floor and Ceiling Systems	
l.	Lighting Systems	
m.	Power Systems	
n.	Data Systems	
o.	ADA Compliance	
p.	Building Code Compliance	
q.	Any other requirements	

*Maximum Score is for illustrative purposes ONLY. Quantity of any of these categories may be adjusted to reflect the particular characteristics of a project and the considerations involved in its construction. For example, the construction of a memorial statuary garden might need aesthetic criteria to be more heavily weighted; the construction of a storage shed might need utilitarian criteria to be more heavily weighted.

2. Project-Specific Management Plan Maximum Score: 10
 - a. Management plan and organization
 - b. Resumes of key professional and managerial personnel
 - c. Craft training and staffing capabilities
 - d. Quality assurance plan
 - e. Safety plan
 - f. Experience of individual members of the team
 - g. Experience of the team

3. Project Schedule Maximum Score: 10
 - a. Construction schedule and ability to meet schedule
 - b. Architecture/Engineering design schedule and ability to meet schedule
 - c. Length of construction and design schedule

4. Design Creativity and Originality Maximum Score: 25

5. Qualifications Maximum Score: 10
 - a. Experience with comparable projects
 - b. Financial bonding capacity
 - c. Managerial resources
 - d. Recent and current workload
 - e. Ability to complete project in a satisfactory and timely manner

Total Maximum Score: 100

- 10.3. The Total Criteria Score for the Qualitative Proposal will be 100 in all instances. A Design-Builder must achieve a minimum score of 70 in order to advance in the competition.

- 10.4. Prior to opening the cost proposal, the Technical Review Committee will total and submit the scores of each Design-Builder to the Awarding Authority.

- 10.5. Points for the qualitative proposal shall not be awarded on a fractional basis.

§ 148-11-11. The Procedures for Negotiations Prior to Acceptance of a Proposal.

Negotiations between the apparent successful bidder and the Awarding Authority prior to award of a contract must not result in a contract amount which would change the outcome of the original bid. See W.Va. Code § 5-22A-6(5).

§ 148-11-12. Award of Design-Build Contract.

- 12.1. The Awarding Authority will set a date to inform the bidders of their qualitative scores and will simultaneously notify them of the date to publicly open the cost proposals, which shall be two working days after the opening of the qualitative Proposals.
- 12.2. The Awarding Authority will publicly open and read aloud the sealed cost proposals which met the qualitative proposal criteria. The lowest cost proposed will be assigned a score of 100. Other cost scores will be arrived at by the following formula:

$$\frac{\text{Lowest cost proposed}}{\text{Cost being evaluated}} \times 100 = \text{Cost Score}$$

To determine the successful Design-Build proposal, the total of the qualitative and cost scores will be added to arrive at a total score.

- 12.3. There is no requirement for the Awarding Authority to submit duplicate bids/Proposals to the Auditor's Office under the provisions of the governing Code section.
- 12.4. Unless all Proposals are rejected, the Awarding Authority will approve and award to the Design-Builder with highest total score and notify all proposing parties of intent to enter into a contract with the Design-Builder selected as provided above. The Awarding Authority reserves the right to reject all Proposals.
- 12.5. No protests may be lodged until such time as the final qualitative and cost proposals have been publicly opened, and may not be lodged at any time later than 72 hours following the public opening of the cost proposals.
- 12.6. The Awarding Authority will have final authority to approve or reject the recommended award based upon due process, legal, fiduciary, financial or policy considerations, but will not substitute its judgment on the qualitative evaluation for that of the Technical Review Committee.
- 12.7. The Secretary of Administration of the Awarding Authority may at his/her discretion waive any inconsistencies or infractions of this process, provided that a) it is deemed in the best interests of the state, and b) it does not give any party a cost or score advantage.

§ 148-11-13. Public Emergencies.

- 13.1. In the event of public emergency, the exceptions enumerated in W.Va. Code § 5-22-1 shall be followed. See W.Va. Code § 5-22A-6(7).

§ 148-11-14. Protests.

- 14.1. Any bidder adversely affected by the intended decision of the Awarding Authority to award a contract or to reject all bids shall file a notice of protest and bond with the Awarding Authority within seventy-two (72) hours after the posting of intent to award. A formal written protest must be filed within ten (10) days after filing the notice of protest with the Awarding Authority, stating with particularity the facts and law upon which the protest is based.
- 14.2. Any bidder who files a notice of protest in a bid rejection or an award pursuant to this section shall post with the Awarding Authority, at the time of filing the notice of protest, a bond payable to the Awarding Authority in an amount equal to one percent (1%) of the lowest bid submitted, or \$5,000, whichever is greater.
- 14.3. If the Awarding Authority prevails after completion of the protest and any appellate court proceedings, it shall recover all costs and charges included in the final order or judgment, excluding attorneys' fees. Upon payment of such costs and charges by the protester, the bond shall be returned. If the protesting party prevails, it shall be entitled to recover from the Awarding Authority all costs and charges included in the final order or judgment, excluding attorneys' fees. The entire amount of the bond shall be forfeited if the hearing officer determines that a protest was filed for a frivolous or improper purpose including, but not limited to, the purpose of harassing, causing unnecessary delay or causing needless cost for the Awarding Authority or parties.
- 14.4. All protest bonds, to be acceptable, must be made payable to the Awarding Authority and must be signed and sealed by the protesting party and surety. Such bonds must bind the protesting party and surety and be conditioned upon the satisfaction of any cost and charges included in any final order of judgment or appellate proceedings, in the event that the Awarding Authority prevails. In lieu of a bond, the protester may submit a cashier's check or bank money order made payable to the Awarding Authority, which monies will be held in trust by the Awarding Authority. Protest bond forms may be obtained from the Awarding Authority.
- 14.5. The Awarding Authority shall be deemed the prevailing party if the protesting party withdraws the protest at any time before entry of the final order.
- 14.6. All notices of protest and formal protests shall be filed with the Awarding Authority.
- 14.7. A protest is not timely filed unless both the notice of protest and the formal protest are received by the Awarding Authority within the required time limits. A written notice of protest which is filed by 5:00 p.m. on the date on which the seventy-two (72) hours expires shall be timely. If such date is Saturday, Sunday, or a holiday when the Awarding Authority offices are closed, the period shall run until 5:00 p.m. of the next day that is neither a Saturday, Sunday, nor holiday.

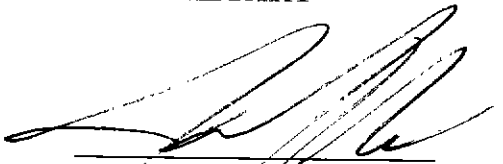
LEGISLATIVE RULE

148 CSR 11

**TITLE 148
DEPARTMENT OF ADMINISTRATION**

SERIES 11

APPROVAL OF FILING BY CABINET SECRETARY



**Joseph F. Markus
Cabinet Secretary
Department of Administration**



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: March 22, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Penny S. Stafford, Paralegal

Department of Administration, State Capitol Complex, Bldg. 1, Rm. EB-62, Charleston,

West Virginia 25305 PH: (304) 558-3392

LEGISLATIVE RULE TITLE: Rules For Selecting Design-Builders Under Design-Build

Procurement Act

1. Authorizing statute(s) citation § 5-22A-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
November 23, 1999

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
December 24, 1999

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

March 22, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Penny S. Stafford, Paralegal

Department of Administration, State Capitol Complex, Bldg. 1, Rm. EB-62

Charleston, WV 25305

PH: (304) 558-3392, FAX: (304) 558-5658, E-mail: PStafford@GWMail.State.WV.US

- g. **IF DIFFERENT FROM ITEM 'F'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

John T. Poffenbarger, General Counsel

Department of Administration, State Capitol Complex, Bldg. 1, Rm. E-119

Charleston, WV 25305

PH: (304) 558-4331, FAX: (304) 558-2999, E-mail: J.Poffenbarger@GWMail.State.WV.US

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

148 CSR 11

**TITLE 148
DEPARTMENT OF ADMINISTRATION**

SERIES 11

BRIEF SUMMARY OF PROPOSED RULE

This Legislative Rule sets forth the operative procedures for agencies to follow in selecting Design-Builders to provide combined design and construction services for projects authorized as Design-Build Board projects by the West Virginia Design-Build Board that are constructed and owned, potentially owned or ultimately owned by any Agency.

148 CSR 11

**TITLE 148
DEPARTMENT OF ADMINISTRATION**

SERIES 11

STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

This Legislative Rule is necessary for the Design-Build Board, established pursuant to §5-22A-4 of the West Virginia Code, to select Design-Builders and sets forth the operative procedures for agencies to follow in that selection.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules For Selecting Design-Builders Under Design-Build Procurement Act

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Administration

Address: State Capitol Complex, Bldg. 1, Rm. E-119

Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

3. Objectives of These Rules:

No Fiscal Impact.

Rule Title: Rules For Selectin Design-Builders Under Design-Build Procurement Act

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

C. Economic Impact on Citizens/Public at Large.

Date: March 22, 2000

Signature of Agency Head or Authorized Representative:

Renny S. Stafford

Received by Penny Stafford, Paralegal
DOA by 10:00AM 12-27-99

THE LAW OFFICES OF
STUART CALWELL, PLLC

405 Capitol Street
Suite 607
Post Office Box 113
Charleston, West Virginia 25321
Telephone: (304) 343-4323
FAX: (304) 344-3684
Toll Free: 1-800-876-5529
Email: stuartcalwell@calwelllaw.com

Stuart Calwell
John H. Skaggs
Mary McQuain
Shirley A. Skaggs

David H. Carriger (WV & VA)
John H. Kozak
D. Christopher Hedges
Vincent Tivelli (WV & DC)
Tom White

Cabinet Secretary Joseph F. Markus
Department of Administration
1900 Kanawha Blvd., E
Charleston, WV 25305

December 27, 1999

Re: Comments on Proposed Regulations 148 CSR 9;
And 148 CSR 11

Dear Secretary Markus:

I represent the Laborers District Council. This correspondence is intended as the written comments of the Laborers District Council concerning the above detailed regulations relating to West Virginia Code section 5-22A-1 *et seq* The Design-Build Procurement Act. Please note that the Laborers District Council concurs with and incorporates by reference the comments on these regulations submitted by the Affiliated Construction Trades Foundation.

Concerning Series 9:

- 5.7 This provision attempts to empower the Board to suspend, alter or amend these Rules outside of public notice and comment. This provision should be deleted.

- 6.4 This provision unnecessarily restricts the power of the Board to determine if a project meets the criteria of the law. This provision should be deleted.

Concerning Series 11:

There are several important issues that should be addressed in this series:

- Public projects. It must be made clear that all projects considered for construction under this statute and regulations are public projects and must therefor comply with all aspects of the law of West Virginia including but not limited to all aspects of this state's prevailing wage law.

- Contractor Disclosure. In order for there to be a complete review of potential Design-Build proposals the reviewers must know the entire team. Therefor there must be a requirement

that all Design-Build proposals include information concerning all contractors and subcontractors who are to undertake construction should the bid be accepted.

- Labor Input. In order to have a true Technical Review Committee, a representative of the areas Building and Construction Trades should be included on each Technical Review Committee established pursuant to 6.1.

- Contractor's Record. In order to obtain a complete picture of each potential team, it is important that each proposal include a listing of the record of each contractor and subcontractor with regard to its compliance with the laws of West Virginia and the United States in areas including but not limited to: workers compensation, occupational safety and health and the environment. In addition, an indication of the record of the contractor or subcontractor with regard to the use of change orders on past projects.

- Section 12.7 This provision attempts to provide the Agency or the Secretary of Administration with the ability to override the process established in these regulations. This provision should be deleted.

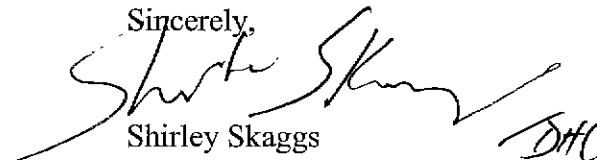
- Section 7.1.1 Architects selected must not have a financial interest in any aspect of the proposed project.

- Freedom of Information. All documents for each project both during development and construction must be available under the Freedom of Information Act.

- Section 14.3. The requirement that an unsuccessful protesting party pay the costs of the Agency will act as a deterrent to legitimate protests. This provision should be amended to permit a court to award the payment of such costs on appropriate situations.

Thank you on behalf of the Laborer's District Council of the opportunity to comment on these proposals.

Sincerely,



Shirley Skaggs
State Bar # 3653

DHC

148 CSR 11
TITLE 148
DEPARTMENT OF ADMINISTRATION
SERIES 11
RESPONSE TO COMMENTS RECEIVED

OFFICE OF THE
SECRETARY OF STATE
VIRGINIA

MAR 23 3 37 PM '00

FILED

Response to the comments received from Shirley Skaggs, Esq.:

Response to Comments on Proposed Regulation 148 CSR 9

Due to the lack of timely comments, no response is required.

Response to Comments on Proposed Regulation 148 CSR 11

1. **Prevailing wage requirement for public projects.** The rule has been revised to clarify that as design-build projects are, by definition, public projects, they are subject to the provisions of the prevailing wage law, as specified at § 21-5A.

2. **Contractor disclosure.** During the 2000 legislative session, House Bill 4442 was passed which established a vendor debarment program to be administered by the Department of Administration for the state and all its political subdivisions. Vendors debarred under this program are precluded from bidding on or being awarded contracts with the state or any political subdivision. Section 4.4 has been added to the rule to require disclosure of all subcontractors to facilitate compliance with the state's vendor debarment program.

3. **Labor input.** It is not within the Board's authority to prescribe members on the Technical Review Committee.

4. **Contractor's record.** Monitoring of contractors will occur through the state's newly established vendor debarment program.

5. **Section 12.7.** Providing the Secretary of Administration with the ability to waive inconsistencies in the proposal process does not allow for override of the rules. The Secretary currently has that ability for other procurements which is used, with appropriate discretion, in the event of minor infractions which might preclude the authorizing agency from considering an otherwise valid proposal.

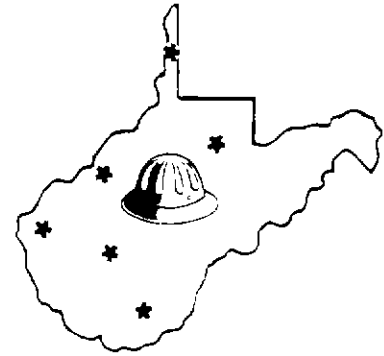
6. **Section 7.1.1.** Architects must not have a financial interest in the proposed

project. Other provisions of the State Code which govern ethics remain in effect and are not relevant to the promulgation of this rule.

7. Freedom of Information Act. Other provisions of the State Code which govern access to documents remain in effect and are not relevant to the promulgation of this rule.

8. Section 14.3. The unsuccessful protesting party pays the costs of the agency's legal fees. This provision will preclude the filing of frivolous protests. We do not believe that a legitimate protest will be deterred by this provision.

WEST VIRGINIA CONSTRUCTION COUNCIL



One Monongalia St. • Charleston, WV 25302 • (304) 342-7141

December 23, 1999

Joseph F. Markus, Cabinet Secretary
Department of Administration
Building 1, Room E119
1900 Kanawha Boulevard, East
Charleston, WV 25305-0120

Dear Secretary Markus:

I am writing to comment on the Title 148, Series 11 proposed *Rules For Selecting Design-Builders Under The Design-Build Procurement Act*.

We support your efforts and commend your agency for its endeavor in developing rules to guide the design-build process. As this is a significant change from the tradition of design-bid-build we are concerned that the process be well thought out and thoroughly critiqued.

At the outset let me state that I have reviewed the recommendations proposed by the Affiliated Construction Trades Foundation and support their recommendations. In addition, after reviewing the proposed rule I would like to offer the following comments.

First, we believe there should be a uniform, rigorous and mandatory screening of the design builder teams. This should include disclosure of the team members past performance, craft staffing, craft training programs, safety and drug testing procedures, and a compliance with general business laws and regulations.

Second, we believe there should be a uniform rating system to be used by the technical review committees and such rating system should be made public. Any rating system should include the data derived from the screening process mentioned above. We also believe the technical review committee should be expanded and include a registered architect or engineer.

Finally, we believe performance of design-builders who are successful in getting awards should be monitored and evaluated to determine the advantages and disadvantages, if any, to the design build process.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Jim Cerra".

Jim Cerra, President

148 CSR 11

TITLE 148
DEPARTMENT OF ADMINISTRATION

SERIES 11

RESPONSE TO COMMENTS RECEIVED

Response to the comments received from West Virginia Construction Council:

1. **Screening of the Design-Builder Teams.** During the 2000 legislative session, House Bill 4442 was passed which established a vendor debarment program to be administered by the Department of Administration for the state and all its political subdivisions. Vendors debarred under this program are precluded from bidding on or being awarded contracts with the state or any political subdivision.

2. **Uniform Rating System.** The concept of a uniform rating system was considered in the drafting of the Design-Build Board legislation, but was rejected. Use of a uniform rating system would restrict the flexibility needed by the authorizing agency to tailor the needs of particular projects.

3. **Inclusion of Architect or Engineer on Technical Review Committee.** Section 6.1 of the rule requires the participation of the Performance Criteria Developer, who must be a licensed architect or engineer, on the Technical Review Committee.

4. **Monitoring of Design-Builders.** We believe the vendor debarment program established by House Bill 4442 passed in March, 2000, provides for adequate monitoring of the performance of design-builders.

**Comments of the ACT Foundation
on the
Design-Build Legislative Rule**



Submitted to:

**The Honorable Joseph F. Marks,
Cabinet Secretary
West Virginia
Department of Administration**



Prepared by:

**Gerard M. Waites, Esq.
O'Donoghue & O'Donoghue
4748 Wisconsin Avenue, N.W.
Washington, D.C. 20016**

**December 23, 1999
(Corrected Copy)**

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I. INTRODUCTION¹

ACT, a subdivision of the West Virginia Building and Construction Trades Council, is a non-profit organization dedicated to promoting quality, cost-efficiency and accountability in the construction industry. ACT and the Council represent fifteen construction trades and approximately 16,000 skilled craftpersons who live and work in West Virginia.

The State's new Design-Build statute is intended to offer an alternative project delivery system for public works. The primary goal of this system is to provide the most advantageous, i.e., "best value" results, for contracting agencies and taxpayers by combining design and construction services to improve project cost, quality and schedule. To achieve these results, the Design-Build Act, and the State's procurement policy in general, mandate:

- (1) open competition among qualified firms;
- (2) fair and objective decision-making; and
- (3) systematic/value-based review of design-build proposals.

Having established this framework, the Legislature has delegated to the Department of Administration the task of developing specific rules and procedures that will govern the awarding of design-build projects in a manner consistent with these goals. ACT commends the Department for its work on the initial legislative rule and appreciates the opportunity to submit these comments.

II. OVERVIEW

It is likely that a good segment of the construction community is wary of the design-build method. This approach requires fundamental changes in the procurement process and represents a major departure from the traditional design-bid-build method which requires projects to be awarded to the lowest responsible bidder under well established bidding procedures.

With design-build ("DB"), contractors have the opportunity to earn relative weight or credit for both their qualifications and design proposals. Awarding authorities, entrusted with the public fisc, must evaluate design-builders in these areas by rating the proposals and performance capabilities of respective bidders.

In developing design-bid procedures, one of the biggest challenges is to demonstrate that public works projects can be awarded under this method in a fair and impartial manner. Low price may no longer rule and, given the flaws in the traditional system, this change may be long overdue. But it is critical that any discretion exercised by contracting officials be limited to prevent potential abuse, favoritism or corruption in the procurement process.

¹The author is a partner in the Washington, D.C. law firm of O'Donoghue & O'Donoghue, where he specializes in public procurement law, construction law and labor law.

Equally important, procedures must be developed to ensure the systematic and accurate evaluation of design-build proposals. In this regard, there must be objective evaluation of both design quality and contractor qualifications. If these issues are effectively addressed, the design-build process can produce best value results and win acceptance.

The regulations proposed by the Department provide a good initial blueprint for meeting the challenges and objectives of the new legislation. ACT submits, however, that a number of additional provisions need to be incorporated into the final rule to ensure that the goals of the Design-Build Act are realized. Some of the key features we recommend are:

- ◆ Mandatory Qualification Screening of Design-Build Teams Via:
 - Uniform Qualification Statements & Contractor Questionnaires
Per Recommendations of Design-Build Institute
 - Full Disclosure of Past Performance Evaluation Reports
Per Recommendations of Design-Build Institute
 - Proof of Adequate Craft Training & Staffing Capabilities
Per Recommendations of Business Roundtable & AGC

- ◆ Mandatory Uniform Proposal Rating System
 - Requiring a Minimum of 50 Qualitative Points be Allocated to Bidder Qualifications
 - 20 Points for Past Performance, 20 Points for Technical Qualifications, 10 Points for Craft Training & Staffing
 - To Prevent Over-Valuing of Design Quality & Ensure Project Success

- ◆ Performance Tracking Procedures: Full Disclosure & Direct Reporting to Department of Administration for All Projects to Monitor:
 - Quality of Services Delivered by DB Teams; and
 - Effectiveness of the Design-Build Process

Exhibit A hereto sets forth the specific recommendations and proposed regulatory language, in the form of revised and additional contracting procedures, that ACT encourages the Department to consider. The rationale and justification for these recommendations are explained in the remaining comments below.²

²These recommendations are based on a review of the Design-Build Act and model guidelines provided by the Design-Build Institute of America ("DBIA"). In addition, we have relied on a best practices survey of best value contracting (DB and non-DB), prequalification and responsible contractor policies utilized in public and private sectors. This best practices survey, which we will be glad to make available on request, was conducted by the author for the United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry.

III. QUALIFICATION SCREENING & BEST VALUE SOURCE SELECTION

A. The Role of Qualification Screening in Design-Build

For projects awarded under the Design-Build Act, low bid will no longer be the determining factor. Rather, projects will be awarded on a best value basis considering price, design quality and the qualifications and capabilities of the design-build team.

In this equation, qualifications are just as important as design quality, if not more so, because they determine the ability of the DB team to successfully deliver the proposed project. The most creative, innovative and economical design will offer little value if the team selected does not have the capabilities to meet the quality, cost and schedule conditions of the proposal. As explained in the Practice Manual of the Design-Build Institute:

The ability of the design-builder to successfully complete projects efficiently and on time are key attributes that an owner must take into account when evaluating prospective design-build proposers. Design and construction management capabilities vary from one organization (or team) to another.

While most firms, by their very nature, are eager to compete for different types and sizes of projects, some firms are better qualified in terms of management skills, design quality, quality control, finance, experience and personnel than other firms for a particular type and size of project. For this reason, minimum requirements, combined with a screening process utilizing published and weighted evaluation criteria, are essential.³

Thus, the importance of screening qualifications in the design-build process cannot be understated. The degree to which a contracting agency can effectively evaluate the capabilities of design-build teams will, to a large extent, determine its ability to achieve best value results. Procurement officials must first make sure that they look at the "right" issues or factors, namely the key factors most likely to impact project success. And, second, the procurement system must be designed to make certain that contracting officials have sufficient information and performance data on all factors or performance areas evaluated.

The recommendations set forth below are designed to ensure that contracting agencies conduct effective screening of all design-build team members in terms of their technical qualifications, past track record and present performance abilities.

³DBIA Practice Manual, Design-Build RFQ/RFP Guide for Public Projects, p. 27.

A. Establishing Key Performance/Qualification Criteria

ACT recommends that the DB regulations list twelve (12) mandatory qualification factors/performance areas that should be reviewed by contracting agencies during both the initial qualification stage and the subsequent source selection process. These areas are:

- (a) Licensing & Bonding Capacity
- (b) Financial Strength & Capabilities
- (c) Experience & Technical Expertise: With Projects of Similar Size/Scope
- (d) Past Performance: 5-Year Minimum Review of All Projects, Public/Private, Including All Relevant Quality, Schedule & Cost Data
- (e) Law Compliance/Business Integrity: 5-Year Minimum Review of All Projects
- (f) Qualifications/Experience of Key Management and Professional Staff
- (g) Craft Training & Staffing Capabilities: Programs & Resources
- (h) Capacity To Accomplish Work in Required Time/Disclosure of Workload
- (i) Quality Control & Quality Assurance Policies/Programs
- (j) Safety Record/Safety & Drug-Testing Policies/Programs
- (k) Equipment, Technical Resources & Information Technology
- (l) Subcontracting Plan & Qualifications/Capabilities of Subcontractors

While the list set forth above is somewhat extensive, it is necessary. If the State is going to depart from the lowest responsible bidder rule and permit public agencies to award projects on the basis of qualifications and performance, as well as price, it is critical that awarding agencies conduct rigorous inquiries into qualifications and past track records of prospective design-build teams.

Qualification screening is particularly important for design-build projects in the construction industry. Design firms and especially construction firms come and go quickly in the industry. And, with design-build, each new project can generate proposals from newly formed design-build teams of architect/engineers, prime contractors and subcontractors. For agencies to make informed contracting decisions, substantial background and performance data on proposed design-build team must be scrutinized for each new project.

Virtually all of the factors listed above are recommended by the DBIA Practice Manual and in the Federal Government's regulations governing DB contracting procedures and the selection of architect/engineering firms.⁴ While the relevance of most of these factors is self-evident, several warrant discussion.

⁴See DBIA Practice Manual, Design-Build RFQ/RFP Guide for Public Projects, pp. 20-21, 27; Federal Acquisition Regulation ("FAR"), § 36.303-1; § 36.602-1. A number of these factors are also included in the "Example of Rating System" provided in the Department of Administration's proposed regulations. (Section 148-11-10.2).

1. Past Contract Performance

Past performance, which should be distinguished from experience, is a critical evaluation factor in any design-build procurement. Experience generally refers to how long a company has been involved in the industry and the types of projects it has designed or constructed. Past performance relates to how well it has performed.

The central role that past performance in public procurement has been strongly emphasized by the Federal Government, which mandates that it be included as an evaluation factor in all best value and design-build acquisitions. In the Federal Acquisition Streamlining Act of 1994, Congress declared:

Past contract performance of an offeror is one of the relevant factors that a contracting official . . . should consider in awarding a contract. It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform [the] contract⁵

Subsequently, the Federal Acquisition Council issued new regulations mandating the tracking, review and evaluation of past performance for all negotiated contracts. Current regulations now include the following provisions:

The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications and prior experience

past performance shall be evaluated in all solicitations for negotiated competitive Acquisitions issued on or after January 1, 1998 for all Best Value contracts valued over \$100,000.⁶

The current draft of West Virginia's Design-Build regulations do not specifically mandate the consideration of past performance, although the relevance of this factor is acknowledged in the sample "Rating System," which includes references to the design-builder's experience.

⁵Public L.No. 103-355, 108 Stat. 3243; See also Presidential Executive Order of October 13, 1994, Federal Procurement Reform, Federal Register, Vol. 59, No. 199, October 17, 1994, Page 52387 (directing executive agencies to "place more emphasis on past contractor performance and promote best value rather than simply low cost in selecting sources for supplies and services."

⁶See, FAR § 15.304(c)(2); § 15.304(c)(3)(ii); § 42.1501-1502; § 36.201.

ACT submits that the past performance of the DB team and individual team members, should be a mandatory, separately weighted evaluation factor, in all design-build projects. In addition, since it is one of the few measurable and best indicators of future success, we recommend that past performance be allocated a minimum of 20 qualitative points for all projects. It bears repeating that the best design will provide little value unless the team selected can deliver.

As noted above, we also urge that in order to effectively review past performance, awarding authorities should be required to obtain a complete listing of all of the firm's projects (not just its best few examples) and full disclosure of past performance evaluation reports for all projects, public and private.⁷ Another useful tool for obtaining past performance data is customer questionnaires, a process relied on by a number of Federal contracting agencies.

Consideration of performance information, particularly in the areas of cost, schedule and quality, is specifically recommended by the Design-Build Institute in its model documents.⁸ In sum, the careful review of past performance information should be an integral part of the awarding agency's evaluation of the respective qualifications of design-build teams.

2. Craft Training & Staffing Capabilities

Anyone familiar with the construction industry will agree that the quality, productivity and efficiency of the craft labor force deployed on a project will have a dramatic impact on the project's success. Recognizing this fact, a number of prominent industry organizations have recently issued reports to advise project owners on craft labor issues. Two of the most notable reports in this area were prepared by the Business Roundtable ("BRT") and the Private Industry Council of the Associated Contractors of America ("AGC").⁹

The BRT and AGC reports advise project owners to carefully evaluate prospective contractors on both their training and staffing capabilities. Several factors drive these recommendations:

⁷These reports, which are prepared on virtually all public projects and most private jobs, typically rate contractors and architect/engineers on key performance areas, including cost, schedule, quality, cooperation and overall customer satisfaction. The firm evaluated is usually given copies of these documents and permitted to comment on them. Therefore, the proposed design-builder could be required to submit copies of these records, along with its responses, as part of its qualification package. If it does not have copies, it should authorize a release to permit the contracting agency to obtain copies from its previous customers.

⁸DBIA Practice Manual, RFQ/RFP Guide for Public Sector Projects, pp. 20-21.

⁹See, *Confronting the Skilled Construction Workforce Shortage*, Business Roundtable, Construction Cost Effectiveness Task Force (1997), Ex. B hereto; AGC Press Release, February 8, 1999, Ex. C hereto.

- ◆ Construction is highly labor-intensive industry; a single project can require thousands of employees.
- ◆ It is a diverse, dangerous and highly skilled industry; it requires well-trained safety-conscious craft persons in multiple trades and classifications.
- ◆ As we enter the 21st Century, skill levels are becoming even more demanding as new methods of construction are developed and new technology and materials are introduced.
- ◆ For several years there have been acute, severe skill shortages in craft personnel; this is widely recognized as the industry's "No. 1" problem.
- ◆ Construction is highly transient: the make-up a contractor's workforce can change dramatically on each project; this often presents an "unknown" risk factor for owners.

Given these factors, it is easy to see how the training and skills of a contractor's craft personnel have a substantial impact on its overall performance capabilities, particularly in current market conditions. Project success will also depend on the contractor's ability to adequately staff a project in all required crafts.

Citing the negative impact that skill shortages are having on project performance, the Business Roundtable has strongly recommended that owners carefully evaluate a contractor's craft training and staffing plans on every project. Indeed, the BRT warns that project owners should only do business with contractors who maintain a substantial investment in and commitment to training and can adequately staff projects.¹⁰

The Private Industry Council of the AGC has issued similar guidelines. Specifically, it recommends that every Request For Proposal issued by project owners should require contractors to provide specific information on the types of skill training and safety training it provides for craft personnel and the level of financial investment in maintains in training.¹¹

ACT submits that these recommendations should be incorporated into the final design-build regulations to help ensure the success of proposed projects. Specifically, agencies should require that, as part of their qualification package, design-builders submit proof on the following items:

¹⁰See, Ex. B, BRT Report, pp. 1-3, 9-14.

¹¹See, Ex. C, PIC/AGC Recommendations

- (a) The amount of construction work the Design-Builder plans to self-perform.
- (b) The number of craft personnel the Design-Builder employees directly in each craft or classification; the same information on any proposed subcontractors.
- (c) The Design-Builder shall provide detailed information as to how it plans to staff the proposed project, how it plans to recruit craft employees, the localities in which it expects to employ craft personnel, how it plans to retain craft employees and maintain a sufficient workforce for the duration of the project.
- (d) The types of skill training and safety training provided by the Design-Builder for each craft and the amount of funds invested in training by the Design-Builder and its respective team members on a craft-by-craft basis.
- (e) The number and type of registered apprenticeship training programs and journeyman training programs in which the Design-Builder participates.

3. Law Compliance & Business Integrity

Since projects built under the Design-Build Act will be funded by tax dollars, design-builders should be required to qualify as "responsible contractors" under state law. This term, as defined in procurement law generally, encompasses both the technical qualifications and the business integrity of the proposed firm. See e.g., FAR § 9.104-1

The issue of qualifications has been discussed above and it is addressed to a limited extent in the proposed regulations. The business integrity component, however, is also important and should be specifically included in the final regulations. Business integrity simply relates to the prospective contractor's honesty and trustworthiness. This factor is a vital consideration in any public procurement. Public contracts, funded by tax dollars, should not be awarded to companies that fail to pay taxes, engage in unfair business practices, or commit violations of criminal, environmental or labor laws.

When companies cheat on any laws, they obtain a tremendous unfair and illegal advantage. Such effects erode public trust in the system and are highly unfair to law-abiding companies that play by the rules. Moreover, the government should not be rewarding a contractor with one arm, while investigating and prosecuting it with another.

The consideration of business integrity and law compliance have long been considered key elements in assessing contractor responsibility in Federal procurement.¹² ACT recommends that these factors be reviewed as mandatory evaluation factors for all Design-Build projects. Specifically, contracting agencies should require prospective design-builders to disclose all law violations for the past five years. Agencies should also review public data banks for law compliance and tax status information to ensure contractors are making full disclosure.¹³

Self-disclosure by design-builders can be accomplished through mandatory contractor questionnaires on responsibility issues. ACT recommends that the model questionnaire, attached hereto as Ex. D, be a required procedure for all design-build projects and incorporated into the final regulations.¹⁴

Further, to ensure future compliance on design-build projects with the requirements of the State's prevailing wage law, the final regulations should require that the RFPs for all projects expressly stipulate that the proposed project is covered by W. Va Code §21-5A.

4. Subcontracting Plans & Subcontractor Qualifications

The Design-Build Act explicitly provides that contracting agencies may require design-build teams to pre-list the subcontractors they plan to use for the project. See, W.Va. Code § 5-22A-11. ACT recommends that the final rules specifically mandate that design-builders be required to identify their entire team, including subcontractors, and to demonstrate the qualifications of all team members.

This requirement is needed for several reasons. First, many general contractors self-perform only a very limited portion of the entire project and subcontract the rest to numerous subcontractors. These subcontractors, which can literally number in the dozens, may end up performing 90% or more of the actual work.

The fact that the general contractor, or design-builder is ultimately responsible to the agency, is not sufficient protection. If a major subcontractor is hired and later proves to be incompetent, the fact that the agency may have some legal recourse against the design-builder will be of limited value.

¹²There are numerous Federal cases upholding nonresponsibility determinations on this basis, which we would be glad to furnish upon request. There are also a substantial number of cases disqualifying contractors on the basis of poor past performance, as well as inadequate training and staffing capabilities.

¹³Under this approach, contractors should be disqualified only for serious and substantial law violations, the determination of which must be made on a case-by-case basis.

¹⁴This model contractor questionnaire, which is based on a recent best practices survey by New York State, is also designed to elicit other critical past performance information from prospective contractors.

Project schedule and quality could still be seriously undermined, producing harmful delays, defects and other problems for the awarding authority.

In addition, without this requirement, prime contractors may tend to "shop" bids around to maximize their own profit. While this may benefit the prime, it also tends to drive bid prices to unrealistic levels. The subcontractors eventually hired may then seek to cut corners or deliver marginal performance at best. All of these facts are recognized by the DBIA, which counsels that:

The agency should be able to evaluate the qualifications of the persons to whom duties will be sublet under the design-build contract. Disclosure of such persons will also discourage potentially harmful post-award bid shopping. It is assumed that awards will be induced in part by the qualifications of the persons to whom work is sublet, so replacement of those persons without approval of the Agency is ground for revocation of the award.¹⁵

Requiring pre-listing of subcontractors can avoid these problems and force disclosure of the true identity of the design-build team. To ensure best value selections, the awarding authority should also review the credentials of all major subcontractors, i.e., subcontracts valued over \$100,000. For these subcontractors, all of the qualification and performance areas discussed above should be evaluated. Agencies need to consider the capabilities of major subcontractors in evaluating the design-builder's overall ability to perform a quality project under the proposed schedule and budget. In any event, the agency should always reserve the right to screen subcontractor qualifications and to disqualify firms that fail to meet minimum performance standards.¹⁶

C. Developing Effective Qualification-Screening Procedures

ACT submits that all of the twelve performance areas listed above are critical to every project and, therefore, contracting agencies should specifically be required by regulation to examine prospective DB teams in all of these areas for every project.¹⁷ Further, while agencies should be permitted to examine additional qualification factors at their discretion, the above-listed criteria should be part of a mandatory qualification/performance screening process applicable to all agencies.

¹⁵DBIA Practice Manual, Model Design-Build Procurement Act, p. 8 (emphasis added)

¹⁶The final rule should also impose a requirement on the design-builder to screen its own subcontractors and make a representation that it has conducted an evaluation in the 12 performance areas specified above and has made a determination that the listed firms are qualified, responsible contractors.

¹⁷As discussed below, contracting agencies should also be given the option to utilize prequalification procedures and to consider these same factors as a matter of prequalification.

In addition, ACT recommends providing a uniform format for screening qualifications that will promote consistency and fairness in the bidding process. For these reasons, the final regulations should require the use of a standardized qualification statement by all agencies, as recommended by the DBIA:

Required Format of Qualification Statements. In order to determine eligibility, and to make quick and accurate comparisons between competing applicant teams, a consistent format of information is desirable. There are several forms available from government agencies, professional organizations and trade associations that would include most of the typical information requested in a design-build RFQ. Utilization of these forms, to the extent possible, allows for convenient comparisons by . . . [contracting officials], and reduces the cost to the applicant firms to prepare the information.

The Qualification Statement should be designed to elicit sufficient information on each of the 12 performance areas specified above. We stress, however, that qualification statements provide only one source of data. ACT advocates that contracting agencies be required to use of other available screening procedures and information-gathering techniques as well, including audited financial statements, complete listings of past projects, mandatory disclosure of all past performance evaluations and detailed contractor questionnaires.

Prospective design-build teams should be required to provide all of this information as part of a standard qualifications package. The use of a standardized package could be efficient for both contractors and procurement officials. Under this approach, once a firm compiles the necessary information, it could use it for any DB projects throughout the State, provided the package is updated for each new job as new information becomes available.

Contractor questionnaires can be an important information-gathering device insofar as firms can be screened on various performance areas, such as past contract default, incidents of liquidated damages, claims litigation, incidents of schedule delays and other potential problem areas. (See, Ex. D hereto.) As noted above, contractor questionnaires can also be useful for inquiring into the firm's record of law compliance and business integrity.

Further, since contractors may not always engage in full, complete disclosure during the screening process, ACT recommends that public agencies conduct independent reviews of prospective bidders by auditing public data bases, issuing customer questionnaires and utilizing other available sources of qualification and performance data. Prospective DB firms should be warned that failure to disclose required information could result in disqualification.

All of these tools are essential for ensuring that contracting agencies have the necessary data to permit informed best value decisions. To aid this process, it would also be beneficial to create a centralized contractor data base within the Department of Administration, which, together with contractor performance evaluations on new DB projects, could be used to maintain qualification records that could be used for future reference and shared by contracting agencies.

D. Requiring Minimum Standards for Design-Build Rating Systems

As noted, the best design will be of little value unless the DB team offering the proposal has the qualifications and capabilities to successfully perform the project. Given this fact, ACT recommends that the final regulations mandate that all Request for Proposals for design-build projects require that a minimum of 50 qualitative points be allocated to the DB team's qualifications, according to following break-down:

Qualifications/Capabilities of Design-Builder	Minimum Score:
Past Performance	20
Technical Capabilities * Includes Financial, Management Resources, and Other Mandatory Evaluation Factors	20
Craft Staffing Capabilities *Includes Training & Staffing Capabilities for All Crafts	10
Qualitative/Design/Technical Criteria	
Materials/Systems/Plans	20
Proposed Project Schedule	10

The remaining 20 points may be allocated at the discretion of the contracting agency to any of the above-referenced factors, or any other factors that are reasonably related to achieving the best value results from the project.

This approach, which should be clearly explained in the RFP documents, will maximize best value results. It will also discourage unqualified firms that lack the necessary experience and resources, while encouraging participation from the companies that are truly qualified to do the job. As a result, the quality of the competition will be enhanced.

E. Optional Pre-Qualification Procedures

Contracting authorities should be permitted, at their discretion, to utilize prequalification procedures to aid the design-build process. Such procedures should be expressly authorized by the final regulations and encouraged, particularly for larger, more complex projects.

Since the Design-Build Act promotes the evaluation and use of qualification factors in the design-build process and seeks to maximize best value results through this process, a regulatory provision authorizing the optional use of prequalification would be fully consistent with the key

goals of the statute. ACT recommends that where agencies use prequalification they be required to examine the qualification criteria set forth above and employ the information-gathering techniques suggested in these comments.

The use of prequalification will benefit design-builders since it permits them to know where they stand up front -- before investing literally hundreds of thousands of dollars in developing contract proposals. Further, the information submitted during this initial screening phase could be used during the proposal evaluation and rating process, provided it is updated with all relevant, responsive information.

IV. MAXIMIZING CHECKS & BALANCES IN THE DB PROCESS

A. The Technical Review Committee

The current regulations mandate only two voting members be included in the Technical Review Committee. ACT recommends that the final rule require at least three full voting members to ensure a balanced, deliberative evaluation process.

While committee members should be permitted to discuss the respective qualifications of design-builders, to promote objective analysis, the members should be required to rate each firm individually and independently. Individual scores should then be combined and averaged for a total score for each design-builder.

ACT also recommends that the final rule require that members of the Technical Review Committee be adequately qualified to perform their duties. The final rule should require that members have a minimum of five years experience in the procurement of design and/or construction services.

B. The Role of the Performance Criteria Developer

ACT recommends that the final regulations direct the Performance Criteria Developer ("PCD") to closely monitor the design-build process, as required by the statute. See W. Va Code 5-22A-13. To encourage objective monitoring of DB projects, the PCD should be required to report to the head of the Department of Administration, as well as the awarding authority. It might also be helpful to encourage contracting agencies to hire outside PCDs, rather than use in-house personnel. This could provide an extra independent check on the DB process.

C. Complaint Protection Procedures

To prevent potential abuse, favoritism and corruption in the awarding and/or administration of design-build projects, procedures should be established to encourage the reporting of any improprieties or irregularities in relation to these projects by any person having

knowledge of same. Persons seeking to report such matters should be directed to file complaints with the Department of Administration and/or the head of the awarding authority.

Where such persons are public employees, they should be afforded full protection in their employment for engaging in these activities. Where such persons are not public employees, for example, in the case of independent PCDs, protection from discrimination should also be provided. While these types of activities will hopefully be rare, it is critical that protections be afforded to provide a check against potential abuse in the system. In addition, the mere existence of such procedures will serve as a deterrent effect against abuse.

D. Agency Approval of Source Selection

Act submits that Section 12.6 of the proposed regulations gives too much discretion to the awarding authority. This provision would allow the agency to override the contracting decision or recommendation of the Technical Review Committee for "financial or policy considerations." There could be a host of problems created by authorizing such discretion. Not only could this open the door to disguised favoritism, but it could be devastating to design-builders who invest hundreds of thousands of dollars in preparing proposals, only to have their contract thrown out for "financial or policy considerations." It is also questionable whether such an action by an agency would withstand legal challenge.

V. PERFORMANCE EVALUATION: DB TEAMS & THE DB PROCESS

A. Monitoring & Reporting on the Performance of Design-Build Teams

Since performance plays such a decisive role in design-build projects, it is essential that contracting agencies closely track the quality of work and overall performance delivered on each project. This information can be critical to future contracting decisions. Thus, the performance of the DB team, particularly in terms of cost, schedule and quality, should be carefully monitored, evaluated and documented in formal performance evaluation reports.

This requirement should be spelled out in the final regulation and carried out by the PCD, who should be directed to report to the Department of Administration, as well as the awarding authority. This reporting should be performed on at least a quarterly basis during the entire design-construction process and in a final report prepared at project close-out.

To provide guidance in this process, the final regulations should incorporate the language and monitoring requirements stipulated in the Design-Build Act. See W.Va. Code § 5-22A-13. In addition, a standardized or uniform performance evaluation report should be developed and used on all projects. This form should be based on the best models used in the industry. A sample federal report is attached hereto as Ex. E.

B. Monitoring & Reporting on the Results of the Design-Build Process

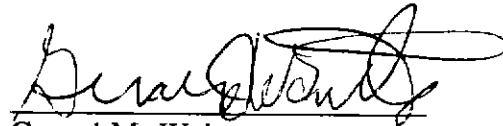
It would be beneficial for the State and its contracting agencies to monitor the design-build process itself, as well as the performance of DB teams. While the above-referenced performance evaluations could be examined to help evaluate the process itself, the PCD should also be directed to monitor and report on all key activities in the solicitation, evaluation and source selection stages to evaluate the fairness and effectiveness of the entire DB contracting process.

On these matters, the PCD should again be directed to report to both the Department of Administration and the awarding authority. This information could be extremely useful in aiding future decisions for using design-build procedures and in developing necessary revisions to DB guidelines and regulations.

VI. CONCLUSION

ACT fully supports the use of the Design-Build and other forms of best value contracting, provided these systems are developed and administered in a fair and effective manner. We hope that the comments and recommendations set forth herein assist the Department in its review of this important matter.

Respectfully submitted,



Gerard M. Waites

A

**Recommendations of the ACT Foundation
For
Revised/Additional Provisions
for the Design-Build Regulations
148 CSR 11**



Submitted to:

**The Honorable Joseph F. Marks,
Cabinet Secretary
West Virginia
Department of Administration**



Prepared by:

**Gerard M. Waites, Esq.
O'Donoghue & O'Donoghue
4748 Wisconsin Avenue, N.W.
Washington, D.C. 20016
December 23, 1999**

PROPOSED REVISIONS AND ADDITIONS

§ 148-11-2 Definitions

2.11.1: Addition: Qualifications Proposal: A Qualifications Proposal shall include all necessary information to evaluate a prospective Design-Builder in all major qualification and performance areas, including those relating to licensing, bonding, business integrity, past performance, experience, financial and technical resources, project staffing, craft training and safety and other information provided in response to the qualifications component of the Request for Proposals.

2.11.1: Addition: Supplemental Qualifications Proposal: A Supplemental Qualifications Proposal shall include the Initial Qualifications Proposal, a pre-listing of any parties to whom the Design-Builder is going to subcontract to, qualifications data of proposed subcontractors and any specific management plans, staffing plans, training plans, safety plans, or quality control plans for the proposed project and other information provided in response to the qualifications component of the Request for Proposals.

2.11.2: Addition: Qualitative or Design/Technical Proposal: A qualitative proposal shall include preliminary design drawings, outline specifications, technical reports, calculations, permit requirements, management plan, schedule, and other data provided in response to the qualitative component of the Request for Proposals.

2.11.3: Addition: Price/Cost Proposal: The price proposal shall be submitted in a separate sealed package. The package shall indicate clearly that it is the price proposal and shall identify clearly the firm's name, project description, or any other information required by submission of proposals.

§ 148-11-4 Qualification Requirements for Firms Providing Design-Build Services and Qualification for Design-Build Projects

4.1 **Revision:** To fulfill the goals of W.Va. Code § 5-22A-1 and to ensure best value results in the selection process, prospective Design-Builders and any members of a prospective Design-Build team including architects, contractors, and engineers, shall be required to meet minimum qualification standards as defined below.

4.1.1 **Addition:** Each Design-Builder shall be required to submit a Qualifications Proposal that shall be evaluated by the Agency's Technical Review Committee during a qualifications screening process.

4.1.2 Addition: To determine whether a prospective Design-Builder meets required qualification standards, the Design-Build entity, or the appropriate member of the proposed Design-Build team, shall be required to submit information sufficient to be evaluated in all of the following areas:

- (a) Licensing & Bonding Capacity
- (b) Financial Strength & Capabilities
- (c) Experience & Technical Expertise: With Projects of Similar Size/Scope
- (d) Past Performance: 5-Year Minimum Review of All Projects, Public/Private, Including All Relevant Quality, Schedule & Cost Data
- (e) Law Compliance/Business Integrity: 5-Year Minimum Review of All Projects
- (f) Qualifications/Experience of Key Management and Professional Staff
- (g) Craft Training & Staffing Capabilities: Programs & Resources
- (h) Capacity To Accomplish Work in Required Time/Disclosure of Workload
- (i) Quality Control & Quality Assurance Policies/Programs
- (j) Safety Record/Safety & Drug-Testing Policies/Programs
- (k) Equipment, Technical Resources & Information Technology
- (l) Subcontracting Plan & Qualifications/Capabilities of Subcontractors

4.1.3 Addition: In conducting evaluations required by this part, the Agency shall require the Design-Builder's to provide sufficient information and evidence on each of the above-listed criteria to permit proper evaluation of the Design-Builder's qualifications and capabilities.

4.1.4 Addition: The information collected at this stage shall be examined for purposes of scoring the Design-Builder's Qualifications Proposal and Qualitative Proposal and may be given appropriate relative weight during the best value evaluation process. This information shall be submitted to the Technical Review Committee and shall include, but not be limited to:

- (a) proof of licenses, audited financial statements, documentation on management personnel, quality control and safety programs (including drug-testing), equipment, information technology and subcontracting and other technical resources.
- (b) all performance evaluations or reports, from all projects, public or private, for at least the last five years.
- (c) detailed questionnaires regarding past performance, past law compliance and any other factors determined relevant by the Agency;

4.1.5 Addition: In determining the craft training and staffing capabilities of prospective Design-Builders, the Agency shall require information on and make necessary inquiries into the following areas:

- (a) The amount of construction work the Design-Builder plans to self-perform.
- (b) The number of craft personnel the Design-Builder employees directly in each craft or classification; the same information on any proposed subcontractors.
- (c) The Design-Builder shall provide detailed information as to how it plans to staff the proposed project, how it plans to recruit craft employees, the localities in which it expects to employ craft personnel, how it plans to retain craft employees and maintain a sufficient workforce for the duration of the project.
- (d) The types of skill training and safety training provided by the Design-Builder for each craft and the amount of funds invested in training by the Design-Builder and its respective team members on a craft-by-craft basis.
- (e) The number and type of registered apprenticeship training programs and journeyman training programs in which the Design-Builder participates.

4.1.5 Addition: A Design-Builder disqualified during the initial qualifications screening process shall be notified by the Technical Review Committee and shall have a right to appeal any such determination to the Agency within seven days.

§ 148-11-6. Technical Review Committee

- 6.1 Revision:** There shall be a Technical Review Committee ("TRC") comprised at a minimum of three voting members properly qualified to evaluate Design-Build proposals. The TRC shall have responsibility for rating and scoring Qualification and Qualitative Proposals as provided in Section 10 of these regulations.
- 6.1.1 Addition:** At least one of these individuals shall be a duly licensed architect or engineer with substantial experience in the design/construction industry. The other two members of the TRC shall have at least five years experience in the procurement of design/construction services.
- 6.1.2 Addition:** The TRC shall include three voting members, including one representative of the Agency and one representative of the facility user. The Performance Criteria Developer shall be a member of the TRC and may be assigned a voting or non-voting role on the Committee. At the discretion of the Secretary of Administration, the Secretary or his/her designee may serve as a member of the TRC.

§ 148-11-8. Preparations & Contents of Request For Proposals

§ 8.1.1 Addition: The RFP should advise interested parties of the nature of the qualifications screening process and best value source selection process and request all information necessary to comply with Sections 4 and 10 of these regulations.

§ 8.1.2 Addition: The RFP shall advise that the project will be subject to the State's prevailing wage requirement pursuant to §21-5A of the West Virginia Code.

§ 8.1.3 Addition: The RFP should further encourage all interested parties to carefully review all requirements of § 5-22A of the West Virginia Code and these regulations prior to submitting a proposal.

§ 8.1.4 Addition: The RFP shall inform interested parties of the evaluation criteria that will be utilized in selecting the best value proposal and the maximum number of qualitative points available for each evaluation factor.

§ 8.1.5 Addition: In designing the RFP, the Technical Review Committee of the Agency shall include the following evaluation criteria and minimum scores:

1. Qualitative/Design/Technical Criteria	Minimum Score:
Materials/Systems/Plans:	20
Proposed Project Schedule	10
2. Qualifications/Capabilities of Design-Builder	Minimum Score:
Past Performance	20
Technical Capabilities	20
* Includes Financial, Management Resources & Other Mandatory Criteria (Per Section 4.1.2)	
Craft Staffing Capabilities	10
*Includes Training, Staffing & Safety Capabilities for All Crafts	

The remaining 20 points may be allocated at the discretion of the Agency to any of the above-referenced factors, or any other factors that are reasonably related to achieving the best value results from the project.

8.1.5 Addition: The RFP shall notify interested parties of the exact scoring system that will be utilized in evaluating proposals, including the evaluation factors and sub-factors that will apply and their respective minimum and maximum scores. Interested parties shall be further advised that the scores they receive for their qualifications may be based, in part, on all information provided during the qualification screening process.

§ 148-11-10 Evaluation of Proposals

10.1 Revision: A response to an RFP received from Design-Builders will be segmented into three parts, consisting of:

– a qualification proposal/package, which includes a pre-listing of subcontractors and evidence of its subcontractors qualifications, and all information required by §148-11-4 of these regulations;

-- a qualitative proposal (which includes all relevant data, drawings and documentation on the proposed design, materials and schedule);

and a price/cost proposal.

10.2 Revision: The Technical Review Committee will review the qualifications and qualitative proposals submitted by each Design-Builder and will establish a rating for each Design-Builder's proposal based upon the performance criteria format. This criteria may be adjusted for the particular characteristics of the project, providing it maintains the minimum standards set forth in Section 8 above and clearly set forth the applicable criteria in the RFP.

10.2.1 Addition: While the TRC members may discuss their review of competitive proposals, each voting member of the TRC shall individually, independently and confidentially rate or score each proposal on each of the major evaluation criteria stated in the RFP. These individual scores shall then be combined and averaged for the total score for each evaluation criteria for each proposal.



CONSTRUCTION COST EFFECTIVENESS TASK FORCE

Confronting the Skilled Construction Work Force Shortage

A Blueprint for the Future

October 1997

Confronting the Skilled Construction Work Force Shortage

A Blueprint for the Future

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I. INTRODUCTION

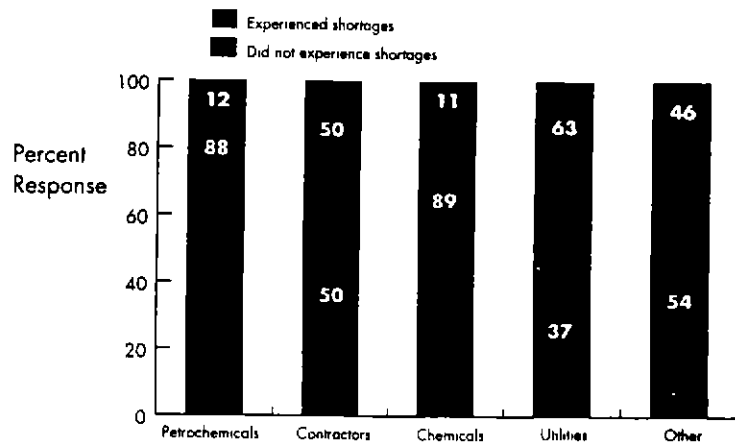
A chemical company in the Southeast experiences delays on a \$60 million project in spite of paying overtime and per diem to attract workers. A paper mill expansion requires special wage rates, scheduled overtime and recruiting outside normal areas to reduce the effects of worker shortages. The mill still experiences cost overruns and schedule delays. A chemical company delays a new \$9 million unit in the Southwest because of a lack of qualified welders. A utility company has problems attracting electricians, pipefitters, boilermakers and insulators for a \$3 million boiler outage. An oil and gas company utilizes excessive overtime and special subsistence to lure workers from other jobs to complete an offshore platform, but still has cost overruns and schedule delays.

A major problem facing the construction industry is the industry's inability to attract new people. Beginning in 1988 when the U.S. Department of Labor issued its *Workforce 2000* study, there have been many predictions of potential shortages of skilled workers in the construction industry. The recession of the early 1990s provided a smoke screen, but now as the economy picks up, we are seeing the impacts of the shortages of skilled construction craft workers. For the past several years, as the domestic construction activity has been in a recovery mode, shortages of these skilled workers have surfaced in various areas of the country. In addition to these more obvious stories of skilled worker shortages and their effects, there is also a general feeling starting to bubble to the surface of deficiencies in the skill levels of craft workers caused by lack of training or outdated training that has not kept pace with technological advances.

For the past several years as the domestic construction activity has been in a recovery mode, shortages of these skilled workers have surfaced in various areas of the country.

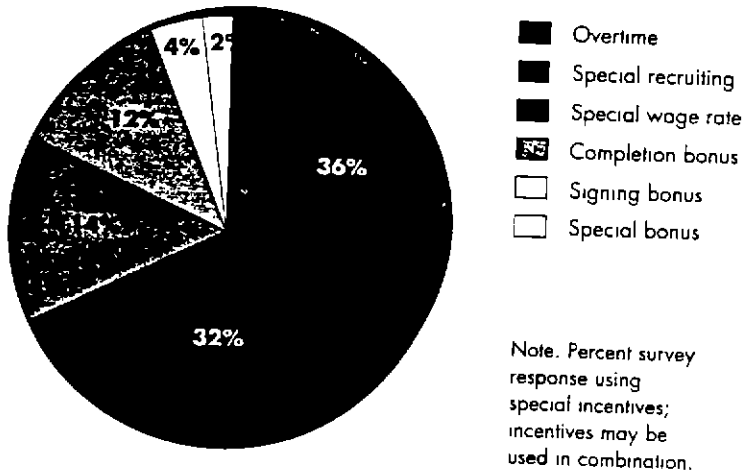
In late 1996, The Business Roundtable surveyed its member companies to validate the many reported effects of shortages in the skilled work force. The stories previously related are only a sample of the real problems being experienced by present-day owners. Over 60 percent of the survey respondents indicated they had encountered a shortage of skilled craft workers, and 75 percent reported the trend had increased over the past five years. These results are consistent with recent studies done by several construction industry associations.

Industry Segment



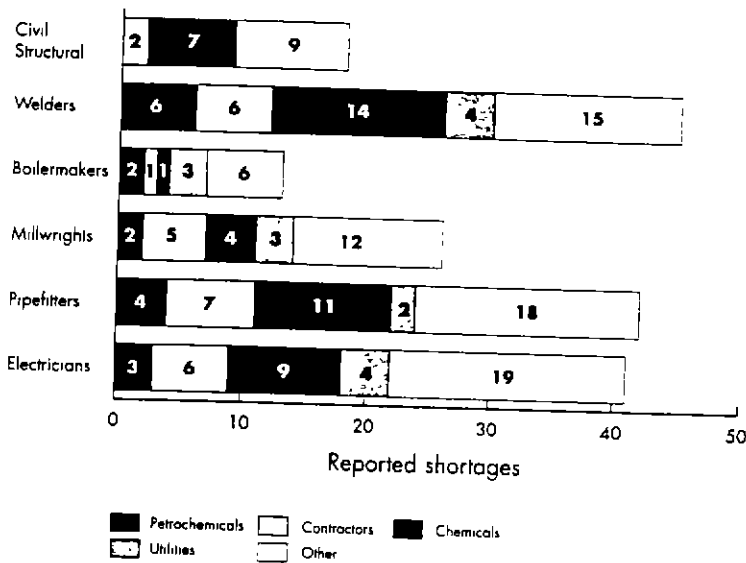
In an industry analysis, nearly nine out of 10 chemical and petrochemical companies have experienced difficulty in attracting skilled craft workers to their projects. One of every four companies encountering shortages noted serious project impacts in cost overruns and/or schedule delays. Special incentives were being used extensively to attract skilled workers.

Special Incentives for Work Force Recruitment



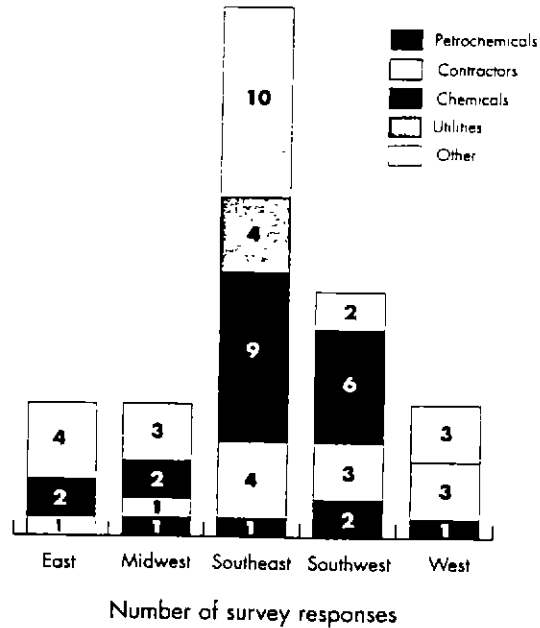
Craft worker shortages were most frequently reported among electricians, pipefitters and welders; but each craft defined in the survey experienced some level of shortages.

Craft Worker Shortages by Region



Each area of the country has encountered worker shortages, with the Southwest and Southeast Gulf Coast having the most often reported problems.

Work Force by Region



More survey respondents were of the opinion that decreasing numbers in the skilled work force were evident and increased demand was less a driving force of the shortages.

II. BACKGROUND

All recent projections indicate the construction industry must recruit 200,000–250,000 new craft workers per year to meet future needs from attrition and support anticipated growth. Both demographics and image are working against the construction industry in addressing this need. The construction industry has historically populated its new work force from the supply of 18- to 24-year-olds. The number of available potential workers in this age group has experienced and will continue to experience a slow decline. Along with the general U.S. population, the current construction skilled work force is aging. The industry has always had high attrition at the entry-level positions, and

many workers leave the industry in the 35–40 age group for a variety of reasons.

The image of the skilled construction craft worker has fallen on hard times. It does not command the respect that it once did. With the industry competing for the same decreasing pool of applicants as other industries, it does not bode well for construction to meet its work force needs. The image problem in the construction industry comes from many different perceptions: Students who don't go to college are "failures"; the work is hard, seasonal, dirty and dangerous. Cultural and societal changes have altered the way young people entering the work force look at the professions they may wish to pursue. Physical, outdoor work with your hands is not viewed in the same light as it once was.

Although image may be the driving force behind the recruitment problems the industry faces, career path is the driver for retention. Solving the retention problem, keeping skilled craft workers in the industry, begins with craft training and development. If retention rates can be improved, some pressure will be relieved from the recruitment problem. Craft training has received a tremendous amount of press in recent years as shortages of skilled workers have surfaced.

The union sector has always excelled in craft training through the joint labor/management apprenticeship programs. These programs and those developed by the large open shop contractors supplied the skilled work force needs in the 1970s and 1980s. The lack of standardized training in the open shop is now taking its toll as their market share has grown to 70–80 percent, according to BLS data, and the older skilled work force is depleted by retirement faster

The image of the skilled construction craft worker has fallen on hard times.

than it is replenished. Although apprentice training in the union sector is well established and funded through collective bargaining agreements, the number of apprentices now being trained is substantially reduced as the union sector has experienced the effects of decreasing market share and the image problems of choosing construction as a career.

The open shop sector, through establishment of the National Center for Construction Education and Research (NCCER), has for the first time begun an initiative to standardize training curriculum on a national basis. Unity and support among contractors, contractor associations and association chapters in making the initiative successful are critical to the open shop sector in meeting the skilled worker needs of the future. The Center also must be instrumental in providing leadership in addressing the image problems that plague the industry. But standardized curriculum doesn't deliver skilled workers. The challenge remains to implement that training through local initiatives.

Even with the standardized curriculum and assuming qualified applicants enter the industry, the open shop sector must change its attitude on the value of training. The larger, successful open shop contractors have always recognized the value of development of their own programs; but the open shop sector, as a whole, has not supported formal craft training to the extent necessary. They have succeeded by attracting skilled workers from the union sector as market share shifted and recruiting skilled workers from competitors as individual workload changed. As the well begins to dry up, the ability to use these methods decreases.

Why do contractors not train? Many reasons are given. It is cost prohibitive. Investment is lost when a trained worker moves to a competitor. Many fail to recognize the need or appreciate the productivity effects.

III. WHAT THE INDUSTRY MUST DO

The image problem must be addressed first and foremost. The industry must change young adults' perception of the benefits of choosing construction as a career. The industry lost an excellent opportunity to have a unified front and an organization to lead the effort by failing to support the Construction Industry WorkForce Foundation (CIWF), resulting in its demise in late 1994. The task now lies individually in the hands of contractor associations, labor organizations and contractors to fill the void. Owners must support the initiatives at both the national and local facility levels. Everyone in the industry had a hand in creating the image that exists, and everyone must have a hand in changing that image. All industry groups must emphasize more of the positives, opportunities, accomplishments and importance of the construction industry—the nation's largest industry. At the same time, the negative perceptions must be addressed and presented in a better light. Consideration should be given to pooling industry resources for the greatest impact at both the national and regional levels.

Joint labor/management apprenticeship programs need to continually revisit their curriculum in all trades to ensure that craft skills are keeping pace with emerging technology and the needs of the industries to include updating the skills of the present work force. Where practical, contractors should actively participate in these joint labor/management training programs.

The open shop sector must continue the unified efforts to create a standardized curriculum for each craft and expand the delivery network such that all open shop

*The industry
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contractors nationwide have access to training centers. More important, contractors must recognize the need for and benefits of training their employees.

Through the years, the subject of funding for training has come up repeatedly. All of the discussion has been on the open shop side. Training on the union side has always been required and paid for by the owner. A trained work force was expected and guaranteed by the contractors with costs passed on to the owner as part of the collective bargaining labor rate.

It has been a different story on the open shop side. Fourteen years have passed since The Business Roundtable, as sponsor of the Construction Industry Cost Effectiveness (CICE) Project, first spoke out on the training problems in open shop construction. In 1984 and again in 1989, Roundtable publications outlined the dangers to owners and contractors of the potential for shortages of skilled craft workers due to lack of a consistent delivery method and commitment to training by other than a small minority of the major contractors. In each case, it was pointed out that owners should recognize they had a vested interest in ensuring that contractors bring qualified, skilled workers to their project sites. As such, training costs are part of the contractors' cost of supplying services and the compensation due for these services.

The cents-per-hour voluntary contribution method has worked only in a few areas. Generally, it has not received broad support from owners because, with a few exceptions, they have no confidence in or cannot validate that contractors are actually directing part of their compensation to the training area. The majority of owners prefer suppliers of services base their pricing on the costs, both direct and

indirect, plus a reasonable profit that delivers a quality product meeting the owners' needs. The costs a contractor incurs for providing a skilled work force, which performs work safely and supports all his other indirect costs, should be invisible to the owner. It is the contractors' responsibility to determine how to do this in the most cost-effective manner to remain competitive and keep their customers—the owners—competitive.

Not many years ago, safety on construction sites was a matter of choice. Contractors either chose to invest in it or not. Those who recognized the moral obligation and the financial rewards associated with performing work safely were also the more successful. When the owners took the initiative to drive the process and remove the "choice," making safety a condition of employment, everyone benefited. There were no discussions of how to pay for it. The owners knew, and those contractors who didn't learned quickly, that any costs they incurred and added to their pricing was more than offset by the savings incurred in accounts such as insurance and productivity among others.

Training should be treated the same. Maintaining a skilled work force is mandatory. It is necessary to provide cost-effective construction.

Owners should only do business with contractors who invest in training and maintain the skills of their work force.

Owners should only do business with contractors who invest in training and maintain the skills of their work force.

IV. ROLE OF OWNER COMPANIES

- Owners/users should make contractor commitments to craft training a factor for evaluation in pre-qualification by requiring in the contract documents:
 - ▲ A description of the contractor's overall company program and investment in training and any specific training planned for the proposed project.
 - ▲ A work force staffing plan and craft skill level breakdown by journeymen, helper and apprentice categories.
 - ▲ Proposed methods to assess skill proficiencies, such as skills assessment testing, rework measurement, repairs, weld rejection rate, etc.
- Support the continued updating and improvement of apprenticeship training in the union sector.
- Endorse the NCCER as a method to standardize training curriculum, performance standards and certification in the open shop sector.
- Provide proactive leadership and support for the development and implementation of craft training programs at the regional level.
- Provide proactive leadership and support for contractor, contractor association and labor organization programs to enhance the image of careers in construction and recruitment of entry-level applicants.
- In conjunction with contractors, contractor associations and labor organizations, develop improved methods to assess the effectiveness of craft skills and training.

- Consider job specifications requiring a certain number of “craftsmen-in-training” in every job.
- Consider on-site training facilities on larger projects.

The Business Roundtable has endorsed the NCCER as a method of establishing training curriculum, performance standards and certification in the open shop sector. The Business Roundtable continues to recognize and support apprentice training as provided in the union sector. We believe owner companies should support the delivery of training in each local area where they have a demand for construction workers. The owners and contractors must work jointly to develop methods to evaluate training delivery and its impact. Owners also should support contractors and industry associations in their effort to attract entrants to the industry. This would include efforts to improve the overall image of the construction craft worker, as well as contractor efforts in recruitment and retention of craft workers.

In selection of contractors, the owners must create a level playing field amongst contractors bidding on their projects by establishing expectations in the area of work force training and development, work force recruitment and worker retention. Establishment of criteria in these areas for contractor proposal evaluations will provide the necessary minimum requirements. Owners must recognize the necessity of investing in training.

Owner companies should support the delivery of training in each local area where they have a demand for construction workers.

V. ROLE OF CONTRACTORS, CONTRACTOR ASSOCIATIONS AND LABOR ORGANIZATIONS

- Ensure that a qualified, skilled work force is available to meet industry needs by investing in training curriculum development and providing the leadership in establishment of training delivery methods that actively train and certify craft workers in each geographical area.
- For union contractors, actively participate in joint labor/management apprenticeship training and monitor return on employer contributions to apprenticeship training.
- Develop industry programs that enhance the image of construction as a career by fostering education of parents, teachers and others who influence the decision-making of the nation's youth. Emphasis should be placed on partnering with local school districts on educational programs highlighting the opportunities available and communication of basic education standards required of the educational system.
- Enhance industry and company programs directed at improving the retention of skilled craft workers.
- Support the NCCER in creation of standardized curriculum for craft training and national certification in the open shop sector.
- Communicate and ensure development of new and/or revised curriculum for craft training that meets the changing needs of the industry.
- In conjunction with owners/users, develop improved methods to assess the effectiveness of craft training.

Primarily, it is the role of the contractor to ensure a skilled work force is available to meet current and future demand. Key efforts are to improve the industry image and early education of potential entrants. Basic recruiting is, and should, remain the responsibility of contractors with support from owners. Attraction of workers is not enough; improved retention of workers is another area where contractors must focus attention. Finally, contractors must work with owners to develop standards (metrics) to measure the effectiveness of any training program.

VI. ROLE OF LOCAL USER COUNCILS

In many areas of the country, owners have formed Local User Councils as a forum with contractors and engineers to address local issues affecting construction cost effectiveness. Where these organizations exist, they should:

- Coordinate with area owners, contractor agencies, associations, etc. to develop and periodically update skilled craft worker availability by trade and projections of near and long term regional craft needs.
- Develop programs that enhance the image of the construction industry, its accomplishments and its contributions to the community.
- Partner with local school systems to promote the construction industry as a rewarding career. Coordinate presentations, field trips, etc.
- Where feasible, take a leadership role in working with associations and labor organizations in the delivery of craft training.

Contractors must work with owners to develop standards (metrics) to measure the effectiveness of any training program.

VII. SUMMARY

All of us associated with the construction industry have debated the extent of the craft worker shortages and have not collaborated on solutions to the problems facing our industry. As noted in the opening paragraph, companies are currently experiencing significant problems in staffing construction projects, resulting in escalating costs and costly schedule delays. For the past decade, we have not joined our efforts toward solving the problem, and it is growing worse. We must address these issues now to prevent an escalation of the problems in efficiently completing projects. The roles outlined are a start in the collaborative journey to create a skilled craft work force to meet current and future skills and capacity requirements. Our challenge is to be a participant in the solution and not a bystander. The Business Roundtable will continue to monitor, appraise and champion the recommended roles.



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FOR IMMEDIATE RELEASE

February 8, 1999

CONTACT:

Dennis S. Day: (202) 383-2710

Chris Monek: (202) 383-2723

AGC ANNOUNCES MODEL LANGUAGE FOR "TRAINING FOR THE TRADES" IN RFPs

Washington D.C. — The Associated General Contractors of America (AGC) with the Private Industry Advisory Council (PIAC), today announced recommended model language on "training for the trades persons and management personnel" to be included in owners' Requests for Proposals (RFP). The PIAC is composed of representatives from over 40 Fortune 500 U.S. commercial and manufacturing firms and AGC contractor members.

AGC President Peter K.W. Wert said, "The industry can not expect to maintain a high level of safety and productivity without a trained and competent workforce. Owners and contractors need a coordinated effort to solve the workforce shortage. The recommended RFP language is an important step to address the tremendous training needs in the construction industry."

In 1998, owner representatives and AGC agreed that it was time to elevate the industry's commitment to workforce training, especially for on-site personnel, to the level of importance dedicated to workforce safety. The PIAC developed the recommended model language owners could utilize in their requests for proposals. Owner and AGC representatives agreed that the best means for the owner to evaluate the contractor's commitment to training would be to ask questions about the contractors commitment in requests for proposals and to include training as one of the owner's key selection factors. The recommended language also reflects the Business Roundtables' (BRT) recommendation to owners that contractor commitment to training be a factor in prequalification. (BRT--*Confronting the Skilled Construction Work Force Shortage*, October 1997.)

Attached is the recommended model language that would be included by an owner in a request for proposal from contractors. The language is intended to measure the contractor's interest and commitment to the training of the trades persons and management personnel. More specifically, owners will be better able to gauge the skill and ability of the contractors' personnel on a jobsite.

The Associated General Contractors of America established the Private Industry Advisory Council in October 1993 to provide a direct line of communication between selected representatives of private industry responsible for the design and construction of facilities and AGC, the nation's largest construction trade association representing over 7,300 general contracting firms.

RFP Language for Training

Recommended statement of the owner's interest and/or intent for the training of the trades persons and management personnel on a project. (To be developed by each owner.)

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1. Does your firm actively provide or financially support craft training pertinent to the construction industry? Do you propose providing training or accreditation for trades persons employed on this project? Yes or No (if yes, respond to questions 2,3,4).
2. If involved in craft training, explain your programs(s). Your response may include efforts of the prime contractor, and any proposed specialty subcontractors. Support for craft worker training may include contractor sponsored and operated training, participation in trade union training programs, participation in trade association training programs or other efforts. Do you use NCCER, trade union or other training materials?
3. What is the cost of your craft training program(s) and how are (do you propose) costs to be handled for this project?
4. What measurements/assurances are part of the craft-training program to evaluate success.
5. If you have a management/supervisory-training program, describe the program(s) indicating the objectives, features and category of personnel included. What measurements/assurances are part of the management/supervisory training to evaluate success?

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www.agc.org dayd@agc.org

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NEW YORK STATE PROCUREMENT BULLETIN BEST PRACTICES DETERMINING VENDOR RESPONSIBILITY

I. Introduction

Article XI §163(3)(a)(ii) of the State Finance Law states that "commodities contracts shall be awarded on the basis of lowest price to a responsive and responsible offerer"; and, §163(4)(d) states that "service contracts shall be awarded on the basis of best value to a responsive and responsible offerer."

Responsibility is described in the New York State Procurement Guidelines Section II – General Policy as follows:

"State agencies should only award contracts to vendors who are responsible. Agencies must administer a process in which offerers are required to provide assurances that they conform with responsibility requirements. Such requirements may include, but are not limited to, the offerer's qualifications, financial stability and integrity. Responsibility differs from responsive in that it generally applies to the offerer and the constructs are established in case law. Responsive applies to the extent to which the offerer has complied with the specifications or requirements of the solicitation document."

This "best practices" document has been developed to assist agencies by describing the general scope of a responsibility determination; identifying specific information which might be considered in a responsibility determination; and, providing samples of documents which could be used to address responsibility issues. Agencies should adopt their own internal responsibility review procedures based on these guidelines.

II. Scope of Vendor Responsibility Determinations

Each agency is responsible for determining the scope of its vendor responsibility review and determination process. While all contracts must be awarded to a responsible bidder, a survey of State agency practices in determining vendor responsibility indicated that the scope of agency responsibility review efforts increase as the dollar value of the contract increases; and, that additional emphasis is placed on Financial Capacity and Responsibility/Integrity factors in service and technology contracts.

Apart from dollar value and contract complexity, other factors related to the procurement may support the need for more stringent responsibility reviews. For example, procurements that are critical to the agency's mission may require extensive vendor reviews, as would a procurement in which a low bid is significantly lower than those of the competition.

Under the three basic components of vendor responsibility – Qualifications of the Firm, Financial Capacity and Responsibility/Integrity - agencies may identify and emphasize the evaluation of certain criteria it deems critical depending upon the nature and scope of the proposed contract. For example, a responsibility

determination for a management or information technology consulting contract may emphasize vendor experience, resumes of project team members, etc., while a commodity award would normally focus on the firm's capacity to produce and/or supply the commodity.

Responsibility criteria focus the agency's analysis of the **contractor's capacity to fully perform the contract requirements in all respects and the business integrity to justify the award of public contracts**. An unfavorable determination in one or more areas of evaluation need not result in a non-responsibility determination. Each contract award must be considered on a case-by-case basis after a comprehensive weighing of all factors.

III. Vendor Responsibility Criteria

Under the general scope of Qualifications of the Firm, Financial Capacity and Responsibility/Integrity, agencies may consider the following criteria:

- i. adequacy of financial resources;
- ii. satisfactory technical qualifications;
- iii. satisfactory experience;
- iv. satisfactory record of performance;
- v. adequacy of the organization, material, equipment, facilities and personnel resources and expertise necessary to carry out the work and meet required delivery or performance schedules;
- vi. necessary licenses, insurance and bonds;
- vii. satisfactory record of business integrity; and,
- viii. compliance with public policy issues.

Agencies may detail specific requirements within these criteria or they may add additional standards or criteria to reflect special contract requirements. In all cases, these standards must be rational, and based on demonstrated needs. They should not be used to artificially limit competition.

Depending upon the nature and scope of the contract requirements, certain responsibility criteria may overlap with issues of responsiveness. For example, a bid proposal in which a vendor indicates the firm cannot meet a required project deadline may be deemed either non-responsive (i.e. not meeting specifications) or non-responsible based on failure to meet (v) above. As a practical matter, agencies would reject the bid proposal as non-responsive rather than non-responsible, which would require more extensive review and have more far-reaching impact on the vendor.

IV. Obtaining Information for Vendor Responsibility Evaluation

The most direct way to gather the information necessary to assess vendor responsibility is to ask bidders or vendors to supply the required information or to certify to the accuracy of responses to specific questions (e.g., Non-Discrimination in Employment in Northern Ireland). Attachments A and B are examples of questionnaires that address a broad range of responsibility/ integrity issues in a concise manner. Attachment A may be appropriate for use in procurements of lower dollar value or risk, or in "off-the-shelf" procurements; while Attachment B could be used in high value, high risk, mission critical or complex procurements.

Both Attachments A and B incorporate references, with some variations, which broaden the applicability of the responsibility inquiry to include the firm, any affiliates, any predecessor companies or entities, owner/director, officer, partner, proprietor, major stockholders or persons involved in the contracting process.

Depending on the nature and scope of the procurement, agencies may require the firm to detail the specific nature of its relationships with other firms; to provide the names and addresses of key personnel as identified above, and to identify past ownership positions or officer status these personnel have had with other firms over the past three to five years. Responsibility/Integrity questions would then be made applicable to those firms as well.

Agencies may also use a variety of resources to obtain or to verify vendor information. For example:

- Vendor reliability and past performance can be verified by contacting other State agencies or vendor references.
- Vendor financial capacity can be verified by obtaining a credit rating service report or obtaining certified financial statements. On-line business services such as "edgar on-line" provide summaries of ownership and Securities and Exchange Commission filings with detailed information available through subscription.
- Information regarding liens, bankruptcies, civil and criminal court actions, federal or state agency legal actions, affiliates, key personnel, federal debarments, etc., can be obtained from a commercial service such as Lexis/Nexis (available on state contract) or OSHADData; or, by contacting the appropriate federal or state agency.

In obtaining vendor data from outside sources, agencies should be aware of any potential problems with the reliability, accuracy and timeliness of the data. Agencies should independently verify information which reflects negatively on a vendor's responsibility.

Attachment C provides a more comprehensive listing of evaluation factors which may be considered in a responsibility determination.

V. Review of Responsibility Information

If a vendor discloses derogatory information, or if an agency's contract review reveals such information, the agency should take affirmative steps to verify the information before a non-responsibility determination is made. The agency should:

Contact the Vendor – The most direct way to resolve issues and confirm the accuracy of any derogatory information is to contact the vendor in writing and request additional information or clarification.

Have the Vendor Address the Specific Problem – Certain problems, such as a vendor's failure to pay taxes, can be readily resolved and corrective action by the vendor may result in the vendor being deemed responsible.

Assess the Information and Contracting Options – Not all information of a derogatory nature may be sufficient to result in a non-responsibility determination; and, in some cases an agency may need to contract with a vendor even if there are strong indications of non-responsibility. In such cases, agencies may wish to award based on a vendor certification that it is in compliance, or will comply, with any specific responsibility conditions imposed by the agency under the contract terms.

VI. Non-Responsibility Determinations

1. Pre Bid – If an agency has previously found a vendor to be non-responsible, or

has knowledge of a vendor's past violations, convictions, non-performance, etc., the agency must still provide the vendor with an opportunity to bid and then consider the issue of responsibility on a case-by-case basis.

- 2. Pre-Award - If an otherwise award eligible vendor is determined to be non-responsible, the agency should notify the vendor in writing of the basis for that determination. The vendor should be provided the opportunity to submit additional information, clarification or explanation; and, to request a hearing which should be conducted prior to award.

Agencies should include information concerning a non-responsibility determination in the Procurement Record provided to the Office of the State Comptroller.

Attachment A

VENDOR RESPONSIBILITY QUESTIONNAIRE

Within the past five years has your firm, any affiliate, any predecessor company or entity, owner, director, officer, partner or proprietor been the subject of:

(Check any that apply. If "yes," describe using additional pages.)

an indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business-related conduct constituting a crime under local, state or federal law?

_____ NO _____ YES

a federal, state, or local government suspension or debarment, rejection of any bid or disapproval of any proposed subcontract, including pending actions, for lack of responsibility, denial or revocation of prequalification or a voluntary exclusion agreement.

_____ NO _____ YES

any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful"?

_____ NO _____ YES

a consent order with NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a construction-related violation of federal or state environmental laws.

_____ NO _____ YES

Attachment B

RESPONSIBILITY QUESTIONNAIRE

INSTRUCTIONS:

Please complete this form answering every question. A "Yes" answer to any question requires a written explanation attached to the questionnaire and submitted on company letterhead signed by an officer of the company.

All new mailing list applicants are required to complete this form at the time of application. Companies are responsible for updating information in their Responsibility Questionnaire as changes occur. Any vendor recommended for award on a New York State contract will be required to have this form on file prior to the award date.

QUESTIONS:

Within the past five years, has your firm, any affiliate, any owner or officer or major stockholder (5% or more shares) or any person involved in the bidding or contracting process been the subject of any of the following:

a. a judgment or conviction for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion?
_____ YES _____ NO

b. a criminal investigation or indictment for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion?
_____ YES _____ NO

c. an unsatisfied judgment, injunction or lien obtained by a government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any government agency?
_____ YES _____ NO

d. an investigation for a civil violation by any local, state or federal agency?
_____ YES _____ NO

e. a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion?
_____ YES _____ NO

f. a local, state, or federal suspension, debarment or termination from the contract process?
_____ YES _____ NO

g. a local, state or federal contract suspension or termination for cause prior to the completion of the term of a contract?
_____ YES _____ NO

h. a local, state, or federal denial of award for non-responsibility?
_____ YES _____ NO

i. an agreement to a voluntary exclusion from bidding/contracting?
_____ YES _____ NO

j. an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal contract?
_____ YES _____ NO

k. a State Labor Law violation deemed willful?

_____ YES _____ NO

l. a firm-related bankruptcy proceeding?

_____ YES _____ NO

m. a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license?

_____ YES _____ NO

n. a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status?

_____ YES _____ NO

o. a rejection of a low bid on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract?

_____ YES _____ NO

p. a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local government laws?

_____ YES _____ NO

q. an occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful?

_____ YES _____ NO

r. a rejection of a bid on a New York State contract for failure to comply with the MacBride Fair Employment Principles?

_____ YES _____ NO

s. a citation, notice, violation order, pending administrative hearing or proceeding or determination for violations of:

- federal, state or local health laws, rules or regulations
- unemployment insurance or workers' compensation coverage or claim requirements
- ERISA (Employee Retirement Income Security Act)
- federal, state or local human rights laws
- federal or state security laws
- federal INS and Alienage laws
- Sherman Act or other federal anti-trust laws

_____ YES _____ NO

NOTES:

Information on the following additional topics should also be submitted with this questionnaire. Check "none" if topic does not apply.

1. agency complaints or reports of contract deviation received within the past two years

for contract performance issues arising out of a contract with any federal, state or local agency?

_____NONE

2. disputes within the past two years concerning your company's failure to provide commodities or services to political subdivisions within the past two years pursuant to centralized contracts with the New York State Office of General Services?

_____NONE

3. Employee Identification No., Social Security No., Name, DBA, trade name or abbreviation previously or currently used by your business which is different from that listed on your mailing list application form?

_____NONE

CERTIFICATION:

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions to make a determination regarding either an application for placement on mailing lists or the status of an existing mailing list entry or to award a contract or approve a subcontract; acknowledges that the State or its agencies and political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 USC Section 1001; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

Name of Business

Signature of Officer

Address

Typed Copy of Signature

City, State, Zip

Title

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TITLE 148
DEPARTMENT OF ADMINISTRATION

SERIES 11

RESPONSE TO COMMENTS RECEIVED

Response to the comments received from the ACT Foundation:

§ 148-11-2. Definitions. Section 10 of the rule provides sufficient description of the qualitative proposal and the cost proposal. No additions to the Definitions section are needed.

§ 148-11-4. Qualification Requirements for Firms Providing Design-Build Services and Qualification for Design-Build Projects. Additions imposing qualification standards on design-builders are not needed. During the 2000 legislative session, House Bill 4442 was passed which established a vendor debarment program to be administered by the Department of Administration for the state and all its political subdivisions. Vendors debarred under this program are precluded from bidding on or being awarded contracts with the state or any political subdivision.

4.1.2. Items (a), (b), (c), (f), (h), (i), and (j) of this section are adequately covered in the qualifications section of the sample rating system outlined in Section 10.2.

Items (d) and (e) are adequately addressed in the project-specific management plan section of the sample rating system outlined in Section 10.2.

As to (g), craft training and staffing capabilities have been added to the project-specific management plan section of the sample rating system outlined in Section 10.2.

As to (k), equipment, technical resources and information technology matters are adequately addressed in the project schedule section of the sample rating system outlined in Section 10.2.

As to (l), consideration was given as to whether to require subcontractor information, and it was concluded that the authorizing agency did not want to approve or disapprove of subcontractor arrangements. However, vendors debarred through the state's vendor debarment program would be ineligible to serve as subcontractors. Section 4.4 has been added to the rule to ensure that all subcontractor relationships are disclosed to facilitate tracking through the vendor debarment program.

§ 148-11-6. Technical Review Committee. It is outside the Board's authority to prescribe membership on the Technical Review Committee.

§ 148-11-8. Preparations & Contents of Requests for Proposals.

§ 8.1.2 Addition. Section 4.3 was added to this rule to clarify that, as public projects, design- build projects must comply with the prevailing wage requirement found in § 21-5A.

§ 8.1.4 Addition and § 8.1.5 Addition on page 5. Section 8.3 of the rule provides that the basis for evaluation of proposals be included in the request for proposals.

§ 8.1.5 Addition. Extensive consideration was given to the use of a qualifications screening process to qualify proposers as the rule was drafted. The new vendor debarment program prohibits agencies from soliciting bids from or awarding contracts to companies who have been debarred. That process will screen out ineligible proposers from submitting bids. Rather than establish a two-step process, the qualifications and technical proposal review are performed together to achieve the goal of evaluating the proposers in the most expeditious manner.

The rules do not impose mandatory point scoring to allow for tailoring to individual circumstances. For example, the construction of a memorial statuary garden may give more weight to aesthetic criteria, while the construction of a storage shed might weigh utilitarian criteria more heavily.

§ 148-11-10. Evaluation of Proposals.

10.1 Revision. The proposed revision is not needed because the qualifications of the design-builder are not separate from the qualifications proposal.

10.2 Revision. The proposed revision is not needed. Section 10.2 acknowledges that all items listed as technical criteria in the example rating system may not be part of every project's performance criteria.

10.2.1 Addition. The proposed addition is not needed. The evaluation committee should function in a manner consistent with the authorizing agency's practices. The Department of Administration specifically prohibits the method described in 10.2.1 in favor of reaching a consensus score, rather than use of averages.

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**TITLE 148
DEPARTMENT OF ADMINISTRATION**

SERIES 11

**AMENDMENTS MADE TO PROPOSED RULE
AS A RESULT OF COMMENTS RECEIVED**

Page 3

Addition: 4.3. Due to their public project nature, all Design-Build projects must comply with the prevailing wage requirements of W.Va. Code § 21-5A-1, et seq.

Addition: 4.4. Under the state's vendor debarment program, state and local government entities may not solicit bids, award contracts or consent to subcontracts with debarred vendors. Design-Builders must disclose all subcontractor relationships in the bid process.

Page 7

Section 10.2., Item 2 (**Bold** indicates revision):

2. Project-Specific Management Plan

Maximum Score: 10

- a. Management plan and organization
- b. Resumes of key professional and managerial personnel
- c. Craft training and staffing capabilities**
- d. Quality assurance plan
- e. Safety plan
- f. Experience of individual members of the team
- g. Experience of the team

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**TITLE 148
DEPARTMENT OF ADMINISTRATION**

SERIES 11

REASONS FOR THE AMENDMENTS

4.3. Due to their public project nature, all Design-Build projects must comply with the prevailing wage requirements of W.Va. Code § 21-5A-1, et seq.

4.4. Under the state's vendor debarment program, state and local government entities may not solicit bids, award contracts or consent to subcontracts with debarred vendors. Design-Builders must disclose all subcontractor relationships in the bid process.

Section 10.2., Item 2

Additional qualification desired for a Design-Builder-c. **Craft training and staffing capabilities**