

## 2020 Kansas Statutes

**75-37,145. Same; building design-build project delivery procedures.** Building design-build project delivery procedures shall be conducted as follows:

- (a) The director shall determine the scope and level of detail required to permit qualified persons to submit building design-build proposals in accordance with the request for proposals given the nature of the project.
- (b) Notice of requests for proposals shall be advertised in accordance with K.S.A. 75-430a, and amendments thereto. The director shall publish a notice and notify all active general contractor industry associations in the state of a request for proposal with a description of the project, the procedures for submittal and the selection criteria to be used.
- (c) The director shall establish in the request for proposal a time, place and other specific instructions for the receipt of proposals. Proposals not submitted in strict accordance with such instructions shall be subject to rejection.
- (d) A request for proposals shall be prepared for each building design-build contract containing at minimum the following elements:
  - (1) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards.
  - (2) The proposed terms and conditions for the building design-build contract.
  - (3) The design criteria package.
  - (4) A description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or other information that will be acceptable.
  - (5) A schedule for planned commencement and completion of the building design-build contract.
  - (6) Budget limits for the building design-build contract, if any.
  - (7) Requirements, including any available ratings for performance bonds, payment bonds and insurance.
  - (8) Any other information that the agency at its discretion chooses to supply, including without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs or references to public records.
- (e) The director shall solicit proposals in a three-stage process. Phase I shall be the solicitation of qualifications of the building design-build team. Phase II shall be the solicitation of a technical proposal including conceptual design for the project and phase III shall be the proposal of the construction cost.
  - (1) The state building advisory commission shall review the submittals of the proposers and assign points to each proposal as prescribed in the instructions of the request for proposal.
  - (2) Phase I shall require all proposers to submit a statement of qualifications which shall include, but not be limited to, the following:
    - (A) Demonstrated ability to perform projects comparable in design, scope and complexity.
    - (B) References of owners for whom building design-build projects have been performed.
    - (C) Qualifications of personnel who will manage the design and construction aspects of the project.
    - (D) The names and qualifications of the primary design consultants and contractors with whom the building design-builder proposes to subcontract. The building design-builder may not replace an identified subcontractor or subconsultant without the written approval of the agency.
    - (E) Firms submitting a statement of qualifications shall be capable of providing a public works bond in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bonding capability to the state building advisory commission with their statement of qualifications. If a firm fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection.
  - (3) The state building advisory commission shall evaluate the qualifications of all proposers in accordance with the instructions prescribed in the request for proposal.

Designers on the project shall be evaluated in accordance with the requirements of K.S.A. 74-7003, and amendments thereto. Qualified proposers selected by the evaluation team may proceed to phase II of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to phase II of the process. Under no circumstances shall price or fees be considered as a part of the prequalification criteria. Points assigned in the phase I evaluation process shall not carry forward to phase II of the process. All qualified proposers shall be ranked on points given in phases II and III only. The two phase evaluation and scoring process shall be combined to determine the greatest value to the state agency.

(4) The state building advisory commission shall have discretion to disqualify any proposer, which in the state building advisory commission's opinion, lacks the minimal qualifications required to perform the work.

(5) The state building advisory commission shall prepare a short list containing a minimum of three, but no more than the top five qualified proposers to participate in phase II of the process. If three qualified proposers cannot be identified, the contracting process shall cease.

(6) Phase II of the process shall be conducted as follows:

(A) Proposers shall submit their design for the project to the level of detail required in the request for proposal. The design proposal should demonstrate compliance with the requirements set out in the request for proposal.

(B) Up to 20% of the points awarded to each proposer in phase II may be based on each proposer's qualifications and ability to design, construct and deliver the project on time and within budget.

(C) The design proposal shall not contain any reference to the cost of the proposal.

(D) The design submittals shall be evaluated and assigned points in accordance with the requirements of the request for proposal.

(7) Phase III shall be conducted as follows:

(A) The phase III proposal shall provide a firm fixed cost of construction. The proposal shall be accompanied by bid security and any other submittals as required by the request for proposal.

(B) The proposed contract time, in calendar days, for completing a project as designed by a proposer shall be considered as an element of evaluation in phase III. The request for proposal shall establish a user delay value for each proposed calendar day identified in the proposal.

(C) Cost and schedule proposals shall be submitted in accordance with the instructions of the request for proposal. Failure to submit a cost proposal on time shall be cause to reject the proposal.

(8) Proposals for phase II and III shall be submitted concurrently at the time and place specified in the request for proposal. The phase III cost proposals shall be opened only after the phase II design proposals have been evaluated and assigned points.

(9) Phase III cost and schedule, which shall prescribe containing the number of calendar days, proposals shall be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team shall make public its scoring of phase II. Cost proposals shall be evaluated in accordance with the requirements of the request for proposal. In evaluating the proposals, each proposers' adjusted score shall be determined by adding the phase III cost proposal to the product of the proposed contract time and the user delay cost, and dividing that sum by the phase II score.

(10) The responsive proposer with the lowest total number of points shall be awarded the contract. If the director determines, that it is not in the best interest of the state to proceed with the project pursuant to the proposal offered by the proposer with the lowest total number of points, the director shall reject all proposals. In such event, all qualified proposers with higher point totals shall receive a stipend pursuant to subsection (e)(12) of this section, and amendments thereto, of this act, and the proposer with the lowest total number of points shall receive an amount equal to two times such stipend.

(11) If all proposals are rejected, the negotiating committee may solicit new proposals using different design criteria, budget constraints or qualifications.

(12) As an inducement to qualified proposers, the agency shall pay a stipend, the amount of which shall be established in the request for proposal, to each prequalified building design-builder whose proposal is substantially responsive but not accepted. Upon payment of the stipend to any unsuccessful building design-build proposer, the state shall acquire a nonexclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by the state in any manner. If the building design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

**History:** L. 2006, ch. 80, § 5; L. 2015, ch. 11, § 4; July 1.