

Recommendations for the use of Request for Proposal/Best Value Contracting in Pennsylvania

About the MBA:

The Master Builders' Association of Western Pennsylvania, Inc. is a trade association whose membership includes over 150 of the top general contractors, construction managers, specialty contractors, and service and supplier companies supporting our region's commercial construction industry. Collectively, the membership accounts for over eighty (80) percent of the commercial construction in our area. The MBA brings a strong, influential and single voice to the industry, which is our greatest source of pride and legacy since 1886. We are one of 96 chapters affiliated with AGC of America representing over 32,000 members nationwide. Members of the MBA are also members of AGC of America. This affiliation affords the MBA membership with an even stronger industry voice and broader access to services, resources and activities available on a national level.

POLICY STATEMENT:

The Master Builders' Association of Western Pennsylvania, Inc. (MBA) supports the concept of the Request for Proposal/Best Value Contracting (RFP/BVC) procurement process to award a construction contract to the contractor that provides the best value to the owner. The MBA recommends a consistent and transparent competition among responsible contractors to choose the constructor that offers the best combination of technical qualifications and price. The integrity of the construction industry and the future use of RFP/BVC can and will continue to be successful if qualified firms have an equal opportunity to fairly compete for a public construction project.

This document is a compilation of simple, common sense recommendations for use of the Request for Proposal/Best Value Contracting (RFP/BVC) procurement method from the constructor's perspective. The goal of this document is to provide recommendations to the Commonwealth of Pennsylvania to assure a fair and competitive process is used in bidding a construction project with the RFP/BVC selection process. For more information on RFP/BVC please refer to the following publications:

- Best Practices for Use of Best Value Selections, a Joint Publication of Associated General Contractors of America and National Association of State Facilities.
- Best Value Contracting for Public Construction, a recommendation in the AIA-MBA Joint Committee Best Practices Guide.

The following list of specific recommendations is based upon recent applications of the RFP/BVC contractor selection process used by the Pennsylvania Department of General Services and other state-affiliated entities that fall under the Commonwealth Procurement Code.

1. RECOMMENDATION: Uniform RFP/BVC Procurement Process

In order to ensure a consistent and fair approach to RFP/BVC procurement, the Commonwealth Procurement Code should be amended to require that all government agencies adhere to a single uniform set of procurement procedures and standards governing the procurement of construction services using the RFP/BVC procurement option.

2. RECOMMENDATION: Use a Two-Step Process

When the RFP/BVC selection process is utilized, it should typically be a two-step process. Keep Request for Qualifications (RFQ) and Request for Proposals (RFP) separate. It is widely considered a Best Practice to “shortlist” firms based on their responses to an RFQ prior to asking firms to respond to the RFP. Firms that are no longer considered viable competitors would prefer to know early in the process and not have to go through the time and expense of preparing and submitting a proposal. This will also help minimize the chances that an unqualified firm would submit a very low price, thereby causing great difficulty and pressure for the selection committee trying to recommend the “best” firm.

3. RECOMMENDATION: Maintain Integrity

The RFP/BVC selection process should never be used as a means to an end. The burden on public sector owners to maintain a fair and open process of selection becomes heavier when they include subjective criteria in their evaluation. The ability to have an entirely objective criterion for final selection continues to be the benefit that a traditional low bid selection process can offer over other procurement options. Therefore public owners must be extra careful to ensure that their selections are open and fair when using subjective evaluation criteria. If there are subjective criteria for final selection, then it should be clear to the all proposers what the criteria are and how they are going to be evaluated.

4. RECOMMENDATION: Decide Early

The announcement to use the RFP/BVC procurement model should be made as early as possible.

5. RECOMMENDATION: Establish a Diverse & Fair Selection Committee

In order to make the selection in a way that lowers the probability of a contested result, the public owner depends upon the committee's composition to incorporate diversities of viewpoint, background, and loyalty. Has the owner thought about how the members of the selection committee may be viewed by proposing firms and the public? Although selection committee members may be of high personal integrity, they might be perceived unfavorably if there is not sufficient diversity among them. In addition, all the qualities just enumerated can be laid waste by a public owner who violates the implicit covenant with the public and the provider community: that the selection committee has been established, composed, and authorized to apply explicit selection criteria after having conscientiously evaluated the offers made against those criteria.

6. RECOMMENDATION: Transparency

Share the selection criteria and weighting of items prior to contractor selection. For public owners there is an additional issue of trust and civic responsibility. History is full of stories about corrupt public officials who took advantage of their positions to award public contracts in an unfair manner. That is partly why the traditional Design-Bid-Build delivery method is so often the default for public entities. With only one objective criterion (low bid), there is less opportunity for game playing, favoritism, and collusion. When subjective criteria are brought into the selection process, the challenge to ensure that the process is fair and free from political influence becomes much greater. There is still no perfect way to incorporate subjective criteria into a selection process; nevertheless, there are some best practices that every owner can use to help maintain the integrity of the process.

7. RECOMMENDATION: Promote Innovation

Emphasize a contractor's schedule commitment and management approach as critical items in selection. Unfortunately, the Commonwealth Procurement Code allows for only one project delivery method; multiple prime contracting. The public owner must bid separately and hire a minimum of four (4) separate prime contractors; general trades, plumbing, electrical and HVAC. For the RFP/BVC contractor selection process to be effective and provide the greatest value to the public owner (and the taxpayers who are funding the project), a broad range of project delivery methods should be available for use. One of the most quantifiable and cost saving advantages of the RFP/BVC selection process is schedule improvement. With alternative project delivery methods using one prime contract, project teams can propose to complete a project ahead of schedule, a key component of any RFP/BVC proposal.

8. RECOMMENDATION: Modernize the PA Separations Act

The Commonwealth Legislature should encourage cost-saving innovation and improved cooperation by repealing the Pennsylvania Separations Act so that contractors would be free to form their own team to submit a proposal for a project, instead of being required to work with contractors that are forced upon them in a multiple-prime delivery system.

9. RECOMMENDATION: Subjective Criteria

Review the non-price criteria on a project by project basis, adjusting the weight of an item(s) to fulfill the goals and requirements for a specific project.

10. RECOMMENDATION: Debriefings

Offer to promptly hold debriefing meetings after a contract award announcement to explain to the firms not selected why they were not selected. Offering debriefings to firms after the selection process is a valuable way to keep a sense of fairness as well as encourage continuous improvement in the industry. Owners should be able to communicate to a firm why it did not rank as high or was not successful.

11. RECOMMENDATION: Independent Protest Procedure

Set up a protest system that allows for protesters to be heard by a neutral third party that is independent of the government agency that made the RFP/BVC selection.

12. RECOMMENDATION: Disadvantaged Business Enterprise Goals

Clearly state any disadvantaged business enterprise (DBE) contracting goals for a specific project and allow a contractor up to forty-eight hours after the time bids are due to validate bids to assure goals are met. Also, a project location should be taken into consideration when setting goals, plus a contractor's DBE plan and past performance should be evaluated.

13. RECOMMENDATION: Future Review

Review the use of RFP/BVC periodically to compare the procedures in place with industry best practices for continuous improvement.