WEST VIRGINIA CODE CHAPTER 17 ARTICLE 2D

WV Legislature

§17-2D-1. Short title.

This article shall be known and may be cited as the Alternative Project Delivery Act.

WV Legislature

§17-2D-2. Highway Design-Build Program.

(a) Notwithstanding any provision of this code to the contrary, the Commissioner of the West Virginia Division of Highways may expedite the construction of projects by combining the design and construction elements of any project into a single contract as provided in this article for design-build projects.

(b)(1) For design-build projects authorized by this section, the Division of Highways may contractually obligate in the program:

(A) No more than $200 million on any one project;

(B) No more than $200 million in each fiscal year; and

(C) No more than $300 million in the total aggregate amount in any one fiscal year.

(2) Notwithstanding and in addition to the limits set forth in subdivision (1) of this subsection, for projects financed with bonds, the Division of Highways may contractually obligate in the program:

(A) No more than $300 million on any one project;

(B) No more than $600 million in each fiscal year; and

(C) No more than $700 million in the total aggregate amount in any one fiscal year.

(c) A design-build project may be let to contract only in accordance with the commissioner's established policies and procedures concerning design-build projects.

(d) Projects receiving funding above the amount of federal core funding as appropriated to the state by formula in a federal highway authorization may utilize the program, but shall not be included in calculating contractual obligation limits provided by subsection (b) of this section.

(e) The contractual obligations made for projects that are necessitated by a declared state of emergency within a county that the Governor has included in a declaration of emergency shall not be included in calculating contractual obligation limits provided in §17-2D-2(b) of this code.

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§17-2D-3. Invitation for bids.

(a) The division shall prepare an invitation for bids for prequalified design-builders, which must provide at a minimum:

(1) The procedures to be followed for submitting bids and the procedures for making awards;

(2) The proposed general terms and conditions for the design-build contract;

(3) The description of the drawings, specifications or other information to be submitted with the bid, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

(4) A proposed time schedule commencement and completion of the design-build contract;

(5) Budget limits for the design-build contract, if any;

(6) Requirements or restrictions for the subletting of specific portions of the design-build contract, if any; and

(7) Requirements for performance bonds, payment bonds, insurance, professional liability insurance and workers' compensation coverage.

(b) The division shall make available to the qualified design-builders, a list of prequalified consultants, approved subcontractors, suppliers and sureties, as applicable, additional information including, but not limited to, surveys, soils reports, drawings or information regarding existing structures, environmental studies, photographs or references to public records, or other pertinent information.

(c) The division shall set forth its needs with sufficient clarity to assure that there is a comprehensive understanding of the project's scope and requirement.

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§17-2D-4. Acceptance of design-build bid.

(a) The design-builder shall submit the bid to the division as required in the invitation for bids.

(b) The design-builder shall furnish a bid bond not to exceed five percent of the maximum cost of the design-build contract.

(c) The selection committee may choose to reject all bids. If the selection committee chooses to accept a bid, the committee shall award the project to the qualified design-builder based on low bid or a value-based selection process combining technical qualifications and competitive bidding elements. The selection committee shall ascertain that the submissions comply with the requirements of this article and the policies and procedures of the commissioner.

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§17-2D-5. Report to the Legislature.

On or before January 15, 2014, and annually thereafter, the commissioner shall prepare and submit to the Joint Committee on Government and Finance a written report evaluating the experience of the Division of Highways with each project completed using an alternative project delivery method authorized by this article during the prior calendar year, including whether the division realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received, and other issues the commissioner considers appropriate.

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§17-2D-6. Construction Manager/General Contractor Contracting Program.

(a) The Commissioner of Highways is authorized to enter into agreements that incorporate the Construction Manager/General Contractor (CM/GC) contracting procedures for projects in accordance with 23 U.S.C. § 112 and 23 C.F.R. § 635 Subpart E.

(b) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that set forth what conditions the commissioner shall consider in entering into CM/GC agreements, any necessary or preferred terms that should be incorporated into these agreements, and any other guidelines or standards that are relevant to the implementation of this section. The commissioner may not enter into any CM/GC agreement until such rules have been proposed, and any CM/GC agreement shall be subject to such rules.

(c) For CM/GC projects authorized by this section, the Division of Highways may contractually obligate in the program:

(1) No more than $200 million on any one project;

(2) No more than $200 million in each fiscal year; and

(3) No more than $300 million in the total aggregate amount in any one fiscal year.

(d) Projects receiving funding above the amount of federal core funding as appropriated to the state by formula in a federal highway authorization may utilize the CM/GC Contracting Program and may not be included in calculating contractual obligation limits set forth in subsection (c) of this section.

(e) The contractual obligations made for projects that are necessitated by a declared state of emergency within a county that the Governor has included in a declaration of emergency may not be included in calculating contractual obligation limits set forth in subsection (c) of this section.

WV Legislature