

## 2018 Kansas Statutes

**19-216f. Same; procedure, building design-build projects.** Building design-build project delivery procedures shall be conducted as follows:

(a) The board shall determine the scope and level of detail required to permit qualified firms to submit building design-build qualifications and proposals in accordance with the board requirements given the nature of the project.

(b) The board 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. Phase III shall be the proposal of the construction cost.

(1) The board shall review the submittals of the interested firms and assign points to each proposal as prescribed in the instructions of the request for proposal.

(2) Notice of requests for qualifications shall be advertised and published in the official county newspaper. The notice shall include a description of the project and the procedures for submittal.

(3) The board shall establish in the request for qualifications a time, place and other specific instructions for the receipt of qualifications. Qualifications not submitted in strict accordance with such instructions shall be subject to rejection.

(4) A request for qualifications shall be prepared for each building design-build contract containing at minimum the procedures to be followed for each of the three phases in the process for submitting proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards.

(c) Phase I shall require all firms to submit a statement of qualifications which shall include, but not be limited to, the following:

(1) Demonstrated ability to perform projects comparable in design, scope and complexity.

(2) References of owners for whom building design-build projects have been performed.

(3) Qualifications of personnel who will manage the design and construction aspects of the project.

(4) 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 board.

(5) 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 board with their statement of qualifications. If a firm fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection.

(d) The board shall evaluate the qualifications of all firms in accordance with the instructions prescribed in the request for qualifications. A short list of qualified firms selected by the evaluation team may proceed to phase II of the selection process. Firms 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 firms 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 board.

(e) The board shall prepare a short list containing a minimum of three, but no more than the top five qualified firms to participate in phase II of the process. If less than four firms respond, all firms shall be invited to participate in phase II of the selection process.

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

(1) The remaining project requirements will be provided to the prequalified firms to include the following:

(A) The terms and conditions for the building design-build contract.

(B) The design criteria package.

(C) 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.

(D) A schedule for planned commencement and completion of the building design-build contract.

(E) Budget limits for the building design-build contract, if any.

(F) Requirements, including any available ratings for performance bonds, payment bonds and insurance.

(G) Any other information that the board at its discretion chooses to supply, including without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs or references to public records.

(2) Prequalified firms 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.

(3) The technical proposal may contain certain limited references to specific elements of the cost.

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

(g) Phase III shall be conducted as follows:

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

(2) The proposed contract time, in calendar days, for completing a project as designed by a firm may be considered as an element of evaluation in phase III. In the event the request for proposal shall establish the assignment of value of contract time in the selection process.

(3) Phase III 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.

(h) 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 technical proposals have been evaluated and assigned points.

(i) Phase III cost and schedule, which shall prescribe 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. Phase III shall be evaluated in accordance with the requirements of the request for proposal. In evaluating the proposals and determining the successful firm, each firms' score shall be determined in a quantifiable and objective manner described in the request for proposal in combination of the points earned in both phase II and phase III.

(j) The successful responsive firm shall be awarded the building design-build contract. If the board determines, that it is not in the best interest of the board to proceed with the project pursuant to the proposal offered by the successful firm the board shall reject all proposals. If the determination to reject all proposals is made for the convenience of the board, the successful and responsive firm shall receive twice the stipend

pursuant to subsection (g)(8) of this section, and amendments thereto, of this act, and all other responsive firms shall receive an amount equal to such stipend. If the determination is made to reject all proposals as a result of proposals exceeding the budget published in the request for proposals or otherwise not complying with the request for proposal, the board need not remit a stipend to the firms.

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

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

**History:** L. 2008, ch. 148, § 5; L. 2010, ch. 57, § 5; July 1.