

## **STATE BUILDING COMMISSION**

### **RESOLUTION ON DESIGN/BUILD CONSTRUCTION**

(Adopted May 22, 2012)

WHEREAS, Design/Build is not an authorized construction method defined by G.S. 143-128 to deliver building and other construction projects, and

WHEREAS, the use of Design/Build as a contracting method continues to grow in popularity in the private construction market, and

WHEREAS, there is growing interest in exploring ways in which this contracting method can best be utilized in public construction as evidenced by the introduction of local bills to the legislature to authorize Design/Build contracting, and

WHEREAS, the State Building Commission is a statutory body, empowered by law to perform a multiplicity of duties with regard to the State's capital facilities development and management program, and

WHEREAS, in the specific area of State capital improvement project requirements for building contracts, the State Building Commission is empowered by G.S. 143-135.26 to adopt procedures which allow a State agency or institution, a local government unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128, approved in advance by the State Building Commission for any single project, and

WHEREAS, these procedures have been adopted by the State Building Commission and are set forth in 01 NCAC 30G.0104 of the State Administrative Code, and

WHEREAS, the State Building Commission acknowledges the merit of the Design/Build delivery method for certain projects and has authorized the use of Design/Build in the past, with apparent success, now therefore,

BE IT RESOLVED, that the State Building Commissions encourages State agencies and institutions, local government units or any other entity subject to the provisions of G.S. 143-129 to utilize the procedures adopted by the State Building Commission when seeking authorization to use Design/Build as a construction contracting method and to consider the following:

1. The public owner has the responsibility to secure construction services with methods that will provide a fair and full opportunity for open competition and ensure that the public project is built at a competitive price to the taxpayer without favoritism.

2. Licensed design professionals have responsibilities to public health, safety and welfare that cannot be lessened or delegated in any way because of the involvement as part of a design/build team. This suggests that appropriate design fees must always be part of any Design/Build proposal. It is further recommended that the Design Build contractor utilize a qualification-based selection process in the selection of their partner design firm.
3. Although G.S. 143-135.8 allows bidders to be prequalified for any public construction project, the law does not allow a shortlisting process to restrict the number of potential bidders. Also, the final selection of the Design/Build team must be based on the lowest qualified bid pursuant to G.S. 143-129.
4. The cost incurred by design and construction professionals, when responding to a Design/Build Request for Proposal, can be significant (a cost that can run well into five figures) and could prove to be a deterrent to competition. Therefore, the State Building Commission believes it is essential that “bridging documents” be prepared by the owner (or his independent design professional,) to be used as an objective basis for competitive responses to any Design/Build RFP.
5. The cost to smaller design and construction firms to prepare a design build proposal may hamper their ability to compete with large firms, thus limiting the number of competitive proposals that the Owner receives.
6. The Construction Manager at Risk construction delivery method authorized by G.S 143-128 is a construction method which allows qualification based selection of the contractor and offers many of the advantages of the Design/Build method and, in addition, allows the Owner to have an independent assessment of the construction quality by licensed design professionals. Therefore, the Construction Manager at Risk delivery method should be considered prior to seeking authority for Design/Build.

#### Glossary of Terms

- 1 - Design Build: Project delivery method where the public owner is provided the opportunity of the design team and contractor working together to achieve the public owner’s objectives, under a single contract. The designer works directly for the contractor, instead of the owner.
- 2 - Bridging Documents: Preliminary specifications and/or drawings, prepared by a third party designer, to describe the desired project scope, program, design criteria, and quality expectations.

3 - Construction Management at Risk (CMaR): services provided by a person, corporation or entity that (i) provides construction management services for a project through the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.