



Rural Development

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RD AN No. 4851 (1924-A)
January 24, 2018

TO: State Directors
Rural Development

ATTN: Multi-Family Housing Program Directors, Coordinators,
Specialists, State Architects and Engineers

FROM: Curtis M. Anderson /s/ *Curtis M. Anderson*
Acting Administrator
Rural Housing Service

SUBJECT: Design/Build and Construction Management Proposals for
514/515 Housing Projects

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance to Rural Development staff and to define the process of requesting and obtaining National Office concurrence in the use of design/build or construction management proposals. This AN clarifies the requirements in RD Instruction 1924-A, sections 1924.6(a) and 1924.13(e).

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4795 (1924-A) dated November 2, 2015 which expired on October 31, 2016. This AN issues guidance for the 514/515 projects.

BACKGROUND:

Procurement methods which combine or rearrange design, inspection or construction services (such as design/build or construction management) may be used with Rural Development written approval. When contracts, other than Design-Bid-Build are submitted, National Office prior concurrence must be obtained. The number of requests for approval of the use of design/build and construction management proposals in Housing Programs has increased in recent years.

EXPIRATION DATE:
January 31, 2019

FILING INSTRUCTIONS:
Preceding RD Instruction 1924-A

With an increase in the number of these proposals submitted for housing projects, an expeditious approval process, for design/build or construction management contracts, is required. The guidance outlined in this AN must be followed.

The Design/Build (DB) method of construction is one in which architectural and engineering services normally provided by an independent consultant to the owner are combined with those of the general contractor under a single source contract. These services are commonly provided by a DB firm, a joint venture between an architectural firm and a construction firm, or a company providing pre-engineered buildings and design services. The entity (company or individual) that is the DB firm, with whom the Owner has the contract, should have surety (typically bonding) (see 7 CFR §1924.6(a)(3) and RD Instruction 1924-A section 1924.6) and insurance in its own name, rather than in the name of other firms it hires to execute any part of the work of design or construction.

Selection for a design-build firm must be by a competitive process with the cost of construction considered as a part of the bid proposal. This means the owner will need to prepare adequate documentation concerning the project program and other criteria for an effective bid proposal to be developed. Samples of comparable projects, pre-prepared project development packages and owner budget parameters are options to establish a guaranteed maximum price for the request for proposal. The important aspect is to make the selection for the contract with a guaranteed maximum price established. This may not be the final contract price but it should set the upper limit for the project cost. Bidders should be asked if they can commit to that limit prior to the selection of the service provider.

There are two types of Construction Managers (CM): Construction Manager as Constructor (CMc) and Construction Manager as Advisor (CMa). A CMc acts in the capacity of a General Contractor and is financially and professionally responsible for the construction. This type of Construction Management is also referred to as Construction Manager "At Risk". The construction contract is between the owner and the CMc. The CMc in turn subcontracts for some or all of the work. The total cost of CMc services is stated in a firm-fixed price contract or guaranteed maximum price contract. The amount of either type of contract includes, but is not limited to, all direct (reimbursables, general conditions) and indirect costs, overhead and profit. Generally, fees (overhead and profit) for the CMc fall in the range of 2-7% of the cost of construction, depending on the scope of work and its complexity. The CMc will need to meet Rural Development's requirements for surety (see 7 CFR §1924.6(a)(3) and RD Instruction 1924-A section 1924.6) and insurance, typically required of any general contractor to a project. The most common contract available from the AIA for a CMc project is the A133. This contract is an agreement between the owner and the CMc and includes the clause for cost of the work plus a fee with a guaranteed maximum price (GMP). For RD projects we want to see all project costs stated as an itemized, fixed dollar amount. The overhead and profit can be stated as percentages of the construction cost.

Selection for a CMc must be by a competitive process with the cost of construction included as a proposal in the bid. This means the owner will need to prepare adequate documentation concerning the project program and other criteria for an effective bid proposal to be developed. Samples of comparable projects, pre-prepared project development packages and owner budget parameters are

options for the request for proposal. The important aspect is to make the selection for the contract with a GMP established. This may not be the final contract price but it should set the upper limit for the project cost. The owner can establish the GMP within the solicitation by stating to upper limit they are willing to pay for the project. (including contingencies). Bidders should be asked if they can commit to that limit prior to the selection of the service provider.

A CMA acts in an advisory capacity to the owner on issues related to construction management. The actual contract for construction services should be between the owner and a general contractor. The contract between the owner and CMA should require the CMA to abide by the criterion of free and open competition. Total cost of services include, but are not limited to, all direct costs (reimbursables, general conditions) and indirect costs, overhead and profit. Generally, fees for a CMA should be in the range of 2-4% of the construction cost and stated as an itemized whole dollar amount rather than a percentage of the cost of the construction. CMA compensation shall be stated in the CMA contract as a firm fixed price, not to exceed the bid proposal or owner's budget. The contract for the CMA can be established once the design is sufficient to determine the construction contract amount or before, depending on the experience of the CMA. , The accepted rate will be dependent on the scope of services and complexity of the project and the bidding environment. The overhead and profit due the CMA should be applied by a reasonable percentage of the work performed by the CMA and not applied to the cost of construction. CMA costs are considered "soft costs" as their work is advisory to the construction activities rather than direct project construction, similar to design services fees. Duplication of services among the architect and the CMA should be avoided and adjustments to fees should be made accordingly. Rural Development's requirements for surety and insurance cannot be held by the CMA but rather, must be provided by the general contractor.

Rural Development and owners should expect that an experienced CM can establish an estimated cost for reimbursables for purposes of the bid submittal. Rural Development and owners should also expect that the actual reimbursable costs may differ from the bid.

All projects using alternative contract methods, whether DB, CMc or CMA, must be submitted to the National Office for review using the guidance outlined in this AN. No Identity of Interest, as defined in 7 CFR. Part 1924 section 1924.4(i) and 1924.13(e), is allowed with construction projects.

National Office recommends that all Design/Build or Construction Management contracts comply with 7 CFR part 1924, subpart A for "maximum open and free competition", including cost as a primary selection factor. Capable and responsible entities shall have the opportunity to compete for the work based on fair, reasonable and equal criteria. Industry standard for bidding is to have a minimum of three bidders, where possible.

IMPLEMENTATION:

Prior concurrence by the National Office must be received before a design/build or construction management proposal may be used. Specific information, as noted within the accompanying checklist, must be reviewed by Rural Development, State Office, as part of the concurrence process.

To expedite the National Office concurrence process, the attached checklist will be completed by the State Architect or Engineer in his/her review of the proposal to use design/build or construction management. The State Architect or Engineer will initial each item listed on the checklist indicating that he/she has reviewed that item. The State Architect or Engineer must sign the checklist. A copy of the checklist will be submitted to the National Office, Program Support Staff (PSS), along with a cover memorandum and the required supporting documentation listed in the checklist. The memorandum should include a return fax number.

Information may be: (1) mailed to USDA/RHS/PSS, Room 6900, Mail Stop 0761, 1400 Independence Ave. SW, Washington, DC, 20250-0761; (2) faxed to 202-690-4335; or (3) emailed to william.downs@wdc.usda.gov. All information related to a request should be submitted via the same method. If information is emailed, initials and signatures on the checklist may be typed, with a signed copy maintained in the official Agency file. Please be advised that regular mail will add additional time for the review, since mail to the South Building must be irradiated prior to delivery.

National Office Housing Program staff and Program Support Staff will review the memorandum, documentation, and checklist provided, including any comments entered by the State Architect or Engineer. Any questions or concerns regarding the material reviewed or submitted should be included in the "Comments" section of the checklist. The checklist, if acceptable, will be concurred in by National Office. A copy of the concurrence checklist, with comments to be addressed, will be sent by fax or e-mail to the State Office prior to mailing back the original signed documents.

Please direct all questions pertaining to this AN to William Downs, Architect, for Program Support Staff at (202) 720-1499.

Attachment

Rural Housing Service
DESIGN/BUILD OR CONSTRUCTION MANAGEMENT
CONCURRENCE CHECKLIST

(Comments may be attached or entered on this form. Items in italics are explanatory in nature.)

The following items are required to be submitted to the National Office:

1. State Director's and Agency Architect / Engineer's comments and recommendations and if noncompetitive negotiation is submitted and accepted by the Agency, provide an evaluation of previous work of the proposed construction firm.
2. Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents. *(If this review is being requested concurrently to expedite the process, please so indicate.)*
3. A copy of the owner's written request and description of the procurement method proposed along with a description of the competitive selection process undertaken to acquire the CM or DB services.. *(This may be the same "written request" listed as #1 below.)*
4. A copy of the proposed contract(s).

The owner should provide the following information to the Agency. State Architect / Engineer will initial each item reviewed: *(Required to be sent to N.O. if indicated*)*

- _____ 1*. The owner's written request to use an unconventional contracting method with a description of the proposed method and the selection process used to acquire the CM or DB services.
- _____ 2. A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include such items as:
 - _____ a) A non-technical statement summarizing the work to be performed by the contractor and the results expected.
 - _____ b) The sequence in which the work is to be performed and a proposed construction schedule.
- _____ 3. *A proposed firm-fixed-price contract or guaranteed maximum price contract for the entire project which provides that the contractor shall be responsible for:
 - _____ a) Any extra cost that may result from errors or omissions in the services provided under the contract.
 - _____ b) Compliance with all Federal, State, and local requirements effective on the contract execution date.
- _____ 4. *Where noncompetitive negotiation is accepted by the Agency, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.
- _____ 5. A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.
- _____ 6. *Evidence that a qualified construction inspector who is independent of the contractor will perform inspections, as required.
- _____ 7. Preliminary plans and outline specifications.
- _____ 8. *The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

STATE ARCHITECT COMMENTS:

The State Office has reviewed the above materials and makes a recommendation for concurrence of the use of the **design / build** or **construction management** method (*circle one or the other*) of development for this proposal.

Project: _____

Submitted by: _____

Date: _____

Fax Number: _____

NATIONAL OFFICE REVIEW

RHS Comments on Submittal: _____

The proposal to use the design / build or construction management method is concurred in by:

Program Support Staff
Date: _____

SFH or MFH Programs
Date: _____