**Public Improvement Project**

**Policy Manual**



The Division of Planning, Design & Construction of the Bureau of Real Estate Management (BREM) (formerly Bureau of General Services, or BGS) administers the policies contained in this Policy Manual and with the Director of the Bureau of Real Estate Management makes decisions on projects based on the guiding principles contained in this document. The policies described in this manual are derived from established best practices, under the authority of statute and rule referenced in each policy sheet. These policies are subject to review and revision.

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# Re-roofing

*Roof Structural and Insulation Considerations for Re-roofing Projects*

This policy shall be followed on all re-roofing projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[1]](#footnote-1). This also serves as an advisory policy to administrators on projects which do not require BREM regulation.

Purpose

The objective of this policy is a renovated roof that allows for an effective roof covering, a sound, safe roof structure, and an adequate level of energy-efficient insulation. Structural safety and the effective use of energy resources are among the highest priorities. Environmental safety is another important consideration.

The reference standards are:

1. A load carrying capacity which meets the International Code Council's International Building Code (IBC) standards as adopted by the Department of Public Safety, Bureau of Building Codes and Standards, to the extent judged necessary by BREM, and

2. A minimum average of R-30 insulation value for the roof composite for conditioned buildings.

Applicability

This policy applies to re-roofing projects which require BREM review and approval, including public school re-roofing projects. Any type of building use, any roof size or construction type, and insulated or uninsulated roofs, are relevant and may be declared applicable by BREM. This policy does not apply to projects of minor repair, patching or maintenance of roofs. BREM reserves the right to make the final determination of applicability.

Engineer's responsibility

A Maine-licensed Professional Engineer shall inspect the structural elements supporting the roof for material deterioration, quality of materials and quality of construction; shall review any existing plans, specifications and calculations; and shall make whatever new calculations are necessary to determine the dead load and live load capacity of the roof and its structural components.

This policy does not remove the Engineer’s responsibility to check for other related issues, especially if it is believed that the change in dead loads will have an adverse impact on the building’s structural capacity. The Engineer shall seal and sign a written report of the findings and submit it to the Owner and BREM. Among other relevant information, the report shall include photographs, sketches, calculated current load carrying capacity (as a percentage of the noted standard), construction cost estimates, options, and recommended remedial actions, if necessary.

The design standard for roof structures shall reference the effective edition of the International Building Code (IBC).

Owner's responsibility

The Owner shall initially identify the need for the re-roofing project and convey that information to BREM. The Owner shall disclose all pertinent facts about the facility including current and proposed use, age of roof and building, repair history, and issues such as roof leaks and typical snow and ice accumulation patterns.

The Owner shall implement any structural, insulation or other improvements that may be directed by BREM prior to implementation of the re-roofing project. Generally, re-roofing includes the complete removal of existing roofing materials. A hazardous material assessment and removal plan should precede a re-roofing project.

Role of BREM

BREM Division of Planning, Design & Construction personnel who are licensed Architects or Professional Engineers, subject to their availability and familiarity with similar project scopes, may serve in lieu of a consulting Engineer.

BREM shall determine the actions and order of improvements to be taken for the specific project under consideration. Those actions will reflect the particular conditions and the evident priorities of the proposed project, and the objectives described in this policy.

In the event that total funding for necessary structural improvements is not immediately available, a stringent roof management plan of monitoring and removing snow loads may be permitted by BREM. The plan would be provisional, allowing time to obtain funds to complete the structural improvements based on the building code design standards. The plan shall consist of, but not be limited to, clearing drains of debris and minimizing ice and snow accumulation on the roof.

The roof management plan shall be developed in consultation with the Owner, BREM, and a Maine-licensed Professional Engineer. The written plan shall be filed with the state agency or school administrative unit having jurisdiction over the building and with BREM. A component of the plan shall be a firm commitment by the agency or governing body of the school administrative unit to provide the necessary funds as a part of the next budget approval process.

# Fair Competition

*Avoiding Biased Evaluations on Public Improvement Project Contracts*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[2]](#footnote-2). This serves as an advisory policy to administrators on projects which do not require BREM regulation.

Purpose

The objective of this policy is to describe the principles for avoiding situations which present, or appear to present, an unfair advantage to any planning, design or construction entity seeking a contract on a public improvement project.

Applicability

This policy applies to procurement of architectural or engineering services and procurement of construction services.

Guiding principles

Conduct all procurement in an unbiased and fair manner. Procurement should be carried out according to the requirements of statute and rule and the concepts stated in this policy.

Architectural or engineering services which can be procured through the BREM Prequalified List should be solicited from an apparently qualified firm. A particular firm’s familiarity with a facility, a state agency, or a previous phase of the proposed project does not necessarily indicate that firm is the *only* qualified firm for the proposed project. Note this single source selection process necessitates the Owner negotiates with only one firm at a time; there is no simultaneous comparison of fees or services.

Similarly, architectural or engineering services which are procured with a Request for Qualifications (RFQ)-interview-selection-negotiation process should be selected from a short list of qualified firms. A particular firm’s familiarity with a facility, a state agency, or a previous phase of the proposed project does not necessarily indicate that firm is the *best* qualified firm for the proposed project. Honestly evaluating each firm based on the established criteria for the specific proposed project will result in a ranked list of firms, as required. Negotiation on scope and fee starts with the highest ranked firm, and usually is concluded successfully with that firm.

Contractors, whether chosen from a select list of bidders, a pre-qualified list, or open competitive group of bidders, should not have an unfair bidding advantage created by early or exclusive access to project information. As stated in the Instructions to Bidders, *Contractors are not eligible to bid on the project when their access to project design documents prior to the bid period distribution of documents creates an unfair bidding advantage. Prohibited access includes consultation with the Owner or with design professionals engaged by the Owner regarding cost estimating, constructability review, or project scheduling…The Bureau may require additional information to determine if the activities of a Contractor constitute an unfair bidding advantage.*

The prohibited activity is not simply a Contractor’s access or involvement, per se, in the planning of a project. What is prohibited is that access or involvement which provides Contractors a competitive advantage in the bidding process. Significant consultation with the Owner, or with design professionals engaged by the Owner, at any point in any pre-bid phase of a project regarding cost estimating, constructability review, project scheduling or other areas is subject to review and action by BREM.

BREM may require additional information about the activities of any Contractor to determine if the involvement constitutes an unfair advantage to a bidder. BREM may take action in this regard at any phase of the project: pre-bid, post-bid or post-award of the contract. BREM shall determine when and how to enforce this prohibition to bid. The decision of BREM is final.

Each A/E firm or construction company should be provided equal access to project information or the project site, when it is feasible and advantageous to provide such access to any A/E firm or construction company.

# Project Manual

*Format and Common Requirements of Project Manuals for Public Improvement Projects*

This policy applies to all public improvement projects which are of a cost or complexity that necessitates a Project Manual to be used in the bid process. By statute[[3]](#footnote-3), the Bureau of Real Estate Management (BREM) is authorized to approve such projects.

Purpose

The intent of this policy is to describe the general configuration of Project Manuals for various public improvement projects. Also, this document will clarify the role of the respective parties on a project.

Applicability

This policy applies to any project which requires BREM review and approval, including public school projects. This policy normally does not apply to projects of minor scope, which provide project requirements and specifications in abbreviated form elsewhere. BREM reserves the right to make the final determination of applicability.

Roles of the parties

The Architect or Engineer design professional, Owner, and BREM together will determine what will be included in the Project Manual. The design professional is responsible for compiling and drafting the Project Manual. The Owner is responsible for reviewing the approving the Project Manual, and funding the work, including the cost of the design included within the Project Manual. BREM is responsible for reviewing the proposed Project Manual and approving it for the solicitation of bids.

Content and other requirements

The system of numbers and titles used in ordering the Project Manual shall be the MasterFormat 2004 edition, as updated in 2010 and to date. BREM provides files in Microsoft Word of a standard *Division 00 Procurement and Contracting Requirements*, and has approval authority over the content of those final documents. BREM has approval authority over the content of *Division 01 General Requirements*.

Typically the Project Manual includes a notice to contractors, instructions to bidders, a bid form, general conditions, written specifications, and any associated drawings or reports.

The particular requirements for the bid form, alternate bids, allowances, et cetera are addressed elsewhere in this *Public Improvement Project Policy Manual*.

# Proprietary Specifications

*Using Proprietary Specifications for Building Construction and Renovation Projects*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[4]](#footnote-4). This serves as an advisory policy to administrators on projects which do not require BREM regulation.

Purpose

The objective of this policy is to describe the parameters for writing exclusive-source or limited-source specifications, commonly called proprietary specifications in order to create fair bidding, and appropriate, reliable, practical installations for Owners.

Applicability

Projects of any size, solicited of a select list, a pre-qualified list, or open competitive group of bidders, may incorporate proprietary specifications only when the standards described in this document are addressed by the Owner and approved by BREM. BREM shall make the final determination of when this policy applies to a given situation.

Business practice

Normally, bid requirements must have a written or implied “…or approved equal” clause regarding manufacturers or products. Unless otherwise noted, a reference to manufacturers or products indicates a targeted level of quality. This type of open specification allows for competitive bidding, subject to the regular substitution process and the determination of the design consultant.

For the purpose of this policy, a proprietary specification is a bid requirement which references a particular manufacturer or a particular manufacturer's product as the prescribed response.

Since proprietary specifications generally have a negative effect on competitive bidding, and the practice of limiting competitive bidding on even a portion of a construction contract bid is prohibited, the exclusive-source or limited-source specifications must be pre-approved by BREM. The specification must be acknowledged in writing as a proprietary specification and must meet the standards shown below. Some examples of proprietary specifications are building controls or other equipment controls, locksets, et cetera.

The written acknowledgement of a proprietary specification shall be placed in the bid requirements, only through prior approval of BREM, in language similar to this: *The Owner recognizes this specification section may limit the competitive bidding to a single or restricted number of qualified bidders, sub-bidders or suppliers. The Owner and the Bureau of Real Estate Management has reviewed the justification for this specification and has determined that this approach is acceptable and is applied in the best interests of the State of Maine. Substitutions will not be accepted for this specification section.*

Standards

* *Compatibility*. The product has been demonstrated to be critical for compatible use with existing systems and other products are incompatible.
* *Quality*. The product has been demonstrated to have a necessary level of quality and other products lack that level of quality.
* *Design*. The appearance of the product is a crucial consideration that cannot be achieved with other products. Also, the product will perform the intended function as no other product is able to.
* *Durability*. The product has been demonstrated to have no equal in strength and durability, with durability being a prime factor.
* *Cost*. The estimated cost of a product bid as a proprietary specification is proportional to the perceived benefit.
* *Clarity.* The written specification will clearly define the product in a comprehensive, prescriptive manner, typically formatted in three sections: *General*, *Products*, and *Execution*.
* *Fairness.* The written specification for the product will use every reasonable means to encourage competitive bidding, even with the proprietary specification.
* *Benefit*. Considering all factors such as warranty, installation and maintenance and the standards shown here, specifying the product in this way is in the best interest of the Owner.

# Alternate Bids

*Determining and Creating Alternate Bids for Building Construction and Renovation Projects*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[5]](#footnote-5). This serves as an advisory policy to administrators on projects which do not require BREM regulation.

Purpose

The objective of this policy is to describe the principles for Alternate Bids (also called "alternates") that are fair, understandable and uncomplicated for bidders, and are relevant, practical and advantageous for Owners.

Applicability

Projects of any size may utilize Alternate Bids, whether bids are solicited from a select list, or a pre-qualified list, or an open competitive group of bidders. BREM reserves the right to make the final determination of applicability.

Roles of the parties

The Owner, Architect and BREM will determine what alternates will be included in the project. The Owner is responsible for reviewing the approving the proposed alternates, and funding the proposed work, including the cost of the design. The Architect is responsible for defining each alternate clearly in the Bid Documents. BREM is responsible for reviewing the proposed alternates, drawings and written specifications associated with the alternates, as well as the bid form, and approving the Bid Documents for release.

Bidders shall not offer, nor should the Owner accept, Alternate Bid options of the bidder’s choosing, or variations of the listed Alternate Bids.

Guiding principles

The Alternate Bids should meet these guidelines:

* *Scope*. An alternate should include only a scope of work that is *not* essential for the completion of the project. For example, the heating system should not be an alternate. The Architect should design the Base Bid to include all of the functions of a complete project. The functionality of the facility should not be the reason the Owner is compelled to accept particular alternates in order to create a complete project. Operational necessity should not be the reason the Owner is compelled to accept alternates in order to create a complete, functioning facility.
* *Quantity*. The alternates should be few in number, depending on the project, perhaps no more than seven alternates for a large project. The alternates should not create an undue burden on the bidders to engage in multiple estimating calculations in addition to those required for the Base Bid. Avoid those alternates which are minimally cost effective as a competitively bid item if that work can easily be incorporated in the project by Change Order after the contract is awarded.
* *Cost*. The dollar value an alternate should not be small and insignificant relative to the Base Bid. Also, the estimated construction cost of all of the alternates should not exceed the available bid contingency.
* *Complexity*. To the extent possible, alternates should involve only one, or a select few trades. Where alternates are proposed *in addition to* work in the Base Bid, the work of the alternate should be uncomplicated in terms of coordination between the Base Bid work and the Alternate Bid work. Where alternates are proposed *in lieu of* an item in the Base Bid, the bid documents should also be very clear as to the scope that is replaced as well as the scope included in the alternate.
* *Selection*. Alternates normally add cost, not deduct cost, to the Base Bid. The Owner shall not knowingly create an undue advantage for one particular bidder regarding the award of a contract due to certain alternates being chosen or not chosen. Selections of alternates are made relative to available funding and the value of the individual Alternate Bid.
* *Priority*. Alternates more highly desired than others, are generally placed in order before those less desired. However, the order of alternates on a bid form does not obligate the Owner to select one alternate before another. The Owner shall evaluate each alternate on its particular merits.

# Filed Sub-bids

*Handling Filed Sub-bid Documents Prior to and After General Contractor Bid Openings*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[6]](#footnote-6) and for which the Owner has elected to utilize the Filed Sub-bid process.

Purpose

This policy describes the procedures that shall be followed on projects where the Filed Sub-bid process is incorporated into the bidding of a project, in order to ensure a fair and justifiable bidding process.

Applicability

Projects utilizing the Filed Sub-bid process should be of a significant estimated construction cost, greater than approximately $1,000,000, where the selected filed sub-bid trades would be approximately $100,000 or greater, or at least 10% of the total construction cost. Filed sub-bid packages should consist of trades that customarily use the Bid Depository and scopes of work that are clearly delineated in the specifications.

Handling of documents

Section *00 22 13 Instructions to Filed Sub-bidders* (in Division 00 Procurement and Contracting Requirements) contains the general requirements of the Filed Sub-bid process. Where and how to bid is described in detail. BREM will receive the Filed Sub-bids on major capital public school projects and on other state projects where BREM is the Owner or assists another state agency with bidding.

Filed Sub-bids shall not be opened prior to the General Contractor bid closing. After the General Contractor bids are opened, the associated Filed Sub-bids of the apparent low GC bid will be opened to confirm the accuracy and completeness of the GC bid.

BREM will hold the unopened Filed Sub-bid envelopes until the General Contractor contract is approved and in effect, then the unnecessary Filed Sub-bids will be discarded.

# Bid Forms

*Management of the Essential Information Included on Bid Forms*

This policy shall be followed on all Public Improvement projects which utilize a bid form for open, competitive bidding and are subject to review or approval by the Bureau of Real Estate Management (BREM), per statute[[7]](#footnote-7).

Purpose

This policy discusses the merits of various elements of a construction contractor bid form. The purpose is to show those elements of a bid form which will allow an irrefutable construction contract award. A well-designed bid form should make the process of awarding a contract uncomplicated and fair for all bidders. A bid form should not include items that cause confusion, or items that are not essential in making an award, which is based on the lowest responsive bid and responsible bidder, including any Alternate Bids the Owner elects to include.

Elements of a bid form

BREM provides a standard form that has been created to minimize the likelihood of a disruption of the bid process. Consider the importance of each element which is included on a bid form, such as those shown below.

* *Alternate Bids.* Please see the BREM policy sheet concerning Alternate Bids for details in how to determine and create Alternates. If there are Alternates, they should always be defined in the appropriate section of the Specifications, and must be included on the bid form if included in the Specifications. The selection of Alternate Bids in combination with the Base Bid may affect the order of bidders. The basis of the contract award is the low bid amount for the combination of Base Bid and Alternate Bids the Owner selects.
* *Allowances.* Showing a specified cost for each bidder to carry in their bid for a certain scope of work or product is acceptable. If there are Allowances, they should always be defined in the appropriate section of the Specifications, and may also be included on the bid form, although *it is not necessary to include allowances on bid forms*. All bidders must have clarity on what should be incorporated in their bid, including allowances.
* *Unit prices*. Unit prices shall not be used to determine the low bidder on a project. Therefore, where unit pricing is not necessary information at the time of the bid opening, spaces for unit prices should not be included on the bid form.

Unit pricing may be used on a bid form in certain circumstances. One method is to list an item, a unit measurement, and a specified quantity; the bidders are required to show a lump sum for the item. There can be several items. The sum of all of the item costs would be the basis of the contract award.

Another method is to list an item, a unit measurement, and a specified quantity; the bidders are required to show a lump sum for the item. That item can be shown on the bid form as an optional selection- an Alternate Bid.

Unit prices shown on bid forms do not necessarily establish the cost of an item negotiated in a later Change Order to the contract.

* *Substitutions.* Bid administrators shall not allow bidders to submit substitutions that would affect the award of the contract. The project should be bid according to what was specified in the design so that all bids are judged on an equal basis.
* *Completion dates.* Project completion dates shall always be identified in the Specifications, and should not be shown as an item of the bidder’s choice on the bid form. The stipulated sum, contingent on Base Bid and Alternate Bids selected, is the determining criteria for a contract award.
  + - *Attachments.* Avoid requiring attachments, such as those that attempt to prove the bidder’s status in some regard or certifications or other evidence of qualification. The submission of the bid is an attestation by the bidder that all of the requirements of the project, defined in the Drawings and Specifications, are met or will be met by the bidder.

A common exception to the rule to avoid attachments is the requirement on certain projects for a bid bond to be included with the bid form. Bid bonds or other bid security need to be evident and authentic at the time of the submission of the bid form.

* + - *Addenda.* Acknowledgement of each Addendum that was issued during the bid period is typically required on a bid form. Certain Addenda have a direct impact on information needed for bidding, however some Addenda are more narrowly relevant to a requirement of the contract to be carried out during the project (i.e.: not bid amount relevant).
    - *Signature.* A signature by a person having the authority to represent the bidder is typically required on a bid form. There should be no uncertainty about this representation in regards to the contract award.

Evaluating bid forms

A standard bid form typically identifies the project name and location; refers to the drawings, specifications and any addenda that have been issued on the project; includes a space to write the bid amount in numbers; includes a space for a signature; and requires submission in a sealed envelope by a published date and time deadline.

For public improvement construction projects, the basis of selection of a contractor bid is the low stipulated sum, in dollars, relative to other valid bids. Selection criteria may involve a determination that the bid is from a responsible bidder. Factors include the evident skill and quality demonstrated on past projects, sufficient financial resources, and anything that affects the bidder’s ability to perform the contract. Whenever the evaluation of bid forms is not straightforward, or is ambiguous in any way, BREM will determine the proper course of action.

# Contractor Prequalification

*Guidelines for Contractor Prequalification on Public Improvement Projects*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[8]](#footnote-8) and for which the Owner has elected to utilize the Contractor Prequalification process.

Purpose

The objective of this policy is to review the considerations for the discretionary contractor prequalification process, and to outline the statutory requirements[[9]](#footnote-9) when the process is utilized.

Applicability

Projects of any size may utilize contractor prequalification, but are generally of large contract size, or specialized contracting. BREM reserves the right to make the final determination of applicability

Considerations

Public improvement projects which are especially complicated or costly may attract bidders who are not capable of completing the project as defined in the bidding documents. Open, competitive bidding with well-developed plans and specifications is normally sufficient in minimizing the risk of an underqualified bidder winning the contract, because the bidding documents demand that the bidder attests to all the requirements of the project.

Contractor prequalification goes further to eliminate bidders who don’t meet the defined criteria. A vetted list of bidders, versus an open bid pool, makes the evaluation of bids and the award of the contract more efficient.

Currently, contractor qualification for construction projects BREM has authority over is accessed through the Maine Department of Transportation website. Only those projects which are specifically designated in a separate *Notice to Contractors* legal advertisement will require the prequalification process. The time needed from the initial legal advertisement to the final approved list of prequalified contractors is approximately 30 to 45 days. If applicants are denied prequalified status they are normally allowed contingent access to plans and specifications if they choose to appeal the decision. Alternatively, the final list of prequalified contractors can be published after the appeal period.

Criteria

Refer to the statute for complete details of the criteria and the process for contractor qualification for projects BREM oversees. Title 5, Chapter 153, Sections 1748 and 1749 also apply. The following are the criteria in brief.

* *Untimely completion.* “…clearly reflects disregard for the completion date and has created a hardship for the owner*”*
  + - *Incomplete work.* “…evidence the contractor has a history of inability to complete similar work”
    - *Insufficient resources. “*…including any significant disparity between the size and type of prior projects and the project or projects under consideration.”
    - *Misconduct.* “…convicted of collusion or fraud or any other civil or criminal violation…”
    - *Safety record.* “…evidence of a history of inadequate safety performance and lack of formal safety procedures…”
    - *Material misrepresentation.* “…evidence of a material misrepresentation on the contractor's prebid qualification statement…”
    - *Termination, suspension, defaults.* “…has been terminated, has been suspended for cause, has been debarred from bidding, has agreed to refrain from bidding as part of a settlement or has defaulted on a contract or had a contract completed by another party”

# Re-bidding a Project

*Considerations in Evaluating Construction Project Bids*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[10]](#footnote-10). This serves as an advisory policy to administrators on projects which do not require BREM regulation.

Purpose

The objective of this policy is to describe the circumstances in which it is advisable to rebid or redesign a construction project of any size or type for which competitive bids were solicited.

Applicability

This policy applies to any construction contract solicited by an Invitation for Bid. BREM reserves the right to make the final determination of applicability

Re-bid considerations

If, in the evaluation of bids received for a project, the Owner is unable to award the contract due to any of the mitigating factors shown below, the rationale should be thoroughly considered and documented before a decision is made to set aside all bids and to put the project out to bid again, or to take action to award the contract. Since all projects should be adequately funded and ready to execute at the time bids are solicited, there would be no reason the Owner would refuse to award a contract without cause. The following factors, individually or in combination, could be valid reasons for not awarding a construction contract.

* *Over budget.* The most common cause for consideration of a rebid is when the bids received exceed the available funds. The Owner typically budgets for the work based on an estimate or “opinion of probable construction cost” from the designer. Also, BREM requires that a bid contingency is held in the amount of five percent of the estimate. If the lowest responsive bid is deemed over budget, the project should be rebid.
* *Change of scope.* If it is necessary to make a significant change in the scope of work from the scope described in the bidding documents, the project should be rebid.
* *Unfair bidding.* If there is evidence of an unfair bidding situation which can only be resolved by rebidding, the project should be re-bid.
* *Bid irregularity.* If circumstances of the bidding process prevent the Owner from awarding the bid, such as late or improperly submitted bids, et cetera, the project should be re-bid.
* *Limited competition.* Occasionally, a limited number of bids (none, one, or two) can adversely affect the cost of the bids submitted. The limited number of bidders responding can also be indicative of problems on a project that were not apparent until the bids were received.

If there are no bids, which explicitly shows a lack of competitive bidding, the project should be rebid.

If there are only one or two bids, and there is an evident lack of competitive bidding, the project should be rebid.

* *Other reasons.* If changes to the program needs or project schedule or funding availability, for example, unexpectedly occur and prevent the Owner from awarding the contract, the project should be rebid.

Other considerations

If the lowest bid is not more than ten percent over budget the Owner may elect to negotiate with the Contractor in order to lower the contract value and award the contract. This option has a potential difficulty of cost reduction amounts not being as robust as those taken in a competitive bid environment. The reduction of scope necessary to achieve the reduction in cost should not eliminate any necessary elements of the design. With this approach, the contract could be awarded.

The Owner may provide additional funds to award the contract without adversely affecting the project contingency needed for the construction phase and fit up of the project. With this approach, the contract could be awarded.

The Consultant Architects and Engineers are obligated to re-design the project without additional compensation if the bids come in over budget. There is a point, however, at which significant re-scoping of a project would warrant an additional design fee for the work.

The normal expectation when on-budget bids are received is to award the contract.

# Competitive Bidding

*Creating a Fair Bidding Context for Construction Projects*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[11]](#footnote-11). This serves as an advisory policy to administrators on projects which do not require BREM regulation.

Purpose

The objective of this policy is to describe the various types of construction project bid solicitations which allow consistent and fair bidding, which benefits the bidders and the Owner.

Applicability

This policy is utilized on all Design-Bid-Build construction contract procurement. BREM reserves the right to make the final determination of applicability

Categories of construction project bids

This policy does not address so-called Alternative Delivery which is addressed in the same section of statute and in separate rule. The *alternative methods of project delivery* allowed in statute are of three types: construction-manager-advisor (CMa), construction-manager-at-risk (CM or CMR) or design-build (D/B). Alternative Delivery must be approved by the BREM Director based on a recommendation of a Review Panel convened to review such project applications.

Although elements of the competitive bidding strategies described in this policy are present in Alternative Delivery projects, this policy specifically addresses the standard Design-Bid-Build (DBB) construction contract procurement.

* *Over $100,000.* Projects estimated to be over $100,000 in construction cost shall have a publicly advertised solicitation. The scope, configuration and quality of the project shall be described in detail in a *project manual* and bidders, therefore, attest to meeting all of the requirements and commitments of the project shown in the plans and specifications. The project completion date is also specified. Certain basic qualifications of the Contractor may also be included in the *project manual*. Optionally, a separate contractor pre-qualification process can be undertaken, directed by statute.

The basis of award is the lowest dollar value bid, including alternate bids, if any, received before a specified bid due date and time, and place.

This process may be used for estimated contract values of any amount, however, it is required for estimated contract values of over $100,000.

For non-school projects, *the competitive bidding process may be waived in individual cases involving emergency circumstances with the written approval of the director[[12]](#footnote-12)*.

* *$100,000 or less.* Projects estimated to be $100,000 or less in construction cost may have bids solicited from a list of bidders created by the Owner. In this category, the Owner shall make every effort to elicit at least three bids. The select list of bidders can number more than three. The Owner must be certain the invited bidders have the capacity, availability and interest in bidding on the project.

The complete requirements of the project shall be described in detail in the bidding documents, whatever form they may take.

The basis of award is the lowest dollar value bid, including alternate bids, if any, received before a specified bid due date and time, and place.

* *$5,000 or less.* Projects estimated to be $5,000 or less in construction cost may have bids solicited from a single bidder selected by the Owner. The complete requirements of the project shall be described in detail in the bidding documents, including any optional, or alternate bids.

The basis of award is agreement between Owner and Contractor, through negotiation if necessary, on the scope, schedule and cost.

* *Over $250,000 public school projects[[13]](#footnote-13).* The same conditions described in the *Over $100,000* section above apply to school projects.

For school projects, *competitive bids may be waived in individual cases involving unusual circumstances with the written approval of the Director of the Bureau of Real Estate Management and the Commissioner of Education.*

# Contract Time

*Considerations for Construction Contract Extensions*

This policy shall be followed on all Public Improvement projects which, by law, must be submitted to the Bureau of Real Estate Management (BREM) for review or approval[[14]](#footnote-14). This serves as an advisory policy to administrators on projects which do not require BREM regulation.

Purpose

The intent of this policy is to review the relevant factors for a construction contract time extension in order to recognize a justifiable time extension request.

Applicability

This policy applies to any project which requires BREM review and approval, including public school projects. BREM reserves the right to make the final determination of applicability.

Guiding principles

Changes to the scope of work of a construction project should be developed only when the proposed changes are necessary, and project cost or schedule is affected. The Change Order must be negotiated fairly, and approved by all parties prior to beginning work. Changes in the project schedule should be documented at the time the Change Order is incorporated in the contract, showing either an accepted estimate of schedule impact, or a provision to accept the actual time used for that Change Order item (by documenting worker time on the jobsite), or a provision to accept the actual time impact on the critical path line of the project schedule (i.e.: some work can be carried out concurrently).

Additional time on a proposed Change Order item should be allowed only to the extent the critical path of construction activities is impacted.

Additional time is subject to negotiation in the same way the other terms of the Change Order item are negotiable. The Contractor shall detail schedule impacts with respect to the approved project schedule.

Additional time should not be granted if that change is made necessary by the contractor’s actions or failure to act.

If the work is not completed by the prescribed contract completion date, it should be considered untimely completion of the project. It is important to accurately record all of the details associated with late delivery in the closing documentation of the project.

1. For state owned or school administrative unit projects see Title 5, Chapter 153, Section 1742, subsections 3 and 7. [↑](#footnote-ref-1)
2. For state owned projects see Title 5, Chapter 153, Section 1742, subsection 7. For school administrative units the applicable statute is Title 20-A, Chapter 609, Section 15903, subsection 3. [↑](#footnote-ref-2)
3. Title 5, Chapter 153, Section 1742, subsection 7, and Section 1743, especially Section 2, for state owned projects. [↑](#footnote-ref-3)
4. For state owned projects see Title 5, Chapter 153, Section 1742, subsection 7, and Section 1743, especially Section 2. For school administrative units the applicable statute is Title 20-A, Chapter 609, Section 15903, subsection 3. [↑](#footnote-ref-4)
5. For state owned projects see Title 5, Chapter 153, Section 1742, subsection 7, and Section 1743, especially Section 2. For school administrative units the applicable statute is Title 20-A, Chapter 609, Section 15903, subsection 3. [↑](#footnote-ref-5)
6. See Title 5, Chapter 153, Section 1742, subsection 7, and Section 1743, especially Section 2, for state owned projects. [↑](#footnote-ref-6)
7. See Title 5, Chapter 153, Section 1742, subsection 7, and Section 1743, especially Section 2, for state owned projects. [↑](#footnote-ref-7)
8. See Title 5, Chapter 153, Section 1742, subsection 7, and Section 1743, especially Section 2, for state owned projects. [↑](#footnote-ref-8)
9. Title 5, Chapter 153, Section 1747 Questionnaire as prebid qualification. [↑](#footnote-ref-9)
10. For state owned projects see Title 5, Chapter 153, Section 1742, subsections 3 and 7, and Section 1743, especially Section 2. [↑](#footnote-ref-10)
11. For state owned projects see Title 5, Chapter 153, Section 1743, subsection 2. [↑](#footnote-ref-11)
12. This provision is part of the above referenced statute and, in practice, is rarely utilized. [↑](#footnote-ref-12)
13. For public school projects see Title 5, Chapter 153, Section 1743-A. [↑](#footnote-ref-13)
14. For state owned projects see Title 5, Chapter 153, Section 1742, subsections 3 and 7, and Section 1743, especially Section 2. [↑](#footnote-ref-14)