



"Best Value" Selection of Design Build Firm in Ohio

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In June 2011, Ohio law governing public construction projects changed for the first time in 134 years. This law, known as Ohio Construction Reform (OCR), provides for new methods of construction delivery. Design build is one method authorized by the OCR, which proposes regulations for choosing a design build firm that presents the "best value" to the public authority.

The Ohio Department of Administrative Services has posted proposed regulations at <http://ocr.ohio.gov/Home.aspx>. The regulations governing selection of a design build firm were proposed in November 2011 and were the subject of a public hearing in December 2011. Final regulations are expected by February 2012. Proposed regulation 153:1-6-02 addresses the methodology for making a best value selection of a design build firm. The text of the proposed regulation can be found here: http://ocr.ohio.gov/Portals/0/pdf/BestValueRule_11182011.pdf.

In summary, the proposed regulation establishes a two step process for selection of a design build firm comprised of a qualifications phase and proposal phase. Qualifications criteria include (1) competence to perform the project; (2) firm's availability to perform the work; (3) quality of past performance; (4) use of licensed design professional; (5) financial responsibility; (6) history of diversity inclusion; and (7) other qualifications consistent with the scope of the project.

The public authority has the discretion to convene an evaluation committee to assist in choosing the best value design build firm. Once the qualification criteria and evaluation committee are finalized, the regulation provides for the release of the request for qualifications. During this phase, the public authority will answer questions posed by interested applicants. From the pool of applicants, the evaluation committee is to create a short list of three firms. If fewer than three qualified firms apply, the public authority may consider one or two firms.

Once a short list is finalized, the public authority can move on to the request for proposal phase and then the determination of best value. These topics will be addressed in a later article.