

New Construction and Improvements to Existing BuildingsConstruction Management at Risk under the Nebraska School Construction Alternatives Act, Neb. Rev. Stat §§ 13-2901, et. seq. - Construction Delivery Method

1. **Introduction:** The Board of Education has determined that it is in the best interests of the School District/Owner to take all necessary action in order to authorize the School District/Owner to enter into a construction management at risk (CMR) contract for purposes of allowing the School District/Owner to avail itself of the construction management at risk construction delivery method and process pursuant to Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. 13-2901, et. seq. (hereinafter "PSCA Act"). Pursuant to the PSCA Act, the Board of Education hereby adopts the following policies for entering into a construction management at risk contract and the general terms of such contract.

2. **Terms Defined:**

A. "Construction management at risk contract" means a contract developed under the terms and conditions of this policy by which a construction manager (a) provides services as a construction consultant to the School District/Owner during the design phase of the project when the School District/Owner's architect or engineer designs the project; (b) assumes the legal responsibility to deliver a construction project for a contracted price, also known as a "guaranteed maximum price" or "GMP"; and (c) is the builder during the construction phase of the project, subject to the School District/Owner's bidding requirements established by this policy and other School District/Owner policies, and the construction management at risk contract;

B. "Construction Manager" or "CMR" means the legal entity which proposes to enter into a construction management at risk contract under this policy;

C. "Proposal" means an offer in response to a request for proposals by a construction manager to enter into a construction management at risk contract for a project under this policy;

D. "Request for Proposals" means the documentation by which the School District/Owner solicits proposals.

3. **Board Selection of CMR Method and Process and Direction to Prepare RFP:** The Board of Education of the School District/Owner shall adopt a resolution to select the construction management at risk under the PSCA Act as the method and process of construction delivery of the specific project and authorize and direct the Administration of the School District/Owner in conjunction with the architecture or engineering firm retained for the specific project to prepare a request for proposals in accordance with the PSCA Act and this policy. See, Appendix "A".

4. ***Duties of Architect and/or Engineer for the Project:*** Prior to proceeding with any construction project under the PSCA Act exceeding a total anticipated cost equal to or in excess of the amount established in Neb. Rev. Stat. § 81-3445, as amended from time to time, the School District/Owner shall retain the services of an architect and/or engineer for such project, to provide design services including the preparation of plans, specifications, and estimates, and observe construction. If the Board of Education selects the construction management at risk method of construction delivery under the PSCA Act, such services shall include consultation and participation in the evaluation of proposals received for such position, and participation on the selection committee for the position of construction manager at risk provided for in the PSCA Act.

5. ***Procedures for the Preparation and Content of Requests for Proposals:*** The Administration, in consultation with School District/Owner legal counsel and the project architect and engineer, shall prepare the request for proposals for the position of construction manager at risk under the PSCA Act. The School District/Owner shall prepare a request for proposals for each construction management at risk contract in accordance with this section. At least thirty (30) days prior to the deadline for receiving and opening proposals, notice of the request for proposals shall be published in a newspaper of general circulation within the School District/Owner and filed with the State Department of Education. The request for proposals shall include the following documents:

A. Notice to Construction Management firms of the School District/Owner's request for proposals which shall establish (1) the day of any pre-proposal conference; (2) the day upon which such proposals shall be returned, received, or opened, as provided by other statutes; and, (3) the hour at which such proposals shall close, or be received or opened, and they shall also provide that such proposals shall be immediately and simultaneously opened in the presence of the proposers, or representatives of the proposers, when the hour is reached for the proposals to close;

B. Invitation to submit proposals and instructions to prospective construction management at risk firms, which shall include:

(1) An invitation to submit proposals with a brief description of the project, instructions to proposers, and standard notices and reservations of rights as follows:

" NOTICE: By submitting a proposal, each proposer agrees to waive any claim it has, or may have, against the School District/Owner and the Architects retained by the School District/Owner, and their respective employees, arising out of, or in connection with, the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the Proposal Documents; or the Contract Documents; acceptance or rejection of any proposals; and award of the Contract."

And,

"The School District/Owner reserves the right (a) to terminate the proposal process at any time; (b) to reject any or all proposals; and (c) to waive formalities and minor irregularities in the proposals received.

The School District/Owner further reserves the right to conduct a pre-award survey of any firm under consideration to confirm any of the information furnished by the firm or to require other evidence of managerial, financial, technical and other capabilities, the positive establishment of which is determined by the School District/Owner to be necessary for the successful performance of the contract."

(2) A description of the scope and nature of the project, the project site, the project schedule and estimated budget;

(3) Requirements for the proposal, including:

(a) A description of the CMR's project team and organization of such team;

(b) Fee proposal, if required by the School District/Owner as part of the RFP;

(c) A description of the limitations, if any, on expenses to be reimbursed;

(d) Insurance and surety bond requirements;

(e) Preliminary project schedule;

(4) Description of the general scope of services to be provided by the CMR, which may include:

(a) Project financing phase informational services;

(b) Scope of project definition;

(c) Pre-construction phase services including consultation of design, materials and systems, long lead items, contractor availability and recruitment, preliminary project schedule and preliminary cost estimation, and review of construction documents and conduct value engineering assessments with respect to constructability, material and construction techniques and building systems, sequencing of construction, separation or combining of bid packages.

(d) Cost estimation and preliminary guaranteed maximum price submittals to the School District/Owner;

(e) Construction administration and supervision services including identification and preparation of bid packages, recruitment and prequalification of prospective proposers for such bid packages, conduct of bid process for each bid package, review of and recommendations to the School District/Owner with regard to proposals submitted, and administration of construction contracts, day-to-day supervision of the work with a qualified site superintendent and project manager;

(f) Preparation and submittal of Guaranteed Maximum Price (GMP) for the project(s).

(5) Information of pre-proposal conference, if any required, and attendance requirements at such conference.

(6) Proposal procedure, including:

(a) Questions and clarification or interpretations of the proposal documents;

(b) Method of handling addenda to proposal documents;

(c) Procedure for modification or withdrawal of proposals;

(d) Proposal due date and opening including date, time, location and methods of submittal of proposals;

(e) Selection team;

(f) Selection procedure and evaluation criteria and the relative weight of each criterion;

(g) Interview process;

(h) Contract negotiation process;

(i) Contract execution process.

C. Agreement between Seward County School District 80-0009, a/k/a Seward Public School District and the construction manager at risk under the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. §§ 13-2901 et. seq., prepared by School District/Owner legal counsel.

D. AIA Document A201/CMa™ - 1992 - General Conditions of the Contract for Construction where the Construction Manager is NOT a Constructor, 1992 Edition, AS MODIFIED;

E. Payment and performance bond and guaranteed maximum price bond requirements for the construction manager at risk;

F. Insurance requirements which shall provide that the construction manager shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the construction manager from claims set forth below which may arise out of or result from the construction manager's operations under the contract and for which the construction manager may be legally liable, whether such operations be by the construction manager or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(1) Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

(2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager's employees;

(3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager's employees;

(4) Claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (2) by another person;

(5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(6) Claims for damages because of bodily injury, death of a person or property damage arising out of School District ownership, maintenance or use of a motor vehicle; and

(7) Claims involving contractual liability insurance applicable to the construction manager's obligations.

G. The CMR organizational chart; and,

H. Policies adopted by the School District/Owner governing the CMR construction process.

6. ***Procedure and Standards to be Used to Pre-qualify Construction Manager Candidates:*** The procedures and standards to be used to pre-qualify construction managers will evaluate prospective construction managers based upon the information submitted to the School District/Owner in response to the request for proposals, and an

evaluation of such information by the Selection Committee based upon the criteria for evaluation of proposals and the relative weight to be given each criterion.

7. ***Procedures and Standards for Preparing and Submitting Proposals:***

A. Notices: The prospective construction managers shall be provided the following notices regarding the project and its legal parameters:

(1) NOTICE: THIS PROJECT IS BEING CONDUCTED UNDER AND IS SUBJECT TO THE PROVISIONS OF THE POLITICAL SUBDIVISIONS CONSTRUCTION ALTERNATIVES ACT, Neb. Rev. Stat. 13-2901 et. seq.

(2) NOTICE: By submitting a proposal, each proposer agrees to waive any claim it has, or may have, against the School District/Owner and the Architects retained by the School District/Owner, and their respective employees, arising out of, or in connection with, the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the Proposal Documents; or the Contract Documents; acceptance or rejection of any proposals; and award of the Contract.

(3) Notice of the following provisions related to the request for proposal process:

(a) Attendance at pre-proposal conference (if required).

(b) A process for answering pre-proposal questions or requiring clarification or interpretation of the proposal documents.

(c) A process to provide for interpretations, corrections, and changes of the request for proposal documents to be made by addendum.

(d) A notice providing that:

(i) A proposal may not be modified, withdrawn or canceled by the proposer during the stipulated time period following the time and date designated for the receipt of proposals, and each proposer so agrees in submitting a proposal.

(ii) A submitted proposal may be modified or withdrawn prior to the time and date designated for receipt of proposals by notice to the party receiving proposals at the place designated for receipt of proposals; such notice shall be in writing over the signature of the proposer.

(iii) A withdrawn proposal may be resubmitted up to the date and time designated for the receipt of proposals provided that they are then fully in conformance with the request for proposals.

(iv) The proposing firm's signature on the proposal is the proposing firm's guarantee that the content of the proposal has been arrived at without collusion with other eligible prospering firm or firms and without effort to preclude the School District/Owner from obtaining the lowest competitive price.

(v) Proposals due at a specified date and time must be received at School District/Owner's location by the date and time specified to receive consideration. Proposals received after the specified date and time are considered late, and shall not be opened.

B. Reservation of Rights:

(1) The School District/Owner reserves the right (a) to terminate the proposal process at any time; (b) to reject any or all proposals; and (c) to waive formalities and minor irregularities in the proposals received.

(2) The School District/Owner further reserves the right to conduct a pre-award survey of any firm under consideration to confirm any of the information furnished by the firm or to require other evidence of managerial, financial, technical and other capabilities, the positive establishment of which is determined by the School District/Owner to be necessary for the successful performance of the contract.

C. Requirements For Proposal. The Selection Committee to be approved by the School District/Owner's Board of Education will select firms to be interviewed using the evaluation criteria as defined in the Invitation for Proposals. Each proposer shall be required to submit ten (10) copies of their written proposal, unless more or less are specified in the RFP. Proposals submitted by interested firms must include the following elements in the order listed:

(1) A description of the CMR's project team and organization of such team;

(2) A fee proposal, if required by the School District/Owner as part of the RFP;

(3) A description of the CMR's approach to the submission, reporting and approval of expenses to be reimbursed;

(4) A certification of compliance with insurance and surety bond requirements.

(5) A preliminary project schedule.

(6) A narrative of firm's philosophy.

(7) Completion and submission of the questionnaire included in the invitation for proposals.

8. ***Procedures for Evaluating Proposals in Accordance with Neb. Rev. Stat. §§ 13-2910 and 13-2911:*** The School District/Owner shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to Neb. Rev. Stat. § 13-2911.

A. Referral to Selection Committee: In evaluating proposals in accordance with Neb. Rev. Stat. § 13-2910, the School District/Owner shall refer the proposals for recommendation to a selection committee.

B. Make-up of Selection Committee: The selection committee shall be a group of at least five (5) persons designated by the School District/Owner. Members of the selection committee shall include (1) members of the school board, (2) members of the school administration or staff, (3) the school's architect or engineer when evaluating proposals from construction managers under Neb. Rev. Stat. § 13-2910, (4) any person having special expertise relevant to selection of a construction manager under the Political Subdivisions Construction Alternatives Act, and (5) a resident of the School District/Owner other than an individual included in subdivisions (1) through (4) of this subsection.

C. Members No Pecuniary Interest: A member of the selection committee designated under subdivision (4) or (5) of this subsection shall not be employed by or have a financial or other interest in a construction manager who has a proposal being evaluated and shall not be employed by the School District/Owner or the performance-criteria developer.

D. Evaluation Criterion: The selection committee and the School District/Owner shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (1) through (8) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:

(1) The financial resources of the design-builder or construction manager to complete the project, ten percent;

(2) The ability of the proposed personnel of the design-builder or construction manager to perform, thirty percent;

(3) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder or construction manager, thirty percent;

(4) The quality of performance on previous projects, thirty percent;

(5) The ability of the design-builder or construction manager to perform within the time specified, thirty percent;

(6) The previous and existing compliance of the design-builder or construction manager with laws relating to the contract, ten percent; and

(7) Such other information as may be secured having a bearing on the selection, twenty percent.

E. Examination of Proposals: Following the opening of the proposals, the Selection Committee will examine the proposals and supporting documentation submitted by all candidates. The selection of the CMR for the Project shall be based upon a careful and objective consideration of the proposals and the ability of each firm submitting a proposal to perform the services described in this Invitation for Proposals and the requirements of any federal, state, local laws and regulations and School District/Owner policies and regulations that are applicable to the Project.

F. Interviews of Candidates: To further assist the Selection Committee in evaluating each proposal to determine which candidate best meets the criteria in the request for proposals, the Selection Committee Board may at its election determine to interview such candidate(s).

G. Records of Selection Committee: The selection committee shall keep and maintain permanent records of the committee proceedings including, but not limited to, records of the minutes of meetings, and documentation received or disclosed in open session of the meetings. The committee shall appoint a board member or district employee to keep the minutes of the committee meetings. The minutes of each meeting shall include as a minimum the following items: a record of the date, time, place, members present, action taken and the vote of each member. The records of the committee shall be placed on public file with the central administration office. The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of section 84-712.01.

H. Rejection of Proposals: The School District/Owner shall have the right to reject any and all proposals. The School District/Owner may subsequently solicit new proposals using the same or different project performance criteria.

9. ***Contract Negotiations:***

A. Negotiations with Highest Ranked CMR: The School District/Owner shall attempt to negotiate a construction management at risk contract with the highest ranked construction manager and may enter into a construction management at risk contract after negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor.

B. Negotiations with Second Highest Ranked CMR, etc. If the School District/Owner is unable to negotiate a satisfactory contract with the highest ranked construction manager, the School District/Owner may terminate negotiations with that construction manager. The School District/Owner may then undertake negotiations with the second highest ranked construction manager and may enter into a construction management at risk contract after negotiations. If the School District/Owner is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the School District/Owner may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

C. Requirement of Execution of Written Contract: No contractual rights shall be created between the construction manager at risk and the School District/Owner until a written contract has been negotiated, agreed upon, approved by the Board of Education of the School District/Owner, and executed by all parties thereto.

D. Insurance and Bonding: The contract shall provide that the CMR shall provide insurance coverage for the Project which shall not be less than the amounts listed in the contract as set forth in the Request for Proposal; such insurance coverage shall include general liability (Project specific), automobile liability, and workers' compensation. Further, the CMR shall provide the School District/Owner with a payment and performance bond for the cost of the services of the CMR and estimated expenses to be reimbursed, and a guarantee bond in the amount of ten percent (10%) of the guaranteed maximum price for the project.

E. Filing of CMR Contract: The School District/Owner shall file a copy of all construction management at risk contract documents with the State Department of Education within thirty (30) days after their full execution. Within thirty (30) days after completion of the project, the construction manager shall file a copy of all contract modifications and change orders with the department.

F. Unsuccessful Negotiations with CMR Candidates: If the School District/Owner is unable to negotiate a satisfactory contract with any of the ranked construction managers, the School District/Owner may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process.

G. Modification of CMR Contract: A construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the School District/Owner in agreement with the construction manager to make changes in the project without invalidating the contract. Later refinements shall not exceed the scope of the project statement contained in the request for proposals.

10. *Procedures for Filing and Acting on Formal Protests Relating to the Solicitation or Execution of the CMR Contract:*

A. Protest Relation to Solicitation:

(1) Request for Proposals, Notice, and Pre-Proposal Process and Procedures: A CMR candidate seeking to protest the policies adopted by the Board of Education pursuant to the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. 13-2901, et. seq. and the form or content of the request for proposals promulgated by the School District/Owner, or the notice of the request for proposal, or any pre-proposal process or procedures, must file such protest within fourteen (14) calendar days from the date of the publication of the notice of the request for proposals.

(2) Proposal Opening, Evaluation and Ranking of CMR Candidates: A CMR candidate seeking to protest the proposal opening process used by the School District/Owner must file such protest within seven (7) calendar days from the date of the proposal opening.

(3) Evaluation and Ranking of CMR Candidates: A CMR candidate seeking to protest the process and procedures used by the Selection Committee in evaluating and/or ranking the CMR candidates must file such protest within seven (7) calendar days from the date the Selection Committee makes its recommendation to the Board of Education or the Board of Education's acceptance of the recommendation of the Selection Committee.

B. Negotiation or Execution of CMR Contract: A CMR candidate seeking to protest the process and procedures used by the School District/Owner in the negotiation or execution of the construction management at risk contract must file such protest within seven (7) calendar days from the date the Board of Education takes action to approve the construction management at risk contract.

C. Form and Filing of Protests: All protests under this subparagraph shall be filed with the Office of the Superintendent of Schools during normal business hours. Such protest must be in writing and received at or before the close of business on the last day provided for the receipt of such proposals. For purposes of this paragraph the term "received" shall mean the actual in hand receipt of all protests and attendant documents. Facsimile transmittals, e-mail or other electronic or telephonic transmittals shall not be accepted and receipt of protest documents, or change in protest documents, in such manner will not be accepted. Protests shall be public records, and shall not be considered proprietary and confidential.

D. Action on Protests: The Board of Education shall take action on any protest filed pursuant to subparagraph A and B above within forty-five (45) days of receipt of such protest, and shall provide the decision of the Board of Education in writing to the protesting party.

Legal Reference: Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. 13-2901, et. seq.; 81-1701 et seq.; and 84-712.

Date of Adoption: 1-11-10