

## CONSTRUCTION MANAGEMENT AT RISK SCHOOL CONSTRUCTION ALTERNATIVE

The school district adopts this policy in the event it resolves to use the construction management at risk (CM at risk) construction delivery process. Prior to using the CM at risk process on a specific construction project, the school district shall review information on file with the State Department of Education, and may consult legal counsel, to assist the board in determining the current eligibility of the proposed project under limitations established by the Nebraska Schools Construction Alternatives Act. The board shall then adopt such a resolution by a seventy-five percent affirmative vote.

Following the acquisition of professional architectural or engineering services as required for the project, the board shall utilize this policy to evaluate, select and contract with a construction manager for the delivery of construction services.

### **Definitions**

1. Construction management at risk contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the school district, (b) acts as a construction consultant to the school district during the design development phase of the project when the school district's architect or engineer designs the project, and (c) is the builder during the construction phase of the project;
2. Construction manager means the legal entity which proposes to enter into a construction management at risk contract under this policy;
3. Letter of interest means a statement indicating interest to enter into a construction management at risk contract for a project under this policy;
4. Project performance criteria means the performance requirements of the project suitable to allow the construction manager to make a proposal. Performance requirements include the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the project;
5. 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;
6. Request for letters of interest means the documentation or publication by which the school district solicits letters of interest;
7. Request for proposals means the documentation by which the school district solicits proposals.

### **Procedural Regulations**

The board directs the superintendent to promulgate regulations detailing the following procedures:

1. Procedures and standards to be used to prequalify construction managers. The procedures and standards shall provide that the school district in consultation with its architect/engineer will evaluate prospective construction managers based on the information submitted to the school district in response to a request for letters of interest and will select construction managers who are prequalified and consequently eligible to respond to the request for proposals;
2. Procedures for the preparation and content of requests for proposals;
3. Procedures for preparing and submitting proposals;
4. Procedures for evaluating proposals;
5. Procedures for negotiations between the school district and the construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated;
6. Procedures for filing and acting on formal protests relating to the solicitation or execution of construction management at risk contracts.

### **Letters of Interest**

The school district shall prepare a request for letters of interest for CM at risk proposals and shall prequalify construction managers in accordance with this policy. The request for letters of interest shall describe the project in sufficient detail to permit a construction manager to submit a letter of interest.

The request for letters of interest shall be (a) published in a newspaper of general circulation within the school district at least thirty days prior to the deadline for receiving letters of interest and (b) sent by first-class mail to any construction manager upon request.

Letters of interest shall be reviewed by the school district in consultation with the architect/engineer. The school district shall select prospective construction managers in accordance with the procedures described above. The school district shall select at least three prospective construction managers except that if only two construction managers have submitted letters of interest, the school district shall select at least two prospective construction managers. The selected construction managers shall then be considered prequalified and eligible to receive requests for proposals.

### **Requests for Proposals**

The school district shall prepare a request for proposals for each construction management at risk contract in accordance with this policy. At least thirty 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 and filed with the State Department of Education.

The request for proposals shall be sent only to the construction managers selected under the prequalification procedures of this policy.

The request for proposals shall contain, at a minimum, the following elements:

1. The identity of the school district for which the project will be built and the school district that will execute the contract;
2. Policies adopted by the school district governing the CM at risk construction process;
3. The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding. The proposed general terms and conditions shall be consistent with the standard model general terms and conditions issued by one of the following:
  - a) The American Institute of Architects (AIA);
  - b) The Engineer's Joint Contract Documents Committee (EJCOC); or
  - c) The Association of General Contractors of America (AGC);
  - d) The Design-Build Institute of America (DBIA).
4. Any bonds and insurance required by law or as may be additionally required by the school district;
5. General information about the project which will assist the school district in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;
6. The criteria for evaluation of proposals and the relative weight of each criterion; and
7. A description of any other information which the school district chooses to require.

### **Receiving and Evaluating Proposals**

Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals.

Proposals may be withdrawn at any time prior to acceptance. The school district shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Nebraska Schools Construction Alternatives Act. The school district may then solicit new proposals using the same or different project performance criteria.

The school district 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.

### **Selection Committee**

In evaluating proposals the school district shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five persons designated by the board and shall include the following:

1. members of the school board;
2. members of the school administration or staff;
3. the school's architect or engineer;
4. any person chosen by the board for providing expertise relevant to selection of a construction manager under the Nebraska Schools Construction Alternatives Act; and
5. a resident of the school district not included in the four preceding subsections.

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 or the district's architect/engineer.

The selection committee and the board shall evaluate proposals taking into consideration the criteria enumerated below when applicable, with the maximum percentage of total points for evaluation which may be assigned to each as shown:

1. The financial resources of the construction manager to complete the project, ten percent;
2. The ability of the proposed personnel of the construction manager to perform, thirty percent;
3. The character, integrity, reputation, judgment, experience, and efficiency of the construction manager, thirty percent;
4. The quality of performance on previous projects, thirty percent;
5. The ability of the construction manager to perform within the time specified, thirty percent;
6. The previous and existing compliance of the 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.

The board shall assign a specific relative weight for each criterion. The same set of criteria and associated relative weights shall be used by both the selection committee and the board in the evaluation process.

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.

### **Contract Negotiations**

The school district 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. If the school district is unable to negotiate a satisfactory contract with the highest ranked construction manager, the school district may terminate negotiations with that construction manager.

The school district 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 is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the school district may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

The school district shall file a copy of all construction management at risk contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the construction manager shall file a copy of all contract modifications and change orders with the department.

If the school district is unable to negotiate a satisfactory contract with any of the ranked construction managers, the school district may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process.

### **Final Contracts**

A construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the school district 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.

The CM at risk contract shall not be used for a construction project with locations on parcels of land which are not contiguous except for specialty maintenance projects. A specialty maintenance project is a construction project for the maintenance of an existing facility with a specialty contractor, such as an electrical contractor or plumbing contractor. Parcels are considered contiguous if they would be contiguous but for the existence of a public road.

Legal Reference: Neb. Statute 79-2001 to 2015  
81-1701 et seq.  
84-712

Cross Reference: 1006.01 Community Use of School District Buildings, Sites and  
Equipment

Approved \_\_\_June 8, 2009\_