

## **80509 Construction Management at Risk Contracting Methodology; Policy and Procedures**

### **(A) Definitions**

For purposes of this Policy the following definitions, patterned on those found in the Political Subdivisions Construction Alternatives Act (Neb.Rev.Stat. §§ 13-2901 et seq.) (“the Act”), are applicable:

- (1) Construction management at risk (CM at Risk) contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project to the College within a contracted price, (b) acts as a construction consultant to the College during the design development phase of the project when the College’s architect or engineer designs the project, and (c) is the builder during the construction phase of the project. In this Policy, the terms “construction management at risk” and “construction manager at risk” and “CM at Risk” are used interchangeably;
- (2) Construction manager (CM) means the legal entity which proposes to enter into a construction management at risk contract with the College pursuant to the Act;
- (3) Letter of interest means a statement indicating interest to enter into a construction management at risk contract with the College for a project pursuant to the Act;
- (4) Request for letters of interest means the documentation or publication by which the College solicits letters of interest;
- (5) Request for proposals (RFP) means the documentation by which the College solicits proposals; and
- (6) Proposal means an offer by a construction manager, in response to a request for proposals by the College, to enter into a construction management at risk contract for a project pursuant to the Act.

### **(B) Board Resolution**

The Board of Governors shall adopt a resolution selecting the CM at Risk contract delivery system for a proposed project prior to using the CM at Risk contract delivery system for the project, and no contract shall be awarded using the CM at Risk contract delivery system for a project unless such resolution has been approved by the affirmative vote of at least two-thirds of the members of the full Board.

### **(C) Letters of Interest; Prequalification of Construction Managers**

- (1) Prior to issuance of a RFP, the Board of Governors shall publish a request for letters of interest soliciting potential construction managers to submit letters of interest to indicate their interest in serving as the College’s CM for a proposed project. The request for letters of interest shall include a brief overview of the scope and delivery

requirements regarding the proposed project. The request shall be published in the *Omaha World-Herald* as well as such other newspapers and other media, both within the College's service area and outside of the area, as the Board of Governors and/or the President may designate for the publication concerning the specific proposed project to assure broad distribution of the request. The request for letters of interest shall be published at least thirty (30) days prior to the deadline for submission of the letters. The request for letters of interest shall also specify a website and/or link at which any more detailed information regarding the specific proposed project may be obtained.

- (2) A submitted letter of interest shall serve to indicate to the College the potential construction manager's interest in responding to a subsequent RFP concerning the proposed project and shall describe the potential construction manager's (a) qualifications to serve as CM, (b) prior experience under CM at Risk delivery systems, and (c) experience in managing projects of size and scope similar to those of the proposed College project.
- (3) The President or his or her designee (or the Board, if the Board has reserved such authority to itself with regard to the specific project) shall prepare a list of qualified construction managers based on the submitted letters of interest. The Board will accept proposals only from potential construction managers appearing on the list. Inclusion of a potential construction manager on the list shall indicate that the potential CM is qualified to submit a proposal pursuant to a subsequent request for proposals that may be prepared and issued by the College, but shall not necessarily indicate that the potential CM is qualified or best qualified to act as the CM for the specific proposed project.

(D) Requests for Proposals (RFP)

- (1) After the Board has adopted a resolution to use the CM at Risk methodology for a specific proposed project and after the College has prepared the list of prequalified construction managers, if the President determines in his or her judgment that it appears to be in the best interest of the College to proceed with the proposed project using the CM at Risk contract delivery system, the College shall prepare a request for proposals by potential construction managers appearing on the list of prequalified construction managers. If the President determines at such time, however, that in his or her judgment it appears not to be in the best interest of the College to proceed with the proposed project using the CM at Risk contract delivery system, the President shall so report to the Board and the Board shall make the determination of whether and how to proceed with the project.
- (2) Any RFP under this Policy shall be prepared by a team appointed by the President and may include representatives from the College's offices or departments of Campus Planning and Sustainability, Facilities Management, and Purchasing, as well as external consultants (such as the College's architect and/or engineer), and any other

individual(s) the President deems to be appropriate. The RFP must contain, at a minimum, the following elements:

- (a) A statement that the project will be built for the Metropolitan Community College Area (College) and that the College will execute any contract awarded;
  - (b) Policies adopted by the College for entering into a CM at Risk project;
  - (c) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the CM selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
  - (d) Any bonds and insurance required by law or as may be additionally required by the College;
  - (e) General information about the project which will assist the College in its selection of the CM, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and estimated budget;
  - (f) The criteria for evaluation of proposals and the relative weight of each criterion; and,
  - (g) A description of any other information which the College chooses to require.
- (3) Notice of any RFP under this Policy shall be published, at least thirty (30) days prior to the deadline for receipt and opening of proposals, in the *Omaha World-Herald* as well as such other newspaper(s) and other media, both within the College's service area and outside of the area, as the Board of Governors and/or the President may designate for the publication concerning the specific proposed project to assure broad distribution of the request. The notice shall specify a website and/or link at which interested persons may access a complete copy of the request for proposals. A copy of the notice shall also be mailed by first-class mail to each of the potential construction managers listed on the list of prequalified construction managers for the project; provided, in lieu of first-class mail, a copy of the notice may be e-mailed to any potential construction manager who has indicated in his/her/its letter of interest that e-mail transmission of any notice of a request for proposals will be acceptable in lieu of first-class mail.

(E) Construction Manager Selection Committee and Proposal Evaluation

- (1) In evaluating potential construction managers to serve as CM at Risk for a proposed project, the College shall refer the proposals to a selection committee for a recommendation to the Board of Governors. The selection committee shall consist of at least five (5) persons designated or approved by the Board and shall include at a minimum:
  - (a) One or more members of the Board;
  - (b) One or more members of the Administration or staff of the College;
  - (c) The College's architect or engineer for the proposed project;
  - (d) One or more persons having special expertise relevant to selection of a CM under the Political Subdivisions Construction Alternatives Act; and,
  - (e) One or more residents of the College's four-county service area other than an individual included in subsections (a) through (d) of this subsection 80509(E)(1).

No member of the selection committee shall be employed by or have a financial interest in a CM who has a proposal being evaluated. No member of the selection committee designated under subsection (d) or (e) of this subsection shall be employed by the College.

- (2) The selection committee and the College shall evaluate proposals taking into consideration the criteria enumerated in subsections (a) through (g) of this subsection 80509(E)(2), 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:
  - (a) The financial resources of the CM to complete the proposed project (not to exceed 10%);
  - (b) The ability of the proposed personnel of the CM to perform (not to exceed 30%);
  - (c) The character, integrity, reputation, judgment, experience and efficiency of the CM (not to exceed 30%);
  - (d) The quality of performance on previous projects (not to exceed 30%);
  - (e) The ability of the CM to perform within the time specified (not to exceed 30%);
  - (f) The previous and existing compliance of the CM with laws relating to the contract (not to exceed 10%); and,

- (g) Such other information as may be secured having a bearing on the selection (not to exceed 20%).
- (3) At any time during the evaluation process, College representatives and members of the selection committee may communicate with any potential construction manager to obtain clarification or elaboration of any proposal submitted by the potential construction manager.
- (4) The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of Neb.Rev.Stat. § 84-712.01.

(F) Selection and Negotiation

- (1) The Board shall evaluate and rank each proposal received on the basis of the criteria set forth in the RFP (see subsection 80509(D) of this Policy) in order to determine the potential CMs best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee.
- (2) The President shall attempt to negotiate a CM at Risk contract with the highest ranked CM and the Board may enter into a CM at Risk contract after and as a result of those negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor. If the President is unable to negotiate a satisfactory contract with the highest ranked CM, the President may terminate negotiations with that CM. The President may then undertake negotiations with the second highest ranked CM and the Board may enter into a CM at Risk contract after and as a result of those negotiations. If the President is unable to negotiate a satisfactory contract with the second highest ranked CM, the President may undertake negotiations with the third highest ranked CM, if any, and the Board may enter into a CM at Risk contract after and as a result of those negotiations.
- (3) Any CM at Risk contract entered into by the College shall include all provisions that may be required by Neb.Rev.Stat. § 13-2905.
- (4) If the President and Board are unable to negotiate a satisfactory contract with any of the ranked construction managers, the Board may either approve a revised RFP and solicit new proposals or cancel the CM at Risk process under the Political Subdivisions Construction Alternatives Act.

(G) Other Applicable Provisions

- (1) A CM at Risk contract may be conditioned upon later refinements in project scope and price and may permit the College, in agreement with the CM, to make changes in the project without invalidating the contract. Later refinements under this subsection shall not exceed the scope of the project statement contained in the request for proposals.

- (2) Nothing in the Political Subdivisions Construction Alternatives Act, or this Policy, shall limit or reduce statutory, regulatory or College requirements regarding bonding or insurance.
- (3) The College shall not use a CM at Risk contract for a project, in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction, except to the extent allowable by law and to the extent such construction may be an ancillary, incidental and minor part of the construction of a building or similar facility and be necessary to the use of such building or similar facility for purposes integral to the College's educational operations.
- (4) This Board Policy shall control over any provision of any other Board Policy or College Procedures Memorandum that is inconsistent with any specific provision of this Policy.
- (5) The President is authorized, in consultation with College Legal Counsel, to promulgate or specify additional procedures for the implementation of this Policy that are not inconsistent with the Political Subdivisions Construction Alternatives Act or with this Policy.
- (6) This Policy is solely for the use and guidance of the Board and of the College Administration. It shall not be interpreted or applied so as to confer any right or entitlement on any construction manager, potential construction manager, contractor, consultant, vendor, or any other individual or entity. However, any individual or entity that wishes to file a formal protest relating to the solicitation or execution of any CM at Risk contract by the College may file a written protest with the President of the College within five (5) business days after the protester knew or should have known of the facts upon which the protest is based. The written protest must set forth a full recitation of the facts giving rise to the protest, state the grounds or basis for the protest, and include copies of any documents supporting the protest. Unless the protest is sooner resolved by mutual agreement between the protester and the President, the Board of Governors will consider and act upon such a timely-filed protest by not later than the Board's next regular monthly meeting held not less than five (5) calendar days after the written protest is received by the President.

(Adopted 12/17/13)