

SEWARD COUNTY, NEBRASKA
CONSTRUCTION MANAGEMENT AT RISK CONTRACT
DELIVERY SYSTEM

PURPOSE:

The purpose of the Construction Management at Risk Contract Delivery System is to establish policies for entering into a Construction Management at Risk Contract, in accordance with the Political Subdivisions Construction Alternatives Act (Neb. Rev. Stat. §§ 13-2901 to 13-2914). These policies are pursuant to Resolution 3111 adopted by the County Board on the 1st day of July, 2014.

PROHIBITION:

A Construction Management at Risk Contract shall not be used for a project, in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction.

POLICY:

A. ENTERING INTO A CONSTRUCTION MANAGEMENT AT RISK CONTRACT:

The following procedures shall be utilized in selecting a Construction Manager (“CM”) for projects utilizing a Construction Management at Risk Contract for construction services. The objective of these procedures is to encourage construction, budget and schedule control by providing an impartial objective and competitive system open to all qualified construction managers.

Section 1. Terms Defined.

For purposes of this Administrative Regulation:

- (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 County, (b) acts as a construction consultant to the County during the design development phase of the project when the County’s architect or engineer designs the project, and (c) is the builder during the construction phase of the project.
- (2) **Construction Manager (“CM”)** means the legal entity which proposes to enter into a Construction Management at Risk Contract.
- (3) **Interested Party** means a prospective CM whose direct economic interest would be affected by the award of a Construction Management at Risk Contract by the County to another CM, or by the failure of the County to award such Construction Management at Risk Contract to such prospective CM.

- (4) **Letter of Interest** means a statement indicating interest to enter into a Construction Management at Risk Contract for a Project.
- (5) **Selection Committee** means the group created for the purpose of evaluating Requests for Proposals submitted by CMs and making recommendations to the County Board.
- (6) **Project** shall mean the work contemplated to be constructed under the Construction Management at Risk Contract.
- (7) **Proposal** means an offer in response to a Request for Proposals by a CM to enter into a Construction Management at Risk Contract for a Project.
- (8) **Protest** means a written objection by an Interested Party regarding alleged improprieties in solicitation of proposals or failure of the Selection Committee to prequalify the prospective CM for a project requiring CM prequalification.
- (9) **Request for Letters of Interest** means the documentation or publication by which the County solicits Letters of Interest and submittal of prequalification documents.
- (10) **Request for Proposals ("R FP")** means the documentation by which the County solicits Proposals.

Section 2. Letters of Interest and Request for Qualifications, when applicable.

The County Board shall prepare a request for Letters of Interest for each Construction Management at Risk Contract requiring CM prequalification in accordance with this Section. At least thirty days prior to the deadline for receiving Letters of Interest, notice of the Request for Letters of Interest shall be published in a newspaper of general circulation within the County. The Request for Letters of Interest shall describe the project and prequalification requirements, if any, in sufficient detail to permit a CM to submit a Letter of Interest.

Section 3. Procedures and Standards to prequalify CMs.

(1) The County Board shall prepare a complete set of pre-qualifications required for the Project. At a minimum, the pre-qualifications shall include the following information about the CM to be submitted with the CM's Letter of Interest:

- (a) CM name, street address, telephone number, and e-mail address;
- (b) Years established and all former names of the CM;
- (c) Type of services the CM is particularly qualified to perform;
- (d) Names of principals and all states where the CM is registered;
- (e) Names of key personnel to be used for the proposed work, experience of each,

and length of service with the CM;

- (f) Average number of staff employed;
- (g) Outside consultants and associates usually and currently employed;
- (h) List of completed projects of a similar nature for which the CM was the Construction Manager at Risk;
- (i) Current projects and estimated construction costs of each;
- (j) Willingness and capability to meet the time requirements expressed in the Request for Letters of Interest;
- (k) Litigation History. Specifically,
 - Listing the nature and outcome of legal claims over the past five (5) years initiated by or against the CM (include liens filed against CM's projects for non-payment and/or claims made against CM's project surety for non-payment;
- (l) Special qualifications applicable to the nature or requirements of the proposed project, i.e.,
 - Experience with procurement and installation of specialized equipment;
 - Experience with multi-phase projects;
 - Experience with sophisticated electronic control (or communications) equipment;
- (m) Other additional materials as may be required in the Request for Letters of Interest.

(2) In order to ensure maximum participation by qualified CMs, the prequalification criteria shall not impose unnecessary conditions beyond those reasonably required.

(3) The prequalification information submitted with each Letter of Interest shall be reviewed by the Selection Committee for conformance to the instructions outlined in the Request for Letters of Interest. Failure to furnish all necessary prequalification information shall disqualify the response.

(4) Qualifying Letters of Interest shall be evaluated by the Selection Committee and the Selection Committee shall make a determination as to whether or not the CM shall be prequalified.

(5) The Selection Committee shall advise the CM of its determination and in the case of a disqualification or denial, shall list the specific reasons therefor.

Section 4. Request for Proposals: Procedures, Content, Requirements

The County Board shall prepare a Request for Proposals “RFP” for each Construction Management at Risk Contract in accordance with this Section. If the Project required CM prequalification, the RFP will be sent only to the pool of CMs who have previously conformed to the pre-qualification requirements for the Project.

Notice of the RFP shall be published in a newspaper of general circulation within the County for all Projects at least thirty days prior to the deadline for receiving and opening Proposals.

The RFP shall contain, at a minimum, the following requirements:

- (1) That the Project will be built for the County and that the County will be the party executing the contract;
- (2) A copy of this policy, which shall set forth the criteria that is used in evaluating the proposals;
- (3) Other 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;
- (4) That the Construction Management at Risk Contract may be conditioned upon later refinements in scope and price and may permit the County, in agreement with the CM, to make changes in the Project without invalidating the contract provided that such later refinements shall not exceed the scope of the Project statement contained in the RFP;
- (6) Any bonds and insurance required by law or as may be additionally required by the County;
- (7) General information about the Project which will assist the County 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 the estimated budget or cost of the Project;
- (8) A description of any other information which the County chooses to require.

Section 5. Procedure for Submitting Proposals.

All CMs desiring to provide Construction Management at Risk services shall submit all information required in the RFP for the County's review and evaluation. If the Project does not require prequalification of CMs, all proposals shall include the proposal and at a minimum, the following information about the CM:

- (1) CM name, street address, telephone number, and e-mail address;
- (2) Years established and all former names of the CM;
- (3) Type of services the CM is particularly qualified to perform;
- (4) Names of principals and all states where the CM is registered;
- (5) Names of key personnel to be used for the proposed work, experience of each, and length of service with the CM;
- (6) Average number of staff employed;
- (7) Outside consultants and associates usually and currently employed;
- (8) List of completed projects of a similar nature for which the CM was the Construction Manager at Risk;
- (9) Current projects and estimated construction costs of each;
- (10) Willingness and capability to meet the time requirements expressed in the Request for Letters of Interest;
- (11) Litigation History. Specifically,
 - a. Listing the nature and outcome of legal claims over the past five (5) years initiated by or against the CM (include liens filed against CM's projects for non-payment and/or claims made against CM's project surety for non-payment);
- (12) Special qualifications applicable to the nature or requirements of the proposed project, i.e.,
 - Experience with procurement and installation of specialized equipment;
 - Experience with multi-phase projects;
 - Experience with sophisticated electronic control (or communications) equipment;
- (13) Other additional materials as may be required in the Request for Letters of Interest.

Section 6. Procedures for Evaluating Proposals.

The County Board shall refer the proposals for review and recommendation by the Selection Committee.

(1) MEMBERSHIP OF THE SELECTION COMMITTEE:

The Selection Committee shall be composed of at least 5 persons appointed by the County Board. Members of the selection committee shall include:

- (a) Up to two members of the County Board.
- (b) Members of the administration or staff of the County
- (c) The County's project architect or engineer.
- (d) Any person having special expertise relevant to selection of a construction manager**; and
- (e) A resident of Seward County**, not an individual included in subdivisions (a) through (d) of this subsection.

** In selecting members under subdivision (d) or (e) of this subsection, the member shall not be employed by or have a financial/other interest in a construction manager who has a proposal being evaluated and shall not be employed by the County.

(2) CRITERIA FOR PROPOSAL REVIEW

The Selection Committee shall evaluate the proposals based on the below criteria and assign points earned per each criteria.

The total points available for evaluation shall be 100 points. The maximum percentage of total points for evaluation which may be assigned to each criterion is set forth below:

CRITERIA	PERCENTAGE	
	Minimum	Maximum
1. The financial resources available to the CM to complete the project	0	10%
2. The ability of the proposed personnel of the CM to perform	0	30%
3. The character, integrity, reputation, judgment and experience and efficiency of the CM	0	30%
4. The quality of performance on previous projects	0	30%
5. The ability of a CM to perform within the time specified	0	30%
6. The previous and existing compliance of the CM with laws relating to the contract	0	10%
7. Such other information as may be secured having a bearing on the selection	0	20%

The Selection Committee shall rank the Proposals in order based on the average of the total evaluations made by each member of the Selection Committee and submit the ranking to the County Board as the recommendation of the Selection Committee.

A copy of the Selection Committee’s recommendation shall be sent to each prospective CM by the Seward County Clerk.

The records of the Selection Committee in evaluating Proposals and making recommendations shall be considered public records for purposes *Neb. Rev. Stat. § 84-712.01*.

(3) COUNTY BOARD REVIEW AND SELECTION

The County Board shall independently evaluate and rank each proposal based on the “Criteria for Proposal Review”. The Board shall evaluate the proposal based on the criteria in the RFP after taking into consideration the recommendation of the Selection Committee. The CM receiving the highest ranking by the County Board will be considered the most qualified CM for the project.

The County Board’s decision shall be final and binding on the County.

Section 7. Procedures for Negotiations between the County Board and the CMs submitting Proposals prior to the Acceptance of a Proposal.

- (1) If the County Board seeks to continue with the project, the County Board shall attempt to negotiate the terms and conditions for a Construction Management at Risk Contract with the highest ranked CM. The negotiations shall include a final determination of the manner by which the CM selects a subcontractor. There will be no binding contract for the Project until the contract documents with the selected CM have been approved and executed by the County in accordance with applicable laws.
- (2) If the County Board is unable to negotiate a satisfactory contract with the highest ranked CM, the County Board shall terminate negotiations with that CM by sending written notice to the CM that the County is terminating the negotiations.
- (3) The County Board may then undertake negotiations with the second highest ranked CM. If the County Board is unable to negotiate a satisfactory contract with the second highest ranked CM, the County Board may terminate negotiations as provided above and may undertake negotiations with the third highest ranked CM, if any.
- (4) If the Negotiating Committee is unable to negotiate a satisfactory contract with any of the three highest ranked CMs, the County may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process.
- (5) In all cases where the negotiations were terminated, the reasons and facts surrounding those negotiations shall be recorded in writing by the County Board.
- (6) The construction management at risk contract may be conditioned upon later refinements in scope and price. The County may, in agreement with the CM, agree to make changes in the project without invalidating the contract. Later refinements however, shall not exceed the scope of the project statement contained in the request for proposals.

Section 8. **Procedures for Filing and Acting on Formal Protests Relating to the Solicitation of or Execution of Construction Management at Risk Contracts.**

- (1) The only grounds for Protest shall be for (a) alleged improprieties in solicitation of a Construction Management at Risk Contract, and (b) failure of the Selection Committee to prequalify the Interested Party as a qualified CM for a Project requiring prequalification.
- (2) Protests shall be in writing and prepared on the Interested Party's letterhead. The Protest shall be filed with the Seward County Clerk. To expedite handling of protests, the envelope containing the protest should be clearly labeled "PROTEST."
- (3) The written protest shall include, at a minimum, the following:
 - a. The name and address of the Interested Party;
 - b. Appropriate identification of the relevant RFP;
 - c. A statement of reasons for the protest; and,
 - d. Supporting exhibits, evidence, or documents substantiating the claim.
- (4) Protests for alleged improprieties in solicitation of a Construction Management at Risk Contract must be filed within five (5) working days following the date of the deadline for receiving and opening proposals.
- (5) Protests for prequalification, disqualification or denial must be filed within five (5) working days following the Selection Committee's disqualification or denial of the Interested Party's request for prequalification.
- (6) Upon timely receipt of a protest, the County Board shall not proceed further with the award of the contract until the County Board has made a decision on the protest.
- (7) The County Board shall consider the written protest and shall make the final decision on the protest. The County Board's decision shall be final and binding upon the County.

Adopted July 1, 2014.

Darrell Miller
Chair