

CONSTRUCTION MANAGER AT RISK POLICIES

District Operational Services: Department of Buildings & Grounds

January 2015

1. Purpose

- a. Establish policies for selection of a construction manager at risk (CM@R) for selected construction projects undertaken by Omaha Public Schools (OPS) pursuant to the authority of §13-2901 to §13-2914, inclusive, of the Nebraska Revised Statutes. CM@R is an alternative project delivery model that is allowed for political subdivisions by the State of Nebraska (State) and can be used in lieu of the traditional “Design-Bid-Build” delivery model for construction projects undertaken by OPS.
- b. These Policies provide for a qualifications-based selection of a CM@R firm to furnish construction related services for both the design phase and the construction phase of the project. During the design phase of the project the CM@R services include site investigation, design reviews, estimates and value engineering as needed, and sub-contractor bidding of all the direct cost of work and preparing a guaranteed maximum price (GMP) proposal to the Owner for review. The CM@R is not responsible for design of the project. During the construction phase of the project the CM@R is responsible for the construction of the project in accordance with the agreed project schedule and within the established GMP. The full scope of the services to be provided will be set forth in the OPS CM@R contract documents.

2. Scope

- a. On November 17, 2014, the OPS Board of Education (Board) adopted a resolution to allow the utilization of the CM@R delivery model for those construction projects selected by OPS. Pursuant to the requirements of §13-2905 of the Nebraska Revised Statutes, these Policies describe the process to be used for the selection of a CM@R.
- b. Based on the project scope, budget, construction difficulty and schedule, the OPS Buildings and Grounds (B&G) staff will evaluate each project and will recommend to the Executive Director of District Operational Services (DOS) or designee the recommended delivery model for each project. The Executive Director of DOS, or designee, will then determine whether to use CM@R or design-bid-build project delivery method for each project.
- c. If the Executive Director of DOS designates the CM@R delivery model for a project, the procedures set forth in these Policies will be used to select a CM@R firm.

3. Policy Overview

- a. The selection of a CM@R firm for the implementation of a CM@R project is a multiple step qualifications-based process that involves: (i) the solicitation of letters of interest with statements of qualifications (SOQs) from interested and qualified CM@R firms; (ii) review and evaluation of the letters of interest and SOQs by the designated selection committee and preparation of a list of pre-qualified CM@R firms eligible to respond to a request for

proposals (RFP); (iii) solicitation of proposals from short-listed eligible and pre-qualified CM@R firms pursuant to RFP documents prepared by or on behalf of OPS; (iv) evaluation and ranking by the designated selection committee of CM@R firms responding to the RFP; (v) interviews with the top three ranked CM@R firms by the selection committee and determination of the final ranking of those firms; (vi) negotiation of a CM@R agreement with the top ranked CM@R firm or with lower ranked firms in order of ranking if the negotiation with the top ranked CM@R firm is not successful; and (vii) submission of the negotiated CM@R agreement to the Board for approval and signature.

- b. OPS reserves the right, at any time during the selection process, to terminate the selection process and abandon the project, or construct the project using the design-bid-build project delivery method.

4. Pre-Qualification Procedures

- a. Prior to issuing an RFP for a CM@R project pursuant to a public RFP solicitation, B&G staff will prepare a list of CM@R firms pre-qualified to perform CM@R projects for OPS. To prepare the list, B&G staff will solicit letters of interest and SOQs from qualified CM@R firms. B&G staff will prepare an SOQ solicitation document stating the requirements of the letter of interest and SOQ and the deadlines and procedures for submitting responses. The SOQ solicitation document will be sent to CM@R firms known to B&G staff to be interested in submitting proposals and will be advertised in a newspaper, having general circulation within the boundaries of OPS, at least 30 days prior to the date for receipt and opening of letters of interest and SOQs. The SOQ solicitation document will also be posted on the OPS website. Notification of the SOQ solicitation may also be provided to other trade publications and construction clearinghouses as B&G staff determines. The SOQ solicitation document will also be made available to any CM@R firm requesting such documents.
- b. CM@R firms that have been previously pre-qualified by OPS will not be required to submit a new letter of interest and SOQ for each project, and will be eligible to submit a response to the RFP if pre-qualified for that type of project based on the earlier pre-qualification. CM@R firms that are pre-qualified will be required to re-submit a letter of interest and SOQ once a year in order to remain on the pre-qualified list. B&G staff may also request that a CM@R firm that is pre-qualified re-submit another letter of interest and SOQ if the staff has a good faith reason to believe that the CM@R firm is no longer eligible for pre-qualification status. A previously pre-qualified CM@R firm may be removed from the pre-qualified list if the CM@R firm does not re-submit a letter of interest and SOQ if requested to do so or fails to timely re-qualify as required.
- c. Responses to the SOQ solicitation will be evaluated by the B&G staff for compliance with the SOQ solicitation document requirements and SOQs submitted by CM@R firms that are incomplete or that do not comply with the requirements contained in the SOQ solicitation documents will be rejected. The selection committee, constituted as set out in Section 5d of these procedures, will review qualified responses and will prepare a list of pre-qualified CM@R firms that will be eligible to submit responses to RFPs issued by

OPS. The list will include CM@R firms that were pre-qualified in a prior SOQ process and that have remained on the pre-qualified list since that time. The selection committee may limit the type and size of project that a pre-qualified CM@R firm is eligible to perform based on the selection committee's determination of the qualifications of each CM@R firm to perform the work when considering the CM@R firm's current qualifications, experience, financial ability, bonding capacity and any other relevant factors. When the list of pre-qualified CM@R firms is completed, all CM@R firms will be notified whether or not they have been pre-qualified and the size and type of projects that each such firm will be entitled to submit proposals. The selection committee may also remove CM@R firms from the pre-qualified list or limit the scope of a CM@R firm's pre-qualification if, in the judgment of the Selection Committee, the CM@R firm is no longer qualified to be on the pre-qualified list or is not qualified to perform certain projects.

- d. Any CM@R firm that is not pre-qualified may submit a letter of interest and SOQ at any time, even though there is not an SOQ solicitation being conducted at that time in order to be placed on the pre-qualified list for future CM@R projects.
- e. In order to meet OPS construction needs, the pre-qualification procedures and the RFP solicitation procedures may be combined in a single solicitation. In such event, any CM@R firm not previously pre-qualified may submit an SOQ and an RFP response simultaneously. If the SOQ is submitted simultaneously with the RFP response, the selection committee will first evaluate the SOQ, and if the CM@R firm meets the pre-qualification requirements, its RFP response will be ranked as provided in Section 5 hereof.

5. RFP Solicitations

- a. For each CM@R project, B&G staff will prepare RFP documents for the solicitation of RFP responses from eligible pre-qualified CM@R firms. The content of the RFP documents will comply with the requirements of §13-2905 of the Nebraska Revised Statutes and other applicable laws. The RFP will include at least the information listed below in subsections 5.a.i to 5.a.ix., inclusive. These minimum requirements for RFP documents are not a limitation on the information that can be included in an RFP, and OPS may include any other information that it deems relevant to the RFP solicitation.
 - i The identity of OPS as the political subdivision soliciting the RFP and as the contracting party with the selected CM@R firm.
 - ii The Construction Manager at Risk Policies in effect at the time the RFP is issued.
 - iii The standard OPS CM@R agreement form which the selected CM@R firm will be required to execute. The agreement will contain the insurance requirements that the CM@R firm must provide.
 - iv Bid bond and payment and performance bond requirements.

- v Project information describing the project to be constructed, including the scope and nature of the project, the project site, the proposed schedule and the estimated budget.
 - vi The criteria for evaluation of the proposals and the relative weight of each criterion if any of the selection criteria stated in these Policies is not utilized.
 - vii The then current Guidance for Construction Contractors and Construction Managers in preparing Economic Inclusion Plans, including the requirement to provide all information requested in the Guidance.
 - viii Any other information that OPS wants to include in the RFP.
 - ix The place where RFP responses are to be filed and the deadline for submission of responses.
- b. RFP documents will be transmitted to each pre-qualified CM@R firm and notice of the RFP will be published in a newspaper of general circulation within OPS boundaries for 30 days prior to the deadline for receiving and opening proposals. The RFP documents will also be posted on the OPS website. Notification of the RFP solicitation may also be provided to other trade publications and construction clearinghouses as B&G staff determines.
- c. Responses to the RFP solicitation received by the deadline for receipt of responses will be opened immediately following the deadline. Responses received after the deadline will be returned to the submitting CM@R firm unopened. If a response is received from a firm that is not eligible and pre-qualified, it will also be returned unopened and will not be considered, unless OPS is conducting the pre-qualification procedures and the RFP solicitation procedures simultaneously as provided in Section 4e of these Policies.
- d. The RFP responses will be submitted to a selection committee composed of the following individuals (must have at least 5 members): one or more members of the current Board (not to exceed three), at least three (3) OPS staff members, the project architect or design consultant, as applicable, a person with familiarity in the review and selection of CM@R firms and a current resident of OPS. All members of the selection committee must be qualified to serve on the selection committee under the requirements of §13-2911 of the Nebraska Revised Statutes. The composition of the selection committee will be changed for different projects if different architects or design consultants are utilized for such projects. The composition of the selection committee may be changed from project to project to assure that OPS Board member or members and OPS staff selection committee members are sufficiently familiar with the needs of the project to be constructed. The Board members serving on the selection committee will be designated by the President of the Board. The President of the Board may at any time remove or replace any Board member serving on the selection committee and may add additional Board members to the selection committee, so long as no more than three Board members are serving on the selection committee at any time. The OPS staff members and the other non-Board selection

committee members will be designated by the Superintendent of Schools or designee. The Superintendent of Schools or designee may at any time remove or replace any non-Board selection committee members and may add additional non-Board members to the selection committee as needed.

- e. The selection committee shall meet, evaluate and rank all RFP responses using the rating criteria and weighting set forth below. Evaluations shall be made and CM@R firms ranked by the selection committee within fifteen (15) business days after responses were opened, unless a longer time for selection committee evaluation and ranking is provided in the RFP solicitation. The selection committee will rank each CM@R firm in accordance with the rating criteria set forth below. The selection committee may utilize a point system for ranking CM@R firms so long as the weighting reflects the percentages set forth below. Notification of the rankings of all CM@R firms reviewed by the selection committee will be sent to each CM@R firm submitting a proposal. The rating criteria will comply with the requirements of §13-2911(2) of the Nebraska Revised Statutes and will include the following rating criteria and weighting when applicable:
 - i The financial resources of the CM@R firm to complete the project – ten percent.
 - ii The ability of the CM@R firm to properly perform the work required – thirty percent.
 - iii The character, integrity, reputation, judgment, experience and efficiency of the CM@R – thirty percent.
 - iv The quality of the performance of the CM@R on previous projects for OPS and for other owners – thirty percent.
 - v The ability of the CM@R to perform the work within the time specified – thirty percent.
 - vi The previous and existing compliance of the CM@R with laws relating to the contract – ten percent.
 - vii Any other information bearing upon the selection, including, but not limited to the CM@R firm's performance and compliance with the economic inclusions programs of OPS and the CM@R firm's safety record and safety programs – twenty percent.
- f. Once the selection committee has compiled the CM@R firm rankings, the selection committee shall invite the three highest ranking CM@R firms to interview with the selection committee. After completion of the interviews, the selection committee will make any adjustments to the rankings of those three CM@R firms based on information from the interview and will document the reasons for any change in rankings in the records of the selection committee. The three CM@R firms participating in the interview process will be notified of any change in the rankings. The selection committee shall then communicate its final ranking to the Executive Director of DOS.

- g. The results of the selection committee in evaluating and ranking the CM@R firms submitting proposals shall be retained in accordance with the OPS record retention policies and shall be considered public records.

6. Contract Negotiation and Approval

- a. Upon receipt of the final rankings, the Executive Director of DOS will designate the B&G staff members to negotiate an agreement with the highest ranked CM@R firm, with the assistance of OPS legal representatives, using the standard OPS CM@R agreement form that was included in the RFP documents. If those negotiations are not successful, OPS may then negotiate with the next highest ranked CM@R firm for an Agreement. OPS will continue to negotiate with CM@R firms in order of ranking until OPS can reach an Agreement with a ranked CM@R firm or OPS abandons the CM@R project delivery method.
- b. Upon completion of negotiation of an agreement with a ranked CM@R firm, the completed Agreement will be presented to the Board for review and approval. If the Board refuses to approve the agreement, B&G staff will attempt to renegotiate the Agreement or OPS may elect to abandon the CM@R project delivery method.
- c. Upon the submission by the selected CM@R firm of a GMP proposal, an amendment to the CM@R agreement will be prepared and the amendment will be submitted to the Board for approval.
- d. A copy of the executed CM@R Agreement will be filed with the State of Nebraska Department of Education within thirty days after full execution of the Agreement. Thirty days after the project is complete, the CM@R firm performing the work will file copies of all contract modifications and change orders with the Nebraska Department of Education.

7. Protests

- a. In the event that any CM@R firm: (i) submits a letter of interest and SOQ and is not placed on the pre-qualified list of CM@R firms or is otherwise not allowed to submit a response to an RFP; (ii) submits a response to an RFP and disagrees with the ranking of the selection committee; (iii) has an SOQ or an RFP response returned unopened or rejected as non-compliant; or (iv) has not been able to successfully negotiate a CM@R agreement with OPS, the CM@R firm may file a protest with the OPS Citizens Bond Oversight Committee (CBOC).
- b. Such protest shall be in writing, shall be addressed to the CBOC and shall be filed in the Office of the Secretary of the Board of Education, Teacher Administrative Center, 3215 Cuming Street, Omaha, Nebraska within 7 calendar days after the notification from OPS to the CM@R firm of the particular action being protested. Protests may be hand-delivered during regular OPS business hours, sent by nationally recognized air courier providing proof of delivery or by certified US mail, return receipt requested, and must be actually

received by the Secretary of the Board of Education within the 7 day period. E-mail, facsimile or verbal protests will not be considered. Protests received after the 7 day period will also not be considered. Risk of non-delivery shall be with the CM@R firm filing the protest.

- c. The protest must contain at least the following information: (i) the name and address of the protesting CM@R firm and the name, phone number and e-mail address of a contact person; (ii) the action of OPS being protested; (iii) the reasons for the protest; (iv) a statement of the protestor's suggested remedy if the protest is upheld and (v) copies of any documents that the protestor believes are relevant to the action protested.
- d. CBOC shall consider the protest and shall notify the protestor in writing of its decision regarding the protest. In reviewing the protest, CBOC may consider any evidence that CBOC believes is relevant to the decision and may interview any person, including representative of the protesting CM@R firm, that the CBOC believes are necessary to make the decision. Notification of the decision shall be sent to the protesting CM@R firm at least 5 calendar days prior to any action by the Board to approve a CM@R agreement for the project being protested.
- e. Any protesting CM@R firm not satisfied with the decision of CBOC may appear before the Board at its next regular meeting following notice of the decision of CBOC and request that the Board overturn the decision. If the protesting CM@R firm fails to make such appearance, the decision of CBOC shall be final. The Board, upon hearing such protest, shall take such action on the protest as it deems appropriate.