

Section 900: Buildings and Sites

Site Acquisition and Building Construction

Construction Management at Risk School Construction Alternative File: 902.05

This policy is adopted pursuant to the Political Subdivisions Construction Alternatives Act (NEB. REV. STAT. §§ 13-2901 to 13-2914).

The board shall adopt a resolution by a two-thirds affirmative vote selecting the construction management at risk contract delivery system prior to proceeding with any of the steps involved with solicitation or execution of any construction contract.

Definitions

For purposes of this policy:

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 pursuant to the Act;
3. Letter of interest means a statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to the Act;
4. Request for proposals means the documentation by which a school district solicits proposals; and
5. School district means O'Neill Public Schools.

Procedures

1. Procedures for the preparation and content of requests for proposals shall include the following:
 - A. 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 contain, at a minimum, the following elements:

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- 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 pursuant to the Act;
 - 3) 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 construction manager selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
 - 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.
2. Procedures for the preparation and submission of proposals by the construction manager shall be determined on a project-by-project basis and included within the requests for proposals.
 3. Procedures for evaluating requests for proposals submitted to the school district by a construction manager shall include the following:
 - A. 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 school district. 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 (4) any person having special expertise relevant to selection of a construction manager under the Act, and (5) a resident of the school district other than an individual included in subdivisions (1) through (4) of this subsection. 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

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evaluated and shall not be employed by the school district or the school's architect or engineer.

B. The selection committee and the school district shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (1) through (7) 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 construction manager to complete the project (up to ten percent);
- 2) The ability of the proposed personnel of the construction manager to perform (up to thirty percent);
- 3) The character, integrity, reputation, judgment, experience, and efficiency of the construction manager (up to thirty percent);
- 4) The quality of performance on previous projects (up to thirty percent);
- 5) The ability of the construction manager to perform within the time specified (up to thirty percent);
- 6) The previous and existing compliance of the construction manager with laws relating to the contract (up to ten percent); and
- 7) Such other information as may be secured having a bearing on the selection (up to twenty percent).

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.

C. The school district shall then 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.

4. 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 shall include the following:

A. 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.

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- B. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor.
 - C. 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.
 - D. 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.
 - E. 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 under the act.
 - F. If the school district is able to negotiate a satisfactory contract with a construction manager, 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 State Department of Education.
5. Procedures for filing and acting on formal protests relating to the solicitation or execution of construction management at risk contracts shall include the following:
- A. Definitions.
 - 1) Interested party shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the school district to another party or by the failure of the school district to award a contract to such actual or prospective bidder.
 - 2) Protest shall mean a written objection by an interested party on any phase of the bidding process, including specification, preparation, bid solicitation, and intent to award.
 - 3) Appeals Board shall mean an independent panel of three disinterested individuals appointed by the Superintendent, which individuals shall have a thorough knowledge of the purchasing process and practices and laws applicable thereto.

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B. Right to Protest. An interested party may protest to the Superintendent. The protest shall be submitted in writing on company letterhead within five working days after public notice of the bid. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening or the closing date for receipt of proposals. In all other cases, the protest must be filed within five working days following the bid opening or if the protest is based on the selection of the lowest responsible bidder, not later than five working days following the selection of the lowest responsible bidder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest". The written protest shall include as a minimum the following:

- 1) The name and address of the interested party;
- 2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- 3) A statement of reasons for the protest;
- 4) Supporting, exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

The Superintendent will immediately decide upon receipt of the protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. The school district shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract, if awarded, unless the Superintendent makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect the substantial interests of the school district.

C. Authority to Resolve Protests. Prior to the commencement of an appeal to the Appeals Board concerning any protest, the Superintendent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Superintendent shall issue a decision in writing within five working days. The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review as provided by the Appeals Board. A copy of the decision shall be mailed or otherwise furnished immediately to the interested party and any other party intervening protester and all other bidders. If not satisfied with the decision of the Superintendent, any interested party protester may appeal to the Appeals Board, but the decision shall be final unless the interested party protester files a timely appeal with the Appeals Board.

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- D. Appeals Board Procedures. Any interested party protester, within five working days of receipt of a decision of the Superintendent, may file with the Superintendent a written notice of appeal for a hearing before the Appeals Board. The Notice of Appeal must clearly state the action protested and the basis of appeal. Upon receipt of an appeal from an interested party protester, the Superintendent shall convene the Appeals Board within ten working days or as soon thereafter as reasonably possible to conduct an administrative review of the appeal. The Appeals Board shall decide whether the solicitation being appealed was in accordance with all applicable laws and regulations and the terms and conditions of all applicable specifications, and whether waiver of specifications, conditions or defects in a bid, if any, were justified and in the best interest of the school district. Within ten working days of hearing such appeal, the Appeals Board shall submit its findings and recommendations to the school district board of education. Should it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the school district board of education without Appeals Board action. No determination by the Appeals Board concerning an issue of law or fact shall be final or binding on the school district.
- E. Finality of Decision. The school district board of education shall consider the recommendations of the Superintendent and the Appeals Board and shall make the final decision on the protest. The school district board of education's decision shall be final.
6. 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.

Prohibitions

The school district shall not use a construction management at risk contract for any construction project excluded by NEB. REV. STAT. § 13-2914 or any other applicable law.

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