

1. ***Introduction:*** The ESU is authorized to enter a Construction Manager (CM) at Risk Contract for ESU construction projects by adhering to the procedures set forth in the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. Section 13-2901 et seq. (the “Act”). Pursuant to the Act, the Board of Education hereby adopts the following policies for entering a CM at Risk Contract and the general terms of such contract.
2. ***Terms Defined:***
  - A. "CM" means a contract developed under the terms and conditions of this policy by which a CM:
    - (1) assumes the legal responsibility to deliver a construction project within a contracted price to the ESU,
    - (2) acts as a construction consultant to the ESU during the design phase of the project when the ESU's architect or engineer designs the project, and
    - (3) is the builder during the construction phase of the project, subject to the ESU's bidding requirements established by this policy and other ESU policies, and the CM.
  - B. "CM" means the legal entity which proposes to enter a contract pursuant to this policy.
  - C. "Proposal" means an offer in response to a Request for Proposals by a CM to enter an at Risk Contract for an ESU construction project pursuant to this policy.
  - D. “Request for Proposals” means the documentation by which the ESU solicits CM Proposals.
3. ***Board Selection of CM Method, Process, and Direction to Prepare Request for Proposals:***

The Board of Education of the ESU shall adopt a resolution to select the CM under the Act as the method and process of construction delivery of the specific project and authorize and direct the ESU Administration in conjunction with the architecture or engineering firm retained for the specific project to prepare a Request for Proposals in accordance with the Act and this policy. The resolution shall require the affirmative vote of at least two-thirds (2/3rds) of the Board of Education.
4. ***Duties of Architect and/or Engineer for the Project:***

Prior to proceeding with any ESU construction project using the CM method under the Act, the ESU shall retain the services of an architect and/or engineer, pursuant to the Nebraska Engineers and Architects Regulation Act, Neb. Rev. Stat. Section 81-3401 et seq., for such construction project, to provide design services including the preparation of plans, specifications, and estimates, and observe construction. Additionally, such architect and/or engineer services shall include assistance, consultation, and participation in preparing the Request for Proposals, evaluation of Proposals received for the CM position, and participation on the selection committee for the CM provided for in the Act and this policy.
5. ***Procedures for the Preparation and Content of Request for Proposals:***

The ESU shall prepare the Request for Proposals for the position of CM under the Act and in accordance with this section. At least thirty (30) 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 ESU and filed with the State Department of Education. The Request for Proposals shall include, at a minimum, the following components:

  - A. The Notice of the Request for Proposals.
  - B. An Invitation to submit Proposals. Such invitation shall:
    - (1) Identify the ESU as the project owner.
    - (2) Contain the day and hour upon which such Proposals are due and shall be received.
    - (3) That Proposals shall be sealed.
    - (4) That Proposals shall not be opened until expiration of the time allowed for submitting Proposals; and
    - (5) The hour at which such Proposals shall be opened in the presence of the proposers, or representatives of the proposers.

- C. These Policies adopted by the ESU;
- D. General information about the project which will assist in its selection of the CM.
- E. A project statement, which contains information about the scope and nature of the project, the project site, the schedule, and the estimated construction budget.
- F. Instructions to prospective CM firms, which shall state that the following requirements:
  - (1) A description of the CM's project team and organization of such team.
  - (2) Fee proposal, if required by the ESU as part of the Request for Proposals.
  - (3) A description of the limitations, if any, on expenses to be reimbursed.
  - (4) Proof of insurance coverage and bonding required by law.
- G. Information of pre-Proposal conference, if any, and attendance requirements at such.
- H. Proposal procedures, including:
  - (1) Questions and clarification or interpretations of the documents.
  - (2) Method of handling addenda to Proposal documents.
  - (3) Procedure for modification or withdrawal of Proposals.
  - (4) Proposal due date, time, location, and methods of submittal of Proposals.
- I. Evaluation procedure, including the criteria, the relative weight of each criterion, the interview process if any, the contract negotiation process, and the contract execution process.
- J. The proposed Agreement between the ESU and the CM, including General Conditions of the Contract for Construction where the CM is at risk. Such Agreement 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.
- K. Payment and performance bonds and guaranteed maximum price bond requirements.
- L. Insurance requirements, which shall provide that the CM shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Nebraska such insurance as will protect the CM from claims which may arise out of or result from the CM's operations under the contract and for which the CM may be legally liable, whether such operations be by the CM or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- M. Special notice requirements, if any, which may include but not limited to the following:
  - (1) **PROJECT IS CONDUCTED UNDER THE PROVISIONS OF THE POLITICAL SUBDIVISIONS CONSTRUCTION ALTERNATIVES ACT, Neb. Rev. Stat. Sec. 13-2901 et. seq.**
  - (2) This ESU is an equal opportunity institution and actively recruits well-qualified and diverse individuals and firms, including women and minorities, for architectural and engineering services and for contractor services. The ESU requires that all responders/bidders/proposers for public work provide written assurances, affirm and agree that (a) they are an equal opportunity employer, (b) they actively recruit a well-qualified and diverse group of employees and subcontractors, including women and minorities, and (c) if selected, they will actively continue and implement this policy throughout any awarded public work. The ESU or any of its responders/bidders/proposers for public work shall not discriminate against any employee or applicant for employment or subcontractor by reason of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, sexual orientation or gender identity, or other protected status.
  - (3) By submitting a Proposal, each proposer agrees to waive any claim it has, or may have, against the ESU and the Architects retained by the ESU, and their respective employees, arising out of, or in connection with, the administration, evaluation, or recommendation of any Proposal; waiver of any requirements under the Proposal Documents; or the Contract Documents; acceptance or rejection of any Proposals; and award of the Contract.
  - (4) The ESU reserves the right:
    - (a) To terminate the Proposal process at any time.
    - (b) To reject any or all Proposals. ~~and~~
    - (c) To waive formalities and minor irregularities in the Proposals received.

- (5) The ESU reserves the right to conduct a pre-award survey of any firm under consideration to confirm any of the information furnished by the firm or to require other evidence of managerial, financial, technical and other capabilities, the positive establishment of which is determined by the ESU to be necessary for the successful performance of the contract.
  - (6) The proposing firm's signature on the Proposal is the proposing firm's guarantee that the content of the Proposal has been arrived at without collusion with other eligible prospering firm or firms and without effort to preclude the ESU from obtaining the lowest competitive price.
- N. Other information, which may include the following:
- (1) A description of the general scope of services to be provided by the CM.
  - (2) Project financing phase informational services, if any.
  - (3) Pre-construction phase services including consultation of design, materials and systems, long lead items, contractor availability and recruitment, preliminary project schedule and preliminary cost estimation, and review of construction documents and conduct value engineering assessments with respect to constructability, material and construction techniques and building systems, sequencing of construction, separation or combining of bid packages.
  - (4) Cost estimation and preliminary guaranteed maximum price submittals to the ESU.
  - (5) Construction administration and supervision services including identification and preparation of bid packages, recruitment and prequalification of prospective proposers for such bid packages, conduct of bid process for each bid package, review of and recommendations to the ESU with regard to Proposals submitted, and administration of construction contracts, day-to-day supervision of the work with a qualified site superintendent and project manager.
  - (6) Preparation and submittal of Guaranteed Maximum Price (GMP) for the project(s).

6. ***Procedures and Standards to be Used to Pre-qualify CM Candidates:***

The procedures and standards to be used to pre-qualify CMs will be to evaluate prospective CMs based upon the information submitted to the ESU in response to the RFP, and an evaluation of such information by the selection committee based upon the criteria for evaluation and the relative weight to be given each criterion.

7. ***Procedures for Preparing and Submitting Proposals:***

Proposals submitted by interested CM firms must include all the elements required by the Request for Proposals. Proposals shall be required to be submitted in the form and method specified in the Request for Proposals, as determined by the ESU. All Proposals must be submitted on or before the time and date and at the location specified in the Request for Proposals. All submitted Proposals become the property of the ESU. Proposals must also contain the following certification or substantially similar language. The proposer provides written assurances, affirms, and agrees that:

- A. The proposer is an equal opportunity employer,
- B. The proposer actively recruits a well-qualified and diverse group of employees and subcontractors, including women and minorities, and
- C. If selected, the proposer will actively continue and implement this policy throughout any awarded public work. The proposers shall not discriminate against any employee or applicant or subcontractor by reason of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, sexual orientation or gender identity, or other protected status.

8. ***Procedures for Evaluating Proposals in Accordance w/ Neb. Rev. Stat. Sections 132910 and 13-2911:***

The ESU 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 pursuant to Neb. Rev. Stat. Section 13-2911 and this section.

- A. Referral to Selection Committee: In evaluating Proposals in accordance with Neb. Rev. Stat. Section 13-2910, the ESU shall refer the Proposals for recommendation to a selection committee.

- B. Make-up of Selection Committee: The selection committee shall be a group of at least five (5) persons designated by the ESU. Members of the selection committee shall include at least one (1) person from each of the following groups:
- (1) A member or members of the Board of Education.
  - (2) A member or members of ESU administration.
  - (3) A representative of the ESU's architect or engineer.
  - (4) A person having special expertise relevant to selection of a CM under the Act; ~~and~~ .
  - (5) A resident of the ESU other than an individual included in (1) - (4) of this subsection.
- C. Members No Pecuniary Interest: 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 CM who has a Proposal being evaluated and shall not be employed by the ESU.
- D. Evaluation Criterion: The selection committee and the ESU shall evaluate Proposals taking into consideration the criteria enumerated in subdivisions (1) through (6) 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:

No.	Selection Criteria	Value
1.	The financial resources of the construction manager to complete the project	10%
2.	The ability of the proposed personnel of the construction manager to perform	30%
3.	The character, integrity, reputation, judgment, experience, and efficiency of the construction manager	20%
4.	The ability of the construction manager to perform within the time specified	20%
5.	The previous and existing compliance of the construction manager with laws relating to the contract	20%
6.	TOTAL (Not more than 100%)	100%

- E. Determination of Evaluation Criteria Percentage Values: The Board of Education, in the resolution adopted to select the CM under the Act as the method and process of construction delivery of the specific project, shall identify and describe the exact percentage of total points for each of the evaluation criteria described above, ensuring that the total percentage does not exceed 100%.
- F. Examination of Proposals: Following the opening of the Proposals, the selection committee will examine the Proposals and supporting documentation submitted by all candidates. The evaluation of the CM for the Project shall be based upon a careful and objective consideration of the Proposals and the ability of each firm submitting a Proposal to perform the services described in the Request for Proposals and the requirements of any federal, state, local laws and regulations and ESU policies and regulations that are applicable to the Project.
- G. Interviews of Candidates: To further assist the selection committee in evaluating each Proposal to determine which candidate best meets the criteria in the Request for Proposals, the selection committee may determine to interview such candidate(s).
- H. Recommendation of Selection Committee to Board of Education: After examining and evaluating all Proposals and interviewing selected candidate(s), if elected, the selection committee shall rank each Proposal on the basis of best meeting the Proposal evaluation criteria. The selection committee shall make a formal, written recommendation to the Board of Education based on the highest-ranking Proposal. The selection committee shall provide the Board of Education with the full rankings.
- I. Records of Selection Committee: The selection committee shall keep and maintain permanent records of the selection 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 selection

committee shall appoint a board member or district employee to keep the minutes of the selection 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 selection committee shall be placed on public file with the central administration office. The records of the selection committee in evaluating Proposals and making recommendations shall be considered public records for purposes of section 84-712.01.

- J. Board of Education Action. After receiving the formal recommendation of the selection committee, the Board of Education shall examine the Proposals and supporting documentation submitted by all proposing CM candidates. Each Proposal will be evaluated and ranked by the Board of Education on the basis of best meeting the evaluation criteria in the Request for Proposals and taking into consideration the recommendation of the selection committee.
- K. Rejection of Proposals: The ESU shall have the right to reject any and all Proposals. The ESU may subsequently solicit new Proposals using the same or different performance criteria.

9. ***Procedures for CM at Risk Contract Negotiations:***

- A. Negotiations with Highest Ranked CM: The ESU shall attempt to negotiate a CM at Risk Contract with the highest ranked CM and may enter into a CM at Risk Contract after negotiations. The negotiations shall include a final determination of the manner by which the CM selects a subcontractor.
- B. Negotiations with Second Highest Ranked CM: If the ESU is unable to negotiate a satisfactory CM at Risk Contract with the highest ranked CM, the ESU may terminate negotiations with that CM. The ESU may then undertake negotiations with the second highest ranked CM and may enter into a CM at Risk Contract after negotiations. If the ESU is unable to negotiate a satisfactory CM at Risk Contract with the second highest ranked CM, the ESU may undertake negotiations with the third highest ranked CM, if any, and may enter into a CM at Risk Contract after negotiations.
- C. Requirement of Execution of Written Contract: No contractual rights shall be created between the CM and the ESU until a written contract has been negotiated, agreed upon, approved by the Board of Education of the ESU, and executed by all parties thereto.
- D. Filing of CM at Risk Contract: The ESU shall file a copy of all CM documents with the State Department of Education within thirty (30) days after their full execution. Within thirty (30) days after completion of the project, the CM shall file a copy of all contract modifications and change orders with the department.
- E. Unsuccessful Negotiations with CM Candidates: If the ESU is unable to negotiate a satisfactory CM at Risk Contract with any of the ranked CMs, the ESU may either revise the Request for Proposals and solicit new Proposals or cancel the Request for Proposals process.
- F. Modification of CM at Risk Contract: A CM may be conditioned upon later refinements in scope and price and may permit the ESU in agreement with the CM 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.

10. ***Procedures for Filing and Acting on Formal Protests Relating to the Solicitation or Execution of the CM at Risk Contract:***

- A. Protest Relation to Solicitation:
  - (1) A CM candidate seeking to protest the policies adopted by the Board of Education pursuant to the Act and the form or content of the Request for Proposals promulgated by the ESU, or the notice of the Request for Proposals, or any pre-Proposal process or procedures, must file such protest within fourteen (14) calendar days from the date of the publication of the notice of the Request for Proposals.
  - (2) A CM candidate seeking to protest the Proposal opening process used by the ESU must file such protest within seven (7) calendar days from the date of the Proposal opening.
  - (3) A CM candidate seeking to protest the process and procedures used by the selection committee in evaluating and/or ranking the CM candidates must file such protest within seven (7) calendar days from the date the selection committee makes its recommendation to the Board of Education or the Board of Education's acceptance of the recommendation of the selection committee.

- B. Negotiation or Execution of CM Contract: A CM candidate seeking to protest the process and procedures used by the ESU in the negotiation or execution of the CM must file such protest within seven (7) calendar days from the date the Board of Education takes action to approve the CM.
- C. Form and Filing of Protests: All protests under this subparagraph shall be filed with the Office of the Superintendent of Schools during normal business hours. Such protest must be in writing and received at or before the close of business on the last day provided for the receipt of such Proposals. For purposes of this paragraph the term "received" shall mean the actual in hand receipt of all protests and attendant documents. Facsimile transmittals, e-mail or other electronic or telephonic transmittals shall not be accepted as receipt of protest documents, or change in protest documents, in such manner will not be accepted. Protests shall be public records and shall not be considered proprietary and confidential.
- D. Action on Protests: The Board of Education shall take action on any protest filed pursuant to subparagraph A and B above within forty-five (45) days of receipt of such protest and shall provide the decision of the Board of Education in writing to the protesting party.

Date of Adoption:

June 19, 2023

Date of Revision: