

SUBJECT: CONSTRUCTION ALTERNATIVES – CONSTRUCTION MANAGEMENT AT RISK
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ISSUED BY: BRENDA GUNN, CITY ADMINISTRATOR

The purpose of this Policy is to authorize the City, pursuant to the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. §§13-2901 to 13-2914 (the "Act"), to enter into a construction management at risk contract for public projects.

The City shall not use a construction management at risk contract for a project, in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction.

DEFINITIONS:

For the purposes of this Policy, the following terms, as outlined in the Act, shall mean:

- 1) Construction management at risk contract: A contract by which a construction manager:
 - a. Assumes the legal responsibility to deliver a construction project within a contracted price to the City;
 - b. Acts as a construction consultant to the City during the design development phase of the project when the City's architect or engineer designs the project; and
 - c. Is the builder during the construction phase of the project.
- 2) Construction manager: The legal entity which proposes to enter into a construction management at risk contract.
- 3) Letter of interest: A statement indicating interest to enter into a construction management at risk contract for a project.
- 4) City: City of La Vista, Nebraska.
- 5) Proposal: An offer by a construction manager in response to a request for proposals to enter into a construction management at risk contract for a project pursuant to this Policy.
- 6) Request for letters of interest: The documentation or publication by which the City solicits letters of interest.
- 7) Request for proposals: The documentation by which the City solicits proposals.

PROCEDURES:

CONSTRUCTION MANAGEMENT AT RISK CONTRACTS

Authorization

The construction management at risk alternative system may not be used for a project to be constructed by the City unless the Mayor and City Council of the City of La Vista have adopted, by the affirmative votes of at least two-thirds of the members of the City Council, a resolution authorizing the use of that alternative system for the specific project.

Letters of interest/Prequalification Procedure

The City, if wishing to enter into a construction management at risk contract for a proposed project, shall prepare a request for letters of interest seeking indications of interest of prospective construction managers to enter into a construction management at risk contract for the project. Requests shall describe the project in sufficient detail to permit the construction manager to submit a letter of interest.

Requests for letters of interest shall be published in a newspaper of general circulation within the City at least thirty (30) days prior to the deadline for receipt of letters of interest. Requests for letters of interest should also be sent via first class mail to any construction manager upon request, and may also be made available on the City's website or as the City otherwise determines.

A submitted letter of interest shall serve to indicate to the City the prospective construction manager's interest in responding to a subsequent request for proposals concerning the proposed project and shall describe the prospective construction manager's (a) qualifications to serve as construction manager, (b) prior experience under construction management at risk delivery systems, and (c) experience in managing projects of size and scope similar to those of the proposed City project.

Letters of interest shall be reviewed by the City and the City shall select prospective construction managers based on information submitted to the City in response to the request for letters of interest, in accordance with this Policy and any procedures and standards adopted by the City. At least three (3) prospective construction managers shall be selected, except that if fewer than three (3) construction managers have submitted letters of interest, the City shall select at least the number of prospective construction managers submitting letters of interest; provided, however, if fewer than two letters of interest are received, selection of the sole prospective construction manager shall be subject to approval of the City Administrator, City Engineer or her or his designee. Selected construction managers shall then be considered prequalified and eligible to receive a request for proposal.

Request for Proposals

The City shall prepare a request for proposals for a proposed project for which the City proposes to enter into a construction management at risk contract. The request for proposals shall be sent only to the pre-qualified construction managers selected based on information submitted to the City in response to the request for letters of interest. Construction managers shall submit proposals as required by the request for proposals.

Notice of the request for proposals shall be published in a newspaper of general circulation within the City at least thirty (30) days prior to the deadline for receipt and opening of proposals.

The request for proposals shall contain, at a minimum, the following request for proposal elements:

- 1) The legal identity of the City and that the City intends to build the project and execute a construction management at risk contract ;
- 2) The policies adopted by the Mayor and La Vista City Council to be used when executing a construction management at risk contract;
- 3) The proposed terms and conditions of the construction management at risk 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 City;
- 5) General information about the project which will assist the City 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 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 City chooses to require.

Proposal. Evaluation

Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals. Proposals may be withdrawn at any time prior to acceptance. The City shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Act. The City may thereafter solicit new proposals using the same or different request for proposal elements.

The City shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five (5) persons designated by the City. Members of the selection committee shall include, at a minimum:

- 1) One or more of the Mayor and/or Members of the La Vista City Council;
- 2) One or more members of the administration or staff of the City;
- 3) One or more of the City's architect or engineer;
- 4) One or more persons having special expertise relevant to selection of a construction manager under the Act; and
- 5) One or more residents of the City other than an individual listed above.

No member of the selection committee shall be employed by or have a financial interest in a construction manager who has a proposal being evaluated. No member of the selection committee designated under item "4" or item "5" above shall be employed by the City.

The selection committee and the City shall evaluate proposals taking into consideration the criteria listed below, with the maximum percentage of total points for evaluation that may be assigned to each criterion, in the request for proposals and in conducting the evaluation, as indicated below:

- 1) The financial resources of the construction manager to complete the project, ten percent (10%);
- 2) The ability of the proposed personnel of the construction manager to perform, thirty percent (30%);
- 3) The character, integrity, reputation, judgment, experience, and efficiency of the construction manager, thirty percent (30%);
- 4) The quality of performance by the construction manager on previous projects, thirty percent (30%);
- 5) The ability of the construction manager to perform within the time specified, thirty percent (30%);

- 6) The previous and existing compliance of the construction manager with laws relating to the contract, ten percent (10%); and
- 7) Other information as may be secured having a bearing on the selection, twenty percent (20%).

The records of the selection committee in evaluating proposals and making recommendations shall be considered public records.

The City shall evaluate and rank, in order of preference, each proposal of the prospective construction managers pursuant to and on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee. At least three (3) prospective construction managers shall be selected for purposes of ranking, except that if fewer than three (3) construction managers have submitted proposals, the City shall select for ranking at least the number of prospective construction managers submitting proposals; provided, however, if fewer than two proposals are received, selection of the sole prospective construction manager shall be subject to approval of the City Administrator, City Engineer or her or his designee.

The City 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; provided, however, if fewer than two proposals are received, attempted negotiation with the sole prospective construction manager shall be subject to approval of the City Administrator, City Engineer or her or his designee. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor.

If the City is unable to negotiate a satisfactory contract with the highest ranked construction manager, the City may terminate negotiations with that construction manager. The City may then undertake negotiations with the second highest ranked construction manager and may enter into a construction management at risk contract after negotiations. If the City is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the City may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

If the City is unable to negotiate a satisfactory contract with any of the ranked construction managers, the City may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process.

A construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the City 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.

Nothing in the Political Subdivisions Construction Alternatives Act or in this Policy shall limit or reduce statutory or regulatory requirements regarding bonding or insurance.

Miscellaneous. The City Administrator is authorized to promulgate or specify additional procedures for the implementation of this Policy that are not inconsistent with the Act or with this Policy. If provisions of any such additional procedures or this Policy conflict with any provision of the Act, provisions of the Act shall control.

This Policy is solely for the use and guidance of the City and its representatives. 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.

Protest Procedures: Any individual or entity wishing to file a formal protest relating to the solicitation or execution of any construction management at risk contract by the City may file a written protest with the City Administrator 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 all documents supporting *the* protest. Unless the protest is sooner resolved by mutual agreement between the protester and the City Administrator, the Mayor and City Council will consider and act upon such a timely filed protest by not later than the next regular City Council meeting held not less than five (5) calendar days after the written protest is received by the City Administrator. The decision of the Mayor and City Council will be final.

Implementation: Unless otherwise expressly required by this Policy, the Act, or other applicable law, the City Administrator, City Engineer, or any designee of the City Administrator or City Engineer from time to time, shall be authorized to implement and carry out any and all provisions of this Policy on behalf of the City, including without limitation, issuing or executing any notices or documents or making any determinations on behalf of the City.

LEGAL REFERENCE

- Nebr. Rev. Stat. 13-2901 Act, how cited
- 13-2902 Purpose
- 13-2903 Terms, defined
- 13-2904 Contracts authorized; governing body; resolution required
- 13-2905 Political subdivision; policies; requirements
- 13-2906 Letters of interest; requirements
- 13-2909 Construction management at risk contract; request for proposals; requirements
- 13-2910 Construction management at risk contract; evaluation of proposals; requirements; negotiations
- 13-2911 Contract proposals; evaluation; selection committee; duties
- 13-2912 Contracts; refinements; changes authorized
- 13-2913 Act; bonding or insurance requirements
- 13-2914 Projects excluded