

BOARD OF COUNTY COMMISSIONERS  
SARPY COUNTY, NEBRASKA

**RESOLUTION ADOPTING POLICY FOR ALTERNATE PROJECT DELIVERY METHODS FOR  
CONSTRUCTION PROJECTS INVOLVING A FACILITY**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, pursuant to Neb. Rev. Stat. §13-290, the County is required to adopt policies for entering into a design-build or construction management at risk contract; and,

WHEREAS, the County of Sarpy desires to adopt such policies for entering into a design-build or construction management at risk contract as outlined in the policy attached hereto as Exhibit A; and,

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the Alternate Project Delivery Methods for Construction Projects Involving a Facility policy, a copy of which is attached.

DATED this 4<sup>th</sup> day of August, 2009.

Moved by Tom Richards, seconded by Pat Thomas, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]

none

none

[Signature]

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[Signature]

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ABSTAIN:

[Signature]

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none

[Signature]

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[Signature]  
County Clerk



Approved as to form:

[Signature]  
Deputy County Attorney

**Alternative Project Delivery Methods  
for Construction Projects Involving a Facility**

**RECOMMENDED GUIDELINES AND PROCEDURES**

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<b>Effective Date:</b>	<b>August 1, 2009</b>
<b>Approved by County Board:</b>	<b>August 4, 2009</b>
<b>Revision Number:</b>	<b>N/A</b>
<b>Revision Dates:</b>	<b>N/A</b>

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**1. PURPOSE**

The purpose of the below recommended guidelines and procedures is to authorize the County, through the Political Subdivisions Construction Alternatives Act (§13-2901), to enter into a design-build contract which is subject to qualification-based selection or a construction management at risk contract for public projects.

**2. BACKGROUND**

2.1 The County shall adopt policies for entering into a design-build contract or construction management at risk contract. The polices shall require that such contracts include the following:

- 2.1.1 Procedures for selecting and hiring on the County's behalf a performance-criteria developer when soliciting and executing a design-build contract consistent with the Nebraska Consultants' Competitive Negotiation Act and shall provide that the performance-criteria developer is ineligible to be included as a provider of any services in a proposal for the project on which it has acted as a performance-criteria developer and is not employed by or does not have a financial or other interest in a design-builder or construction manager who will submit a proposal
- 2.1.2 Procedures for the preparation and content of requests for proposals
- 2.1.3 Procedures and standards to be used to prequalify design-builders and construction managers. The procedures and standards shall provide that the County will select design-builders or construction managers who are prequalified and consequently eligible to respond to the request for proposals
- 2.1.4 Procedures for preparing and submitting proposals
- 2.1.5 Procedures for evaluation proposals in accordance to the Act
- 2.1.6 Procedures for negotiations between the County and the design-builders or construction managers submitting proposals prior to the acceptance of a

- proposal if any such negotiations are contemplated
- 2.1.7 Procedures for filing and acting on formal protests relating to the solicitation or execution of design-build contracts or construction management at risk contracts
- 2.1.8 Procedures for the evaluation of construction under a design-build contract by the performance-criteria developer to determine adherence to the performance criteria

### **3. DEFINITIONS**

For the purposes of this policy, the following are definitions outlined in the Political Subdivisions Construction Alternatives Act.

- 3.1 Construction Management at Risk Contract: a contract by which a construction manager:
  - 3.1.1 Assumes the legal responsibility to deliver a construction project within a contracted price to the political subdivision,
  - 3.1.2 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
  - 3.1.3 Is the builder during the construction phase of the project.
- 3.2 Construction Manager: the legal entity which proposes to enter into a construction management at risk contract pursuant to the Policy.
- 3.3 Design-Build Contract: a contract which is subject to qualification-based selection between a political subdivision and a design-builder to furnish:
  - 2.3.1 Architectural, engineering, and related design services for a project pursuant to the policy, and
  - 2.3.2 Labor, materials, supplies, equipment, and construction services for a project pursuant to the policy .
- 2.4 Design-builder: The legal entity which proposes to enter into a design-build contract which is subject to qualification based selection pursuant to the policy.
- 3.5 Letter of Interest: A statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to the policy.
- 3.6 Performance-Criteria Developer: any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineers and Architects Regulation Act who is selected by the County to assist the County in the development of project performance criteria, requests for proposals, evaluation of proposals, evaluation of the construction under a design-build contract to determine adherence to the performance criteria, and any additional services requested by the County to represent its interest in relation to a project.

- 3.7 County: Sarpy County, Nebraska.
- 3.8 Project Performance Criteria: The performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements include the following, if required by the project:
  - 3.8.1 Capacity
  - 3.8.2 Durability
  - 3.8.3 Standards
  - 3.8.4 Ingress and Egress requirements
  - 3.8.5 Description of the site
  - 3.8.6 Surveys
  - 3.8.7 Soil and environmental information concerning the site
  - 3.8.8 Interior space requirements
  - 3.8.9 Material quality standards
  - 3.8.10 Design and construction schedules
  - 3.8.11 Site development requirements
  - 3.8.12 Provisions for utilities
  - 3.8.13 Storm water retention and disposal
  - 3.8.14 Parking requirements
  - 3.8.15 Applicable governmental code requirements
  - 3.8.16 Other criteria for the intended use of the project
- 3.9 Proposal: An offer in response to the request for proposals
  - 3.9.1 By a design-builder to enter into a design-build contract for a project pursuant to the policy.
  - 3.9.2 By a construction manager to enter into a construction management at risk contract for a project pursuant to the policy.
- 3.10 Qualification-Based Selection Process: A process of selecting a design-builder based first on the qualifications of the design-builder and then on the design-builder's proposed approach to the design and construction of the project.
- 3.11 Request for Letters of Interest: The documentation or publication by which the County solicits letters of interest.
- 3.12 Request for Proposals: The documentation by which a political subdivision solicits proposals.

#### **4. POLICIES**

The Sarpy County Board of Commissioners shall adopt a resolution by two-thirds vote selecting the design-build contract or construction management at risk contract delivery system prior to proceeding with any steps or procedures listed below, including but not limited to solicitation or execution of any construction contract.

## **5. PROCEDURES**

### **DESIGN-BUILD CONTRACT**

#### Letters of Interest

The County wishing to enter into a design-build contract shall prepare a request for letters of interest for design-build proposals. Requests shall describe the project in sufficient detail to permit the design-builder to submit a letter of interest. The details should include the items listed under the project performance criteria under the definition section of this policy.

Requests for letters of interest shall be published in a newspaper of general circulation within the County's area at least thirty (30) days prior to the receipt of letters of interest deadline. Requests for letters of interest should also be sent via first class mail to any design-builder, upon request.

Letters of interest shall be reviewed by the County in consultation with the performance-criteria developer. The County shall select prospective design-builders in accordance with the procedures and standards adopted by the County.

At least three (3) prospective design-builders shall be selected, except that if only two (2) design-builders have submitted letters of interest, the County shall select at least two (2). Selected design-builders shall then be considered prequalified and eligible to receive a request for proposal.

#### Request for Proposal

The County shall prepare a request for proposal for each design-build contract. Notice of the request for proposal shall be published in a newspaper of general circulation within the County's service area at least thirty (30) days prior to the deadline for receipt and opening of proposals.

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

- a. The identity of the County for which the project will be built and that the Sarpy County Board of Commissioners will execute the design-build contract.
- b. The policies adopted by the Board of Commissioners to be used when executing a design-build contract
- c. The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation. The 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 terms and conditions may set forth an in total determination of the manner by which the design-builder selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding.
- d. A project statement which contains information about the scope and nature of the project.
- e. The project performance criteria.

- f. The budget parameters for the project.
- g. Any bonds and insurance required by law or as may be additionally required by the County.
- h. The criteria for evaluation of proposals and the relative weight of each criterion.
- I. A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction but shall not include price proposals.
- j. A requirement that the design-builder agree to the following conditions:
  - 1. An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services;
  - 2. At the time of the design-build offering, the design builder will furnish to the Board a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project;
  - 3. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the Board;
  - 4. A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and will submit proof of sufficient professional liability insurance; and
  - 5. The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder will conform to the Engineers and Architects Regulation Act and rules and regulations adopted under the act.
- k. Other information which the County chooses to require.

### Proposal Evaluation

The request for proposals shall be sent only to the pre-qualified design-builders selected. Design-builders shall submit proposals as required by the request for proposals.

The County may only proceed to negotiate and enter into a design-build contract if there are at least two (2) proposals from pre-qualified design-builders.

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 County shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Political Subdivisions Construction

Alternatives Act. The County may thereafter solicit new proposals using the same or different project performance criteria.

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

- a. Members of the Board of Commissioners
- b. Members of the administration or staff of the County
- c. The performance-criteria developer when evaluating proposals from design-builders
- d. Any person having special expertise relevant to selection of a design-builder under the Political Subdivisions Construction Alternatives Act
- e. A resident of the County's service region other than any individual listed above

Any selection committee member designated under item "d" or item "e" above, shall not be employed by or have a financial or other interest in a design-builder who has a proposal being evaluated and shall not be employed by the County or the performance-criteria developer.

The County shall rank, in order of preference, the design-builders pursuant to the criteria in the request for proposals and taking into considerations the recommendation of the selection committee.

The County and the selection committee shall evaluate proposals taking into consideration the criteria listed below with a maximum percentage of total points for evaluation which may be assigned to each criterion as indicated immediately following the criterion.

- a. The financial resources of the design-builder to complete the project, ten percent (10%)
- b. The ability of the proposed personnel of the design-builder to perform, thirty percent (30%)
- c. The character, integrity, reputation, judgement, experience, and efficiency of the design-builder, thirty percent (30%)
- d. The quality of performance on previous projects, thirty percent (30%)
- e. The ability of the design builder to perform within the time specified, thirty percent (30%)
- f. The previous and existing compliance of the design-builder with laws relating to the contract, ten percent (10%)
- g. Other information as may be secured having a bearing on the selection, twenty percent (20%)

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

The County may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the County and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the design-builder selects

a subcontractor.

If the County is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the County may terminate negotiations with that design-builder. The County may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the County is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the County may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

If the County is unable to negotiate a satisfactory contract with any of the ranked design-builders, the County may either revise the request for proposals and solicit new proposals or cancel the design-build process.

A design-build contract may be conditioned upon later refinements in scope and price and may permit the County in agreement with the design-builder 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.

The County shall not use a design-build contract for a project, in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction.

## **CONSTRUCTION MANAGEMENT AT RISK CONTRACT**

### **Letters of Interest/Prequalification Procedure**

The County wishing to enter into a construction management at risk contract may prepare a request for letters of interest for construction management at risk proposals. 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 County's service area at least thirty (30) days prior to the receipt of letters of interest deadline. Requests for letters of interest should also be sent via first class mail to any contract manager upon request.

The County shall select prospective contract managers in accordance with the procedures and standards adopted by the County. At least three (3) prospective contract managers shall be selected, except that if only two (2) contract managers have submitted letters of interest, the County shall select at least two (2). Selected contract managers shall then be considered prequalified and eligible to receive a request for proposal.

## Request for Proposal

The County shall prepare a request for proposal for each construction management at risk contract. Notice of the request for proposal shall be published in a newspaper of general circulation within the County's service area 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 elements:

- a. The identity of the County for which the project will be built and that the Sarpy County Board of Commissioners will execute the contract
- b. The policies adopted by the Board of Commissioners to be used when executing a construction management at risk contract
- c. The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The 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 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
- d. Any bonds and insurance required by law or as may be additionally required by the County
- e. General information about the project which will assist the County 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
- f. The criteria for evaluation of proposals and the relative weight of each criterion
- g. A description of any other information which the County 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.

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

- a. Members of the Board of Commissioners
- b. Members of the administration or staff of the County
- c. The County's architect or engineer when evaluating proposals from construction managers
- d. Any person having special expertise relevant to selection of a construction manager under the Political Subdivisions Construction Alternatives Act
- e. A resident of the County's service region other than any individual listed above

Any selection committee member designated under item "d" or item "e" above, shall not be employed by or have a financial or other interest in a construction manager who has a proposal being evaluated and shall not be employed by the County.

The County shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into considerations the recommendation of the selection committee.

The County and the selection committee shall evaluate proposals taking into consideration the criteria listed below with the maximum percentage of total points for evaluation which may be assigned to each criterion as indicated immediately following the criterion.

- a. The financial resources of the construction manager to complete the project, ten percent (10%)
- b. The ability of the proposed personnel of the construction manager to perform, thirty percent (30%)
- c. The character, integrity, reputation, judgement, experience, and efficiency of the construction manager, thirty percent (30%)
- d. The quality of performance on previous projects, thirty percent (30%)
- e. The ability of the construction manager to perform within the time specified, thirty percent (30%)
- f. The previous and existing compliance of the construction manager with laws relating to the contract, ten percent (10%)
- g. 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 after the contract has been executed.

The County shall rank prospective contract managers in accordance with the procedures and standards adopted by the County. At least three (3) prospective contract managers shall be selected, except that if only two (2) contract managers have submitted Requests for Proposals, the County shall select at least two (2).

The County may 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. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor.

If the County is unable to negotiate a satisfactory contract with the highest ranked construction manager, the County may terminate negotiations with that construction manager. The County 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 County is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the

County 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 County is unable to negotiate a satisfactory contract with any of the ranked construction managers, the County 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 County 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.

The County 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.

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

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
		13-2907	Design-build contract; request for proposals; requirements
		13-2908	Design-build contract; evaluation of proposals; 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

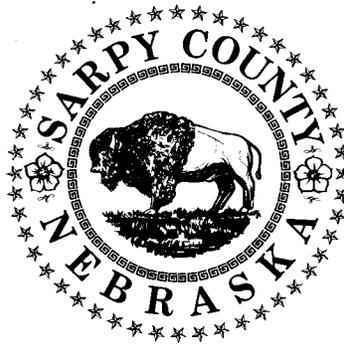
# Sarpy County Board of Commissioners

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ADMINISTRATOR  
Mark Wayne

DEPUTY ADMINISTRATOR  
Scott Bovick

FISCAL ADMIN./PURCHASING AGT.  
Brian Hanson



## COMMISSIONERS

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District 1

**Joni Jones**

District 2

**Tom Richards**

District 3

**Pat Thomas**

District 4

**Rich Jansen**

District 5

## MEMO

To: Sarpy County Board of Commissioners  
From: Mark Wayne  
Re: Construction Project Guidelines and Procedures

At the August 4, 2009 Board meeting the County Board will be asked to approve the attached Guidelines and Procedures for Alternative Project Delivery methods for Construction Projects Involving a Facility (Alternative Method).

Traditionally, when the County has embarked on a construction project, an architect is hired, the project is designed and competitive sealed bids are solicited and awarded. Nebraska School Districts have successfully used the Alternative Method for a number of years and two years ago the Nebraska Legislature made the Alternative Methods available to county governments.

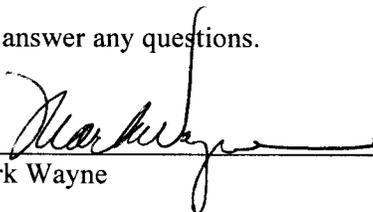
Under the Alternative Method called Construction Manager at Risk (CMAR) the County solicits Letters of Interest and Request for Proposals from qualified construction managers. The County then negotiates with the top rated construction manager to build the project for a Guaranteed Maximum Price (GMP). The construction manager is then responsible for taking bids, coordination with the architect and contractors, and ensuring that the project comes in on time at cost.

Advantages of the CMAR approach include:

1. Timing, a construction manager can bid out portions of the project as soon as they are designed rather than waiting until the entire project is designed and then taking bids.
2. Efficiency, a construction manager "pulls everything together" by coordinating with the architect, contractors and the owner.
3. Budget, a construction manager is responsible to make sure that the total project cost does not exceed the guaranteed maximum price.

I recommend approval of the attached Guidelines and will be glad to answer any questions.

July 29, 2009

  
Mark Wayne

cc: Scott Bovick  
Debra J. Houghtaling  
Brian Hanson  
Michael Smith

MW:bc