



## Interim\* WNCC Administrative Procedure

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| <b>Title:</b>            | Construction Management-at-Risk          |
| <b>Division:</b>         | Administrative Services                  |
| <b>Category:</b>         | College Property and Facilities          |
| <b>Reference:</b>        | BP-331 (Construction Management-at-Risk) |
| <b>Number:</b>           | AP-331.01                                |
| <b>Date of Approval:</b> | September 19, 2023                       |
| <b>Approval:</b>         | Greg Dart, President                     |

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### Purpose

Nebraska Statutes §§13-2901 through 13-2914 were amended by the Nebraska Legislature on July 18, 2008, to allow community colleges to plan, design, and build capital improvements using the Construction Management-at-Risk (CMR) methodology. The Statute is entitled "Political Subdivision Construction Alternatives Act."

Nebraska Statute, §13-2905, requires WNCC to adopt a procedure for entering into CMR contracts and sets forth basic requirements for the contents of the policies to be used by the Board of Governors in implementing a CMR construction project.

The purpose of this procedure is to effectively increase collaboration between the parties involved in the construction process, shorten project schedules, control construction costs, and avoid or reduce costly claims and delays on construction projects the Board of Governors deems suitable for use of the CMR construction methodology.

### Scope

This procedure shall apply to all construction or major maintenance projects undertaken at Western Nebraska Community College.

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## **Definitions**

For purposes of this procedure, the following definitions, patterned on those found in the Political Subdivisions Construction Alternatives Act (Nebraska Revised Statute §§ 13-2901 et seq.), hereafter referred to as "the Act," are applicable.

***Construction Management-at-Risk (CMR)*** – a contract by which a construction manager:

- a) assumes the legal responsibility to deliver a construction project to the College within a contracted price;
- b) acts as a construction consultant to the College during the design development phase of the project when the College's architect or engineer designs the project; and
- c) is the builder during the construction phase of the project.

In this procedure, the terms "construction management-at-risk," "construction manager-at-risk," and "CMR" are used interchangeably.

***Construction Manager (CM)*** – the legal entity which proposes to enter into a construction management-at-risk contract with the College pursuant to the Act.

***Letter of interest*** – a statement indicating interest to enter into a construction management at risk contract with the College for a project pursuant to the Act.

***Proposal*** – an offer by a construction manager, in response to a request for proposals by the College, to enter into a construction management-at-risk contract for a project pursuant to the Act.

***Request for proposals (RFP)*** – the documentation by which the College solicits proposals.

## **Procedure**

The Board of Governors shall adopt a resolution selecting the CMR contract delivery system for a proposed project prior to using the CMR contract delivery system for the project, and no contract shall be awarded using the CMR contract delivery system for a project unless such resolution has been approved by the affirmative vote of at least two-thirds of the members of the full Board.

### **A. Process for Selecting a Construction Manager**

1. For each proposed project, the Board shall evaluate current statements of qualifications and performance data of persons and firms who are on file with the College, together with those proposals that may be submitted by persons or firms regarding the proposed project.
2. The public notice shall include a general description of the project and shall indicate how interested persons or firms can apply for consideration for such contract.

3. The Board shall select a construction manager after receiving a recommendation of the Board's Finance and Facilities Committee as hereinafter provided. The person or firm selected by the Board shall be fully qualified to render the required professional service.
4. The public shall not be excluded from the meetings or proceedings where such findings are made in accordance with the Open Meetings Act.
5. Notwithstanding any other provisions set forth above, there shall be no public notice requirement or utilization of the selection process as provided herein for projects in which the College is able to reuse existing drawings, specifications, and other documents from a prior project.

#### **B. Requests for Proposals (RFP)**

1. After the Board has adopted the resolution, the College shall prepare a request for proposals for each construction management at risk contract.
2. Any RFP under this procedure shall be prepared by a team appointed by the President and shall include the Vice President of Administrative Services, as well as external consultants such as the College's architect and/or engineer, and any other individuals the President deems to be appropriate. The RFP must contain, at a minimum, the following elements:
  - a. A statement that the project will be built for Western Community College Area (College) and that the College will execute any contract awarded.
  - b. Policies adopted by the College for entering into a CMR project.
  - c. 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 CM 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 College.
  - e. General information about the project which will assist the College in its selection of the CM, 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 College chooses to require.
3. Notice of any RFP under this procedure shall be published at least thirty (30) days prior to the deadline for receipt and opening of proposals in the *Star-Herald* as well as such other newspaper(s) and other media, both within the College's service area and outside of the area, as the Board of Governors and/or the President may designate for the publication concerning the specific proposed project to assure broad distribution of the request.

### **C. Construction Manager Selection Committee and Proposal Evaluation**

1. In evaluating construction managers, the College shall refer the proposals to a selection committee for recommendation to the Board Facilities Committee. The selection committee shall be a group of at least five persons designated by the Board. Members of the selection committee shall include:
- a. Members of the Board of Governors,
  - b. Members of the administration or staff of the College,
  - c. The College'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, and
  - e. A resident of the College's 13-county service area other than an individual included in parts a - d above.
2. A member of the selection committee designated under subdivision d or e of this subsection 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 College. The committee shall have among its membership at least one person whose profession represents that field of endeavor being considered by the Board.
3. The selection committee shall evaluate proposals taking into consideration the criteria enumerated in part B.2.a – g of this section with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion.

4. The following criteria shall be evaluated, when applicable:
  - a. The financial resources of the construction manager to complete the project –10%
  - b. The ability of the proposed personnel of the construction manager to perform –30%
  - c. The character, integrity, reputation, judgment, experience, and efficiency of the construction manager – 30%
  - d. The quality of performance on previous projects – 30%
  - e. The ability of the construction manager to perform within the time specified – 30%
  - f. The previous and existing compliance of the construction manager with laws relating to the contract – 10%
  - g. Such other information as may be secured having a bearing on the selection – 20%.
5. The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of Nebraska Revised Statute §84-712.01.

#### **D. Evaluation and Negotiation**

1. The Board shall evaluate and rank each proposal received on the basis of the criteria set forth in the RFP in order to determine the potential CM's best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee.
2. The President or designee shall attempt to negotiate a CMR contract with the highest ranked CM and the Board may enter into a CMR contract after and as a result of those negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects subcontractor(s). If the President is unable to negotiate a satisfactory contract with the highest ranked CM, the President may terminate negotiations with that CM. The President may then undertake negotiations with the second highest ranked CM and the Board may enter into a CMR contract after and as a result of those negotiations. If the President is unable to negotiate a satisfactory contract with the second highest ranked CM, the President may undertake negotiations with the third highest ranked CM, if any, and the Board may enter into a CMR contract after and as a result of those negotiations.
3. If the President or designee is unable to negotiate a satisfactory contract with any of the ranked construction managers, the Board may either approve a revised RFP and solicit

new proposals or cancel the CMR process under the Political Subdivisions Construction Alternatives Act.

4. Any CMR contract entered into by the College shall include all provisions that may be required by Nebraska Revised Statute §13-2905.

#### **E. Other Applicable Provisions**

1. A CMR contract may be conditioned upon later refinements in project scope and price and may permit the College, in agreement with the CM, to make changes in the project without invalidating the contract. Later refinements under this subsection shall not exceed the scope of the project statement contained in the request for proposals.
2. Nothing in the Political Subdivisions Construction Alternatives Act, or this procedure, shall limit or reduce statutory, regulatory, or College requirements regarding bonding or insurance.
3. The College shall not use a CMR contract for a project, in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction, except to the extent allowable by law and to the extent such construction may be an ancillary, incidental and minor part of the construction of a building or similar facility and be necessary to the use of such building or similar facility for purposes integral to the College's educational operations.
4. This procedure is solely for the use and guidance of the Board and of the College Administration. 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. However, any individual or entity that wishes to file a formal protest relating to the solicitation or execution of any CMR contract by the College may file a written protest with the President of the College 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 any documents supporting the protest. Unless the protest is sooner resolved by mutual agreement between the protester and the President, the Board of Governors will consider and act upon such a timely-filed protest by not later than the Board's next regular monthly meeting held not less than five (5) calendar days after the written protest is received by the President.

### **Revising this Procedure**

This Administrative Procedure supersedes any prior WNCC policy, procedure, guideline, or handbook on this subject matter.

WNCC reserves the right to revise this procedure, as necessary, and for the changes to become effective immediately.

**Original Adoption Date:** 2016 (Appendix G-1-16)

**Revision Date:** September 19, 2023

**Sponsoring Division:** Administrative Services

**\*Interim Procedure** – The WNCC President is authorized to develop and implement an interim policy or procedure when a situation requires expeditious action. An interim policy or procedure must be made permanent within 12 months of issuance. If permanent status is not sought, the interim policy or procedure will be allowed to expire after 12 months.