

FACILITIES, NEBRASKA STATE COLLEGE SYSTEM

**POLICY: 8071 Capital Construction; Contracts;
Design-Build; Construction Management
At Risk**

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BOARD POLICY

For contracts related to construction projects, the System will follow the procedures established by the Political Subdivisions Construction Alternatives Act (RRS §13-2901 through §13-2913) in their decision to solicit and execute a design-build contract or construction management at risk contract for capital construction projects.

PURPOSE

This policy authorizes the Colleges to enter into a design-build contract which is subject to qualification-based selection or a construction management at risk contract for a public project if the Colleges adhere to specific procedures.

DEFINITIONS

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

Construction management at risk contract is a contract by which a construction manager:

- a. Assumes the legal responsibility to deliver a construction project within a contracted price,
- b. Acts as a construction consultant during the design development phase of the project, and
- c. Is the builder during the construction phase of the project.

The construction manager is the legal entity which proposes to enter into a construction management at risk contract.

Design-build contract is a contract subject to qualification-based selection of the design-builder to furnish:

- a. Architectural, engineering, and related design services for a project, and
- b. Labor, materials, supplies, equipment and construction services.

A design builder is the legal entity which proposes to enter into a design-build contract by qualification-based selection.

A letter of interest is a statement indicating interest to enter into a design-build contract for a project.

A performance-criteria developer is any person licensed or any organization issued a certificate of authorization to practice architecture or engineering who is selected to assist in the development of project performance criteria, requests for proposals, evaluations of proposals, evaluation of construction under a design-build contract to determine adherence to performance criteria, and any additional requested services to represent the Colleges' interest in relation to a project.

The performance criteria developer is ineligible to be included as a provider of any services in a proposal for any project on which he/she/it has acted as 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.

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The project performance criteria are the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements include the following:

- a. Capacity
- b. Durability
- c. Standards
- d. Ingress and egress requirements
- e. Description of the site
- f. Surveys
- g. Soil and environmental information concerning the site
- h. Interior space requirements
- i. Material quality standards
- j. Design and construction schedules
- k. Site development requirements
- l. Provisions for utilities and storm water retention and disposal
- m. Parking requirements
- n. Applicable governmental code requirements, and
- o. Other criteria for the intended use of the project.

A proposal is an offer in response to a request for proposals a) by a design-builder to enter into a design-build contract or b) by a construction manager to enter into a construction management at risk contract.

The qualification-based selection process is the process of selecting a design-builder based first on qualifications of the design-builder and then on the design-builder's proposed approach to the design and construction of the project.

A request of letters of interest is the documentation or publication by which the state colleges solicit letters of interest.

A request for proposals is the documentation by which the state colleges solicit proposals.

POLICIES

The Board shall adopt a resolution selecting the design-build contract or construction management at risk contract delivery system prior to proceeding with any of the steps involved with solicitation or execution of any construction contract at any of the Colleges. The resolution requires the affirmative vote of at least two-thirds of the Board.

PROCEDURES

DESIGN-BUILD CONTRACT

Letters of Interest

The College 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 Colleges' 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.

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

At least three (3) prospective design-builders shall be selected, except that if only two (2) design-builders have submitted letters of interest, the College 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 College 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 Colleges' 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 College for which the project will be built and that the Board of Trustees will execute the design-build contract.
- b. The policies adopted by the Board 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 initial 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 College.
- 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.

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- k. Other information which the college 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 College may only proceed to negotiate and enter into a design-build contract if there are at least two 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 College 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 College may thereafter solicit new proposals using the same or a different project performance criteria.

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

- a. Members of the Board;
- b. Members of the administration or staff of the College;
- 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; and
- e. A resident of the College'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 College or the performance-criteria developer.

The College 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 College 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 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, judgment, 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%), and
- 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.

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

If the College is unable to negotiate a satisfactory contract with any of the ranked design-builders, the College 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 College 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 Colleges 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

Request for Proposal

The College 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 Colleges' 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 College for which the project will be built and that the Board will execute the contract.
- b. The policies adopted by the Board 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 College.
- e. General information about the project which will assist the College 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.
- 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.

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

- a. Members of the Board;
- 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 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 College or the performance-criteria developer.

The College 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 College 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.

- h. The financial resources of the construction manager to complete the project, ten percent (10%)
- i. The ability of the proposed personnel of the construction manager to perform, thirty percent (30%)
- j. The character, integrity, reputation, judgment, experience, and efficiency of the construction manager, thirty percent (30%)
- k. The quality of performance on previous projects, thirty percent (30%)
- l. The ability of the construction manager to perform within the time specified, thirty percent (30%)
- m. The previous and existing compliance of the construction manager with laws relating to the contract, ten percent (10%), and
- n. 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 College 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 College is unable to negotiate a satisfactory contract with the highest ranked construction manager, the College may terminate negotiations with that construction manager. The College 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 College is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the College may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

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If the College is unable to negotiate a satisfactory contract with any of the ranked construction managers, the College 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 College 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 Colleges 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; negotiations
		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

Policy Adopted: 11/14/08

Policy Revised: 9/9/16