

Direction Concerning Local Contractors and Sub-contractors Preference

**CONSTRUCTION MANAGER AT
RISK DELIVERY METHOD**

**LOCAL CONTRACTOR AND
SUBCONTRACTOR
CONSIDERATIONS**

DEFINITION

“Construction manager at risk (CM@R) delivery” means a construction method for a facility wherein a contractor, for a guaranteed maximum price, provides a range of both pre-construction services and construction management including but not limited to:

Pre-construction Services:

- a. cost estimations
- b. consultation regarding the design of the building project
- c. value engineering
- d. scheduling
- e. preparation and coordination of subcontractor bid packages
- f. cost control

Construction Management Services:

- a. detailing the trade contractor scope of work
- b. holding the trade contracts and other subcontracts
- c. pre-qualifying and evaluating trade contractors and subcontractors
- d. construction
- e. construction management

PROBLEM STATEMENT:

Competent and qualified local contractors are unable to secure CM@R contracts due to qualifications-based procurement of such contracts conducted by the City, and,

Competent and qualified local subcontractors are unable to secure work with the selected CM@R due to either being denied opportunity or perceived practice of bid shopping.

**RECOMMENDED CHANGES TO
CM@R
RFP AND CONTRACT**

RFP CHANGES:

SCOPE: (ADD)

- #. The CM at Risk shall actively participate as a member of the project team with the City and the project architect beginning with providing a Statement of Probable Cost following the Programming Phase, following with design concept, constructability and value engineering reviews, and construction cost estimating at the end of the Schematic, Design Development and during the Construction Document design phases.
- #. The CMAR will manage subcontractor solicitation, subcontracting, construction and commissioning of the project.
- #. The CM at Risk, in cooperation with the City, shall:
 - a. seek to develop local subcontractor interest in the project
 - b. give notice to the City about all project bids or proposals
 - c. conduct pre-bid or pre-proposal meetings together with the project architect and the City
 - d. evaluate submissions by responsible bidders and offerors together with the project architect and the City.
 - e. enter into subcontracts for the execution of the work.

PROPOSAL CONTENT: (See #7 Below for Added Item)

Each copy of the proposal must include a completed and signed RFP COMPLIANCE DECLARATION page that is included below within this solicitation document. Failure to submit the RFP COMPLIANCE DECLARATION page will subject the response to rejection.

- A. Technical Proposal Content: The respondent's Technical Proposal shall include the following items and in the sequence presented:
 - 1. To address Evaluation Criteria No. 1 below, provide description of the proposed technical approach of all professional, technical and customary work to be performed
 - 2. To address Evaluation Criteria No.2. below, provide the names of key personnel who will be assigned to work on the project. For each person listed, a description of experience, areas of competence and percent of time assigned to the project shall be provided.
 - 3. To address Evaluation Criteria No. 3. below, provide the following:
 - a. Description of past contracts similar to the scope herein that have been completed by the firm.

- b. If applicable, list of subcontractors, including addresses, qualifications and areas of responsibility.
 - c. Location(s) of office(s) where the work will be performed, and percent of work to be performed at each.
 4. To address Evaluation Criteria No. 4. below, provide the following:
 - a. Name, address, telephone number, of the principal member/officer of the firm responsible for administration of the contract.
 - b. Name, address, and New Mexico registration (if applicable) of the professional responsible for and in direct charge of the work.
 - c. A project time schedule, operational/management approach, major tasks to be accomplished, and a detailed statement of services to be provided under each task.
 5. To address Evaluation Criteria No. 5, below, provide the following:
 - a. Description and name of a minimum of five past contracts similar to the scope herein that have been completed by the firm including names and telephone numbers of the contact person for each project.
 6. To address Evaluation Criteria No. 6, respond to related Schedule A requirements herein and organize response according to this Section IV. sequence. Note that the RFP COMPLIANCE DECLARATION page incorporated herein must be completed, signed and included within the contents of the technical proposal and not with the contents of the cost proposal.
 - (ADD)7. To address Evaluation Criteria No. 7 below, provide the following:**
 - a. Demonstrate your firm's experience in successfully completing construction projects in Las Cruces, NM.**
 - b. Indicate your firm's familiarity with the Las Cruces, NM, labor market**
 - c. Indicate your firm's capability in developing viable pricing alternatives working with subcontractors and suppliers owned and operated by Las Cruces, NM residents.**
 - d. Describe the conduct for local procurement management including developing local subcontractor interest, conducting pre-bid or pre-proposal meetings, pre-**

qualifying subcontractors and suppliers, receiving and evaluating bids and proposals, and entering into contracts;

PROPOSAL EVALUATION AND SELECTION:

A. Evaluation of the technical proposals determined to be responsive to the submittal requirements will be conducted by an evaluation committee in accordance to the procedures incorporated within enclosed "Schedule B - Proposal Scoring and Evaluation Information".

<u>EVALUATION CRITERIA:</u>	WEIGHT (Percent)
1. Technical approach to the project;	X%
2. Qualifications/competence of project team members to perform project;	X%
3. Capacity and capability of the firm to perform the project, and to do so in a timely manner;	X%
4. Management structure and approach to the project including time-line, task breakdowns and assignments;	X%
5. Performance of the firm with previous clients, based upon quality of the work, control of costs, ability to meet schedules or deadlines; and responsiveness to the client;	X%
6. Clarity of proposal.	X%
(ADD) 7. Offeror's experience and utilization of Las Cruces, NM, subcontractors and material suppliers.	X%
Total	<u>100%</u>

CONTRACT CHANGES:

(ADD)

The Contractor shall perform the Work in accordance with the Contract Documents, deliver a Guaranteed Maximum Price (GMP); perform cost estimation; cost control; value engineering; consultation to the project architect; preparation and coordination of bid packages; scheduling; and, while acting as the general contractor during construction - detail material and subcontractors scopes of work; pre-qualify and evaluate material and subcontractors; hold all contracts to complete the work; and provide all necessary management and construction services to successfully complete the work within a GMP for which the Construction Manager at Risk is solely responsible

Subcontractor Selection.

Unless otherwise provided under this Article, the selection of all Subcontractors and suppliers shall be made by competitive offers in a manner that will encourage substantial competition. The process shall conform to the following procedures in general compliance with the open and competitive nature of public procurement taking into account industry subcontracting practices.

Construction Manager at Risk shall submit to Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. The Owner's authorized Representative will provide its comments within **seven (7) calendar days** of receipt of the documents for review. Construction Manager at Risk shall consider and respond to all Owner comments regarding any proposed offer packages. As offers are received, Construction Manager at Risk shall submit to the Owner an offer comparison in a mutually agreeable form together with any specific back-up requested by Owner. The competitive process used to award subcontracts by the Construction Manager at Risk may be monitored by the Owner's Representative; provided that such monitoring shall not excuse Construction Manager at Risk from compliance with the subcontracting requirements of this Contract. Construction Manager at Risk shall cooperate in all respects with Owner's monitoring. The Owner's and Project Architect's representatives shall be present with the Construction Manager at Risk at offer openings and Construction Manager at Risk shall provide a summary or abstract of all offers in form acceptable to the

Owner's Representative, and copies of particular offers if requested, prior to Construction Manager at Risk's selection of offerors. Prior to opening offers, the Construction Manager at Risk agrees to disclose in writing to Owner any financial interest it has in any such subcontractor, supplier or other contracting party whenever such subcontractor, supplier or contracting party intends to compete on any project work, directly or indirectly, including whether such party is an affiliate of Construction Manager at Risk.

The following minimum requirements apply to the Subcontract solicitation process:

- (a) The Construction Manager at Risk, in cooperation with the Owner and design professional, shall be responsible for the solicitation of the subcontractors, sub-subcontractors and suppliers as necessary, to submit offers for CMAR consideration of their portion of the work. In addition to offers to perform the work, the subcontractors, sub-subcontractors and suppliers shall be required to provide documentation that they are in fact a qualified, responsible offeror, duly licensed and registered with the State of NM Department of Workforce Solutions.
- (b) The Construction Manager at Risk shall conduct a pre-proposal meeting with potential offerors to discuss the project scope of work and the CMAR method of construction. Potential offerors will be advised that any subsequent award of a contract will be based on the qualifications of the offeror and not price alone.
- (c) The date, time, and location of the pre-proposal conference shall be advertised in a local paper of circulation at a minimum of 10 days prior to the scheduled conference.
- (d) Once all proposals have been considered, the Construction Manager at Risk shall prepare a report in writing to the Owner stating the proposed subcontract offerors. The Owner and design professional shall review the report and respond in writing to any objections they may have to a particular offeror. The Construction Manager at Risk shall be responsible for any investigations necessary to either confirm or deny the objection(s).
- (e) Unless specific other prior arrangement has been made with Owner, all offers will be written, sealed and submitted to a specific location at

- a specific time. CM at Risk shall time-stamp all offers as received. If fewer than three (3) offers are submitted in response to any solicitation (inclusive of any offer submitted by CM at Risk), prior written approval by Owner shall be required to accept the offer.
- (f) CM at Risk may develop and implement a prequalification process for particular solicitations, followed by selection of successful offers among those offerors that CM at Risk determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
 - (g) CM at Risk shall comply, and require Subcontractor compliance with, New Mexico Department of Workforce Solutions' prevailing wage rates as specified in the Contract.
 - (h) Owner may at its sole discretion, require CM at Risk to re-solicit for offers based on the same or modified documents.
 - (i) CM at Risk shall review all offers and shall work with offerors to clarify offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
 - (j) The CM at Risk will document any and all discussions, questions and answers, modifications and responses to from any offeror and ensure that the same are distributed to all offerors, and Owner shall be entitled to inspect such documentation on request.
 - (k) CM at Risk shall determine the lowest offer for each solicitation that meets CM at Risk's reasonable performance standards for the components of the Work at issue; provided that if CM at Risk determines it is unable to execute a suitable subcontract with such offeror, CM at Risk may, with Owner's prior approval, execute a subcontract with the second-lowest offeror pursuant to Article 11.3.4 below.

Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require CM at Risk's agreement to establish and implement qualification and performance criteria for offerors, including a scoring system within requests for proposals.

Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor work; design-build work or, where an alternative contracting method that can be demonstrated to clearly benefit Owner.

Construction Manager at Risk shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. Such approval, or disapproval, will be provided within **seven (7) calendar days** of receipt of Notice of Award of any proposed Subcontract. Owner shall not unreasonably disapprove any proposed Subcontractor or supplier. Any increased costs due to Owner's disapproval shall be cause for an increase in the GMP.

Construction Manager at Risk's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

RELEVANT PROCUREMENT CODE CITES

Sec. 24-2. Purpose.

The purpose of this chapter is to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 24-100. Resident and local preferences.

(b) *Preference factor.* The preference factor for the resident and local preference shall be 0.95 for bids and shall be 1.05 for proposals except for federal funded bids/proposals. Federal funded bids/proposals are not subject to a preference factor.

(f) *Bids or proposals for public works projects.* Only the resident contractor preferences shall apply to bids or proposals for public works projects.

Sec. 24-167. Right to audit records.

(a) *Audit of cost or pricing data.* The city may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to section 24-131 to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost of pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.

(b) *Contract audit.* The city shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

Sec. 24-168. Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors for a city contract, a notice of the relevant facts shall be transmitted to the state attorney general by the city attorney.

Sec. 24-226. Management of construction contracting.

The head of the city department responsible for a construction project shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the department head shall consider the city's requirements, its resources, and the potential contractor's capabilities.
