

Board of Education Work Session  
Monday, October 11, 2021 5:00 PM

Virginia Moon Administrative Center  
8545 Park Dr  
Ralston, NE 68127-3621

## **Agenda**

1. Call To Order
2. Legal Update--Construction Manager at Risk Method of Construction  
**Speaker(s):** Dr. Mark Adler
3. Adjourn

KAREN A. HAASE <sup>NE, SD, IA, WY</sup>  
STEVE WILLIAMS <sup>NE</sup>  
BOBBY TRUHE <sup>NE, SD</sup>



COADY H. PRUETT <sup>NE, CO</sup>  
JORDAN JOHNSON <sup>NE</sup>  
TYLER COVERDALE <sup>SD</sup>  
SHARI RUSSELL, Paralegal

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## M E M O R A N D U M

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**To:** Board of Education for Ralston Public Schools  
Dr. Mark Adler, Superintendent

**CC:** Jason Buckingham, Assistant Superintendent for Business

**FROM:** Coady H. Pruett

**DATE:** October 4, 2021

**RE:** Construction Manager-at-Risk Method of Construction

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Superintendent Adler and Assistant Superintendent Buckingham have shared with me some of the facility improvement projects that the district has planned and that are related to the pending bond initiative. As you know, the board has several options for the project delivery systems that you can choose for one or more of these projects. I understand that at least some of the projects lend themselves to being grouped together, present a relatively compact timeline, and/or would benefit from the input of a construction management firm sooner rather than later. These are the types of considerations that may counsel toward using the construction manager-at-risk project delivery method.

Dr. Adler asked our firm to prepare this memo to explain outline the steps that a school district must follow to use the construction manager-at-risk construction method under the *Nebraska Political Subdivisions Construction Alternatives Act*, NEB. REV. STAT. § § 13-2901 to 13-2914 (the "Act"). I have attached a copy of the Act.

School districts using the construction manager at risk ("CM@R") method must comply with the procedural requirements of the Act. Under this method, the school district contracts with a construction manager who (a) assumes the legal responsibility to deliver a construction project within a contracted price to the school district, (b) acts as a construction consultant to

the school district during the design development phase of the project when the school district's architect or engineer designs the project, and (c) is the builder during the construction phase of the contract.

The successful construction manager ("CM") acts as consultant to the school district in the development and design phases, but as the equivalent of a general contractor during the construction phase. The CM enters into a contract directly with the school district, separately from the design team, and reports directly to the school district.

The CM@R method allows the school district to select a fee-based CM based upon qualifications, project approach, and fee structure before the design and bidding documents are completed. The CM works with the design team to develop and estimate the design. The CM then receives proposals from subcontractors for each portion of the work. A guaranteed maximum price (sometimes referred to as a "GMP") is submitted to the school by the CM. The final construction price is the sum of the CM's fees, overhead, contingencies, and the subcontractor's proposals. The school district retains any unused contingency at the end of the project.

The Act requires the school boards to follow specific procedures that are discussed below.

**Step 1: Resolution.** The board must adopt a resolution selecting the CM@R project delivery method for that particular project with at least a two-thirds vote. We have included a resolution that includes this action as well as others discussed below. You will see that you will select the relative weight for each criterion (in %) in the draft resolution, consistent with Policy 3042, described in the next step.

**Step 2: Policy.** The Act contemplates that after the board adopts the resolution described in step 1, then the board must adopt a policy that contains specific procedures the district must follow when using the CM@R method of construction. You have already adopted Policy 3042 on Construction Management at Risk Contracts, a copy of which is attached. If/when you decide to adopt the Resolution described in Step 1, we recommend at least reviewing and then ratifying your Policy 3042 to satisfy the Act's procedure.

**Step 3: Request for Proposals.** At least 30 days before the deadline for receiving and opening proposals, the district must (a) prepare and publish a Notice of the Request for Proposals (RFP) for the CM@R contract and (b) file the Notice of the RFP with the Nebraska Department of Education. Superintendent Adler has asked our firm to be ready to prepare the Notice of

RFP for publication, the Proposal Instructions, and our recommended contract documents for the agreement between the school district and the successful CM.

**Step 4: Selection Committee.** The district must each establish a selection committee composed of at least five persons. The district must refer proposals for recommendation to the selection committee. The composition of the committee is controlled by statute, and must include at least one person from each of the following categories:

1. Members of the governing body;
2. Members of the administration or staff of the school;
3. The board's architect or engineer;
4. Any person having special expertise relevant to the selection of a construction manager under the Act; and
5. A district resident other than a person in subparagraphs 1-4.

The person selected in subparagraphs 4 and 5 may not be a person who is employed by the district or who has a financial or other interest in a construction manager who has a proposal being evaluated. The resolution from Step 1 includes a provision for appointing this selection committee.

**Step 5: Evaluation of Proposals by Selection Committee.** The selection committee must evaluate the proposals taking into consideration specified criteria and subject to a maximum percentage of total points for evaluation (based on your resolution) which may be assigned to each criterion as follows:

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

6. The previous and existing compliance of the construction manager with laws relating to the contract (can be up to 10%); and
7. Such other information as may be secured having a bearing on the selection (can be up to 20%).

The percentages listed above must be modified so that they add up to 100%. On this project, we recommend that these criteria weights be set at the time that you adopt your resolution for this project, and that they are consistent with Policy 3042. Obviously, this will all occur prior to the Notice of RFP being published.

The selection committee then makes a recommendation to the board regarding the proposals. We can provide you with a basic scoring rubric for your use.

**Step 6: Evaluation of Proposals by the Boards.** After receiving the recommendation from the selection committee, the school board is required to:

1. **Evaluate and rank** each proposal using the same criteria as the selection committee, "taking into consideration" the selection committee's recommendation.
2. Attempt to **negotiate a construction management-at-risk contract** with the highest ranked construction manager and may enter into a contract after negotiations. These negotiations may include a determination of the manner by which the construction manager selects a subcontractor and may require the any subcontracted work be awarded by competitive bidding. If the board is unable to negotiate a satisfactory contract with the highest ranked construction manager, it may terminate negotiations and begin negotiations with the second ranked construction manager. This process can be repeated with the third ranked construction manager.
3. The board must **file a copy of an executed contract with the Nebraska Department of Education** within 30 days after its full execution. The construction manager must file all contract modifications and change orders within 30 days of completing the project.

4. If the board does not negotiate a satisfactory contract with any of the ranked construction managers, it may modify the request for proposals and **solicit new proposals or cancel** the construction management at risk process.

**Conclusion.** We hope this memorandum is helpful to you in deciding whether to proceed with the construction management at risk method. There are certainly other project delivery systems available to you, and we are happy to discuss those options as well. Of course, we are happy to assist you in any way. Please do not hesitate to contact me with questions or concerns.

**Attachments**

Political Subdivisions Construction Alternatives Act  
Resolution  
Construction Management at Risk Contracts Policy

## NEBRASKA POLITICAL SUBDIVISIONS CONSTRUCTION ALTERNATIVES ACT

### **13-2901. Act, how cited.**

Sections 13-2901 to 13-2914 shall be known and may be cited as the Political Subdivisions Construction Alternatives Act.

### **13-2902. Purpose.**

The purpose of the Political Subdivisions Construction Alternatives Act is to authorize a political subdivision 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 political subdivision adheres to the procedures set forth in the act.

### **13-2903. Terms, defined.**

For purposes of the Political Subdivisions Construction Alternatives Act:

(1) Construction management at risk contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the political subdivision, (b) acts as a construction consultant to the political subdivision during the design development phase of the project when the political subdivision's architect or engineer designs the project, and (c) is the builder during the construction phase of the project;

(2) Construction manager means the legal entity which proposes to enter into a construction management at risk contract pursuant to the act;

(3) Design-build contract means a contract which is subject to qualification-based selection between a political subdivision and a design-builder to furnish (a) architectural, engineering, and related design services for a project pursuant to the act and (b) labor, materials, supplies, equipment, and construction services for a project pursuant to the act;

(4) Design-builder means the legal entity which proposes to enter into a design-build contract which is subject to qualification-based selection pursuant to the act;

(5) Letter of interest means a statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to the act;

(6) Performance-criteria developer means 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 a political subdivision to assist the political subdivision 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 political subdivision to represent its interests in relation to a project;

(7) Political subdivision means a city, village, county, natural resources district, school district, community college, or state college;

(8) Project performance criteria means 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: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the project;

(9) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract for a project pursuant to the Political Subdivisions Construction Alternatives Act or (b) by a construction manager to enter into a construction management at risk contract for a project pursuant to the act;

(10) Qualification-based selection process means 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;

(11) Request for letters of interest means the documentation or publication by which a political subdivision solicits letters of interest;

(12) Request for proposals means the documentation by which a political subdivision solicits proposals; and

(13) School district means any school district classified under section 79-102.

#### **13-2904. Contracts authorized; governing body; resolution required.**

(1) Notwithstanding the procedures for public lettings in sections 73-101 to 73-106 or any other statute relating to the letting of bids by a political subdivision, a political subdivision which follows the Political Subdivisions Construction Alternatives Act may solicit and execute a design-build contract or a construction management at risk contract.

(2) The governing body of the political subdivision shall adopt a resolution selecting the design-build contract or construction management at risk contract delivery system provided under the act prior to proceeding with the provisions of sections 13-2905 to 13-2914. The resolution shall require the affirmative vote of at least two-thirds of the governing body of the political subdivision. For a project authorized under subsection (3) of section 13-2914, the resolution shall include a statement that the political subdivision has made a determination that the design-build contract or construction management at risk contract delivery system is in the public interest based, at a minimum, on one of the following criteria: (a) Savings in cost or time or (b) requirement of specialized or complex construction methods suitable for the design-build contract or construction management at risk contract delivery system.

#### **13-2905. Political subdivision; policies; requirements.**

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

(1) Procedures for selecting and hiring on its behalf a performance-criteria developer when soliciting and executing a design-build contract. The procedures shall be consistent with the Nebraska Consultants' Competitive Negotiation Act and shall provide that the performance-criteria developer (a) is ineligible to be included as a provider of any services in a proposal for the project on which it has acted as performance-

criteria developer and (b) 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) Procedures for the preparation and content of requests for proposals;

(3) Procedures and standards to be used to prequalify design-builders and construction managers. The procedures and standards shall provide that the political subdivision will evaluate prospective design-builders and construction managers based on the information submitted to the political subdivision in response to a request for letters of interest and will select design-builders or construction managers who are prequalified and consequently eligible to respond to the request for proposals;

(4) Procedures for preparing and submitting proposals;

(5) Procedures for evaluating proposals in accordance with sections 13-2908, 13-2910, and 13-2911;

(6) Procedures for negotiations between the political subdivision and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated;

(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; and

(8) Procedures for the evaluation of construction under a design-build contract by the performance-criteria developer to determine adherence to the performance criteria.

**13-2906. Letters of interest; requirements.**

(1) A political subdivision shall prepare a request for letters of interest for design-build proposals and shall prequalify design-builders in accordance with this section. The request for letters of interest shall describe the project in sufficient detail to permit a design-builder to submit a letter of interest.

(2) The request for letters of interest shall be (a) published in a newspaper of general circulation within the political subdivision at least thirty days prior to the deadline for receiving letters of interest and (b) sent by first-class mail to any design-builder upon request.

(3) Letters of interest shall be reviewed by the political subdivision in consultation with the performance-criteria developer. The political subdivision shall select prospective design-builders in accordance with the procedures and standards adopted by the political subdivision pursuant to section 13-2905. The political subdivision shall select at least three prospective design-builders, except that if only two design-builders have submitted letters of interest, the political subdivision shall select at least two prospective design-builders. The selected design-builders shall then be considered prequalified and eligible to receive requests for proposals.

**13-2907. Design-build contract; request for proposals; requirements.**

A political subdivision shall prepare a request for proposals for each design-build contract in accordance with this section. Notice of the request for proposals shall be published in a newspaper of general circulation within the political subdivision at least thirty days prior to the deadline for receiving and opening proposals. A notice of the request for proposals by a school district shall be filed with the State

Department of Education at least thirty days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

- (1) The identity of the political subdivision for which the project will be built and the political subdivision that will execute the design-build contract;
- (2) Policies adopted by the political subdivision in accordance with section 13-2905;
- (3) The proposed terms and conditions of the design-build 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 design-builder selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
- (4) A project statement which contains information about the scope and nature of the project;
- (5) Project performance criteria;
- (6) Budget parameters for the project;
- (7) Any bonds and insurance required by law or as may be additionally required by the political subdivision;
- (8) The criteria for evaluation of proposals and the relative weight of each criterion;
- (9) 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;
- (10) A requirement that the design-builder agree to the following conditions:
  - (a) An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services;
  - (b) At the time of the design-build offering, the design-builder will furnish to the governing body of the political subdivision a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project;
  - (c) 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 governing body of the political subdivision;
  - (d) A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance; and

(e) 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; and

(11) Other information which the political subdivision chooses to require.

**13-2908. Design-build contract; evaluation of proposals; requirements; negotiations.**

(1) A political subdivision shall evaluate proposals for a design-build contract in accordance with this section.

(2) The request for proposals shall be sent only to the prequalified design-builders selected pursuant to section 13-2906.

(3) Design-builders shall submit proposals as required by the request for proposals. The political subdivision may only proceed to negotiate and enter into a design-build contract if there are at least two proposals from prequalified design-builders.

(4) 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.

(5) Proposals may be withdrawn at any time prior to acceptance. The political subdivision 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 political subdivision may thereafter solicit new proposals using the same or a different project performance criteria.

(6) The political subdivision shall rank in order of preference the design-builders pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 13-2911.

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

(8) A school district shall file a copy of all design-build contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the design-builder shall file a copy of all contract modifications and change orders with the department.

(9) If the political subdivision is unable to negotiate a satisfactory contract with any of the ranked design-builders, the political subdivision may either revise the request for proposals and solicit new proposals or cancel the design-build process under the act.

**13-2909. Construction management at risk contract; request for proposals; requirements.**

A political subdivision shall prepare a request for proposals for each construction management at risk contract in accordance with this section. At least thirty days prior to the deadline for receiving and opening proposals, notice of the request for proposals shall be published in a newspaper of general circulation within the political subdivision. A notice of the request for proposals by a school district shall be filed with the State Department of Education at least thirty days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

- (1) The identity of the political subdivision for which the project will be built and the political subdivision that will execute the contract;
- (2) Policies adopted by the political subdivision in accordance with section 13-2905;
- (3) 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 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 political subdivision;
- (5) General information about the project which will assist the political subdivision 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;
- (6) The criteria for evaluation of proposals and the relative weight of each criterion; and
- (7) A description of any other information which the political subdivision chooses to require.

**13-2910. Construction management at risk contract; evaluation of proposals; requirements; negotiations.**

- (1) A political subdivision shall evaluate proposals for a construction management at risk contract in accordance with this section.
- (2) The political subdivision shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 13-2911.
- (3) The political subdivision 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. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor. If the political subdivision is unable to negotiate a satisfactory contract with the highest ranked construction manager, the political subdivision may terminate negotiations with that construction manager. The political subdivision 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 political subdivision is unable to negotiate a satisfactory contract

with the second highest ranked construction manager, the political subdivision may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

(4) A school district shall file a copy of all construction management at risk contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the construction manager shall file a copy of all contract modifications and change orders with the department.

(5) If the political subdivision is unable to negotiate a satisfactory contract with any of the ranked construction managers, the political subdivision may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process under the Political Subdivisions Construction Alternatives Act.

**13-2911. Contract proposals; evaluation; selection committee; duties.**

(1) In evaluating proposals in accordance with sections 13-2908 and 13-2910, the political subdivision shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five persons designated by the political subdivision. Members of the selection committee shall include (a) members of the governing body of the political subdivision, (b) members of the administration or staff of the political subdivision, (c) the performance-criteria developer when evaluating proposals from design-builders under section 13-2908 or the political subdivision's architect or engineer when evaluating proposals from construction managers under section 13-2910, (d) any person having special expertise relevant to selection of a design-builder or construction manager under the Political Subdivisions Construction Alternatives Act, and (e) a resident of the political subdivision other than an individual included in subdivisions (a) through (d) of this subsection. 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 design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.

(2) The selection committee and the political subdivision shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (a) through (g) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:

(a) The financial resources of the design-builder or construction manager to complete the project, ten percent;

(b) The ability of the proposed personnel of the design-builder or construction manager to perform, thirty percent;

(c) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder or construction manager, thirty percent;

(d) The quality of performance on previous projects, thirty percent;

(e) The ability of the design-builder or construction manager to perform within the time specified, thirty percent;

(f) The previous and existing compliance of the design-builder or construction manager with laws relating to the contract, ten percent; and

(g) Such other information as may be secured having a bearing on the selection, twenty percent.

(3) The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of section 84-712.01.

**13-2912. Contracts; refinements; changes authorized.**

A design-build contract and a construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the political subdivision in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract. Later refinements under this section shall not exceed the scope of the project statement contained in the request for proposals pursuant to section 13-2907 or 13-2909.

**13-2913. Act; bonding or insurance requirements.**

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

**13-2914. Road, street, or highway construction projects excluded; water, wastewater, utility, or sewer construction projects permitted.**

(1) A political subdivision shall not use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act for a project, in whole or in part, for road, street, or highway construction.

(2) A city of the metropolitan class may use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act for the purpose of complying with state or federal requirements to control or minimize overflows from combined sewers.

(3) A political subdivision may use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act for a project, in whole or in part, for water, wastewater, utility, or sewer construction.

**RESOLUTION OF THE BOARD OF EDUCATION TO SELECT THE  
CONSTRUCTION MANAGER AT RISK CONTRACT DELIVERY SYSTEM**

WHEREAS, the Board of Education ("Board") for **Douglas County School District No. 28-0054**, commonly known as **Ralston Public Schools** (the "School District") believes it is in the School District's best interest to use the construction manager at risk contract delivery system under the *Nebraska Political Subdivisions Construction Alternatives Act*, NEB. REV. STAT. §§ 13-2901 to 13-2914 (the "Act") to complete the [DESCRIBE THE PROJECT HERE, such as: School Facility Improvement Project, including without limitation \_\_\_\_\_.] (the "Project").

BE IT THEREFORE RESOLVED that the Board previously adopted Policy 3042 on "Construction Management at Risk Contracts."

BE IT THEREFORE RESOLVED that the Board assigns the following percentage of total points for evaluation of proposals:

<b>Criteria</b>	<b>Weight</b>
Financial resources of the construction manager to complete the project (maximum of 10%)	___%
Ability of the proposed personnel of the construction manager to perform (maximum of 30%)	___%
Character, integrity, reputation, judgment, experience, and efficiency of the construction manager (maximum of 30%)	___%
Quality of performance on previous projects (maximum of 30%)	___%
Ability of the construction manager to perform within the time specified (maximum of 30%)	___%
Previous and existing compliance of the construction manager with laws relating to the contract (maximum of 10%)	___%
Such other information as may be secured having a bearing on the selection (maximum of 20%)	___%
<b>Total</b> (must equal 100%)	___%

[NOTE TO BE DELETED: These percentages can be adjusted as the board desires, subject to the percentage limitations imposed by statute.]

BE IT FURTHER RESOLVED that the Board hereby selects the construction manager at risk contract delivery system to complete the Project.

BE IT FURTHER RESOLVED that the Board directs the School District's administration to prepare a request for proposals and publish notice of the

same in a newspaper of general circulation within the School District and file it with the Nebraska Department of Education.

BE IT FURTHER RESOLVED that the Board hereby authorizes, empowers, and directs the School District's administration to take all actions necessary to comply with the terms of the Act in proceeding with the construction manager at risk contract delivery system.

BE IT FURTHER RESOLVED that the following individuals are designated as members of the Construction Manager at Risk Selection Committee:

(1) Member(s) of the school board: \_\_\_\_\_.

(2) Member(s) of the school administration or staff: \_\_\_\_\_.

(3) The school's architect or engineer: \_\_\_\_\_.

(4) Individual(s) having special expertise relevant to selection of a construction manager under the Act: \_\_\_\_\_.

(5) A resident of the school district other than an individual included in subdivisions (1) through (4): \_\_\_\_\_.

[NOTE TO BE DELETED: A member of the selection committee designated under subdivision (4) or (5) 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 School District or the school's architect or engineer.]

BE IT FURTHER RESOLVED that all proposals received in response to the request for proposals are hereby referred to the Construction Manager at Risk Selection Committee.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
President of the Board of Education

ATTEST:

\_\_\_\_\_  
Secretary of the Board of Education

## 3042

### Construction Management at Risk Contracts

This policy is adopted pursuant to the Political Subdivisions Construction Alternatives Act (NEB. REV. STAT. § 13-2901 through § 13-2914).

The board shall adopt a resolution by a two-thirds affirmative vote selecting the construction management at risk contract delivery system prior to proceeding with any of the steps involved with solicitation or execution of any construction contract. For a project authorized under subsection (3) of section 13-2914, the resolution shall include a statement that the political subdivision has made a determination that the construction management at risk contract delivery system is in the public interest based, at a minimum, on one of the following criteria: (a) Savings in cost or time or (b) requirement of specialized or complex construction methods suitable for the construction management at risk contract delivery system.

**Definitions.** For purposes of this policy:

1. Construction management at risk contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the school district, (b) acts as a construction consultant to the school district during the design development phase of the project when the school district's architect or engineer designs the project, and (c) is the builder during the construction phase of the project;
2. Construction manager means the legal entity which proposes to enter into a construction management at risk contract pursuant to the Act;
3. Proposal means an offer in response to a request for proposals by a construction manager to enter into a construction management at risk contract for a project pursuant to the act;
4. Request for proposals means the documentation by which a school district solicits proposals; and
5. School district means Ralston Public Schools.

**Procedures.**

1. Procedures for the preparation and content of requests for proposals shall include the following:
  - A. At least thirty days prior to the deadline for receiving and opening proposals, notice of the request for proposals shall be published in a newspaper of general circulation within the school district and filed with the State Department of Education. The request for proposals shall contain, at a minimum, the following elements:

1. The identity of the school district for which the project will be built and the school district that will execute the contract;
  2. Policies adopted by the school district pursuant to the Act;
  3. 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 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 school district;
  5. General information about the project which will assist the school district 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;
  6. The criteria for evaluation of proposals and the relative weight of each criterion; and
  7. A description of any other information which the school district chooses to require.
2. Procedures for the preparation and submission of proposals by the construction manager shall be determined on a project-by-project basis and included within the requests for proposals.
  3. Procedures for evaluating requests for proposals submitted to the school district by a construction manager shall include the following:
    - A. The school district shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five persons designated by the school district. Members of the selection committee shall include (1) members of the school board, (2) members of the school administration or staff, (3) the school's architect or engineer (4) any person having special expertise relevant to selection of a construction manager under the Act, and (5) a resident of the school district other than an individual included in subdivisions (1) through (4) of this subsection. A member of the selection committee designated under subdivision (4) or (5) 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 school district or

the school's architect or engineer.

- B. The selection committee and the school district shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (1) through (7) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:
- (1) The financial resources of the construction manager to complete the project **(up to ten percent)**;
  - (2) The ability of the proposed personnel of the construction manager to perform **(up to thirty percent)**;
  - (3) The character, integrity, reputation, judgment, experience, and efficiency of the construction manager **(up to thirty percent)**;
  - (4) The quality of performance on previous projects **(up to thirty percent)**;
  - (5) The ability of the construction manager to perform within the time specified **(up to thirty percent)**;
  - (6) The previous and existing compliance of the construction manager with laws relating to the contract **(up to ten percent)**; and
  - (7) Such other information as may be secured having a bearing on the selection **(up to twenty percent)**.

The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of NEB. REV. STAT. § 84-712.01.

- C. The school district shall then evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee.
4. Procedures for negotiations between the school district and the construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated shall include the following:
- A. The school district 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.
  - B. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor.
  - C. If the school district is unable to negotiate a satisfactory contract with the highest

ranked construction manager, the school district may terminate negotiations with that construction manager. The school district may then undertake negotiations with the second highest ranked construction manager and may enter into a construction management at risk contract after negotiations.

- D. If the school district is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the school district may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.
- E. If the school district is unable to negotiate a satisfactory contract with any of the ranked construction managers, the school district may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process under the act.
- F. If the school district is able to negotiate a satisfactory contract with a construction manager, the school district shall file a copy of all construction management at risk contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the construction manager shall file a copy of all contract modifications and change orders with the State Department of Education.

5. Procedures for filing and acting on formal protests relating to the solicitation or execution of construction management at risk contracts shall include the following:

A. Definitions.

- (1) Interested party shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the school district to another party or by the failure of the school district to award a contract to such actual or prospective bidder.
- (2) Protest shall mean a written objection by an interested party on any phase of the bidding process, including specification, preparation, bid solicitation, and intent to award.

B. Right to Protest. An interested party may protest to the Superintendent. The protest shall be submitted in writing on company letterhead within five working days after public notice of the bid. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening or the closing date for receipt of proposals. In all other cases, the protest must be filed within five working days following the selection of the construction manager. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest". The written protest shall include as a minimum the following:

- (1) The name and address of the interested party;

- (2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- (3) A detailed statement of reasons for the protest;
- (4) Supporting, exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated; and a list of all persons who have knowledge of facts relevant to the protest; and
- (5) The action(s) the protestor desires the school district to take to resolve the protest.

The Superintendent will immediately decide upon receipt of the protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. The school district shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract, if awarded, unless the Superintendent makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect the substantial interests of the school district.

- C. Authority to Resolve Protests. Prior to the commencement of an administrative review by the Board concerning any protest, the Superintendent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Superintendent shall create and deliver a Decision to the protestor within a reasonable time after the written protest was received. The Decision shall include a written summary of the Superintendent's investigation and a recommendation regarding the outcome of the protest. The Decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review by the Board. A copy of the Decision shall be mailed or otherwise furnished immediately to the interested party and any other party intervening protestor and all other bidders. If not satisfied with the decision of the Superintendent, any interested party protestor may appeal to the Board, but the decision shall be final unless the interested party protestor files a timely appeal with the Board.
- D. Board Appeal Procedures. Any interested party protestor, within five working days of receipt of a decision of the Superintendent, may file with the Superintendent a written notice of appeal for an administrative review before the Board. The Notice of Appeal must clearly state the action protested and the basis of appeal. The Board will conduct an administrative review at its next regularly scheduled meeting or at a special meeting. The school district board of education shall consider the Decision of the Superintendent and shall make the final decision on the protest. The school district board of education's decision shall be

final.

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

**Prohibitions.** The school district shall not use a construction management at risk contract for any construction project excluded by NEB. REV. STAT. § 13-2914 or any other applicable law.

Adopted on: July 12, 2021

Revised on: \_\_\_\_\_

Reviewed on: June 28, 2021