

RESOLUTION NO. R13-0128

WHEREAS, this is a resolution to adopt the Construction Alternatives Policy and Procedures CA08062013-1 ("Policy") as authorized by the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. § 13-2901, et seq.;

WHEREAS, the Policy authorizes the City to enter into a design-build contract or a construction management at risk contract for public facilities projects; and

WHEREAS, the Policy sets forth the policies and procedures for the City to enter into a design-build contract or a construction management at risk contract for public facilities projects.

NOW THEREFORE BE IT RESOLVED the Mayor and City Council of the City of Papillion approve and adopt the Construction Alternatives Policy and Procedures CA08062013-1.

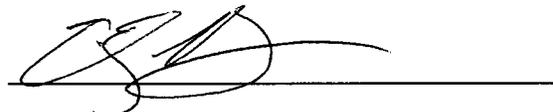
PASSED AND APPROVED this 6<sup>th</sup> day of August, 2013.

CITY OF PAPIILLION



David P. Black, Mayor

ATTEST:



Elizabeth Butler, City Clerk

(SEAL)



CA08062013-1	City of Papillion- General Order	
<b>TOPIC: Construction Alternatives Policy and Procedures (FACILITIES ONLY)</b>		
<b>ISSUED BY:</b> Dan Hoins, City Administrator	<b>NOTE: NEW</b>	<b>EFFECTIVE DATE:</b> August 6, 2013

## I. PURPOSE

The purpose of this policy is to authorize the City, pursuant to the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. §§13-2901 to 13-2914 (the “Act”), to enter into a design-build contract which is subject to qualification-based selection or a construction management at risk contract for public facilities projects.

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

## II. POLICY

It shall be the policy of the City of Papillion that for any public facilities project in which the City wishes to use an alternative construction delivery system the Mayor and Papillion City Council shall adopt a resolution selecting the desired design-build contract or construction management at risk contract delivery system prior to proceeding with any steps or procedures involved with solicitation or execution of any such construction contract by the City. The resolution shall require the affirmative vote of at least two-thirds of the City Council.

## III. DEFINITIONS

For the purposes of this policy, the following terms, as outlined in the Act, shall mean:

- 1) Construction management at risk contract: A contract by which a construction manager:
  - a. Assumes the legal responsibility to deliver a construction project within a contracted price to the City;
  - b. Acts as a construction consultant to the City during the design development phase of the project when the City’s architect or engineer designs the project; and
  - c. Is the builder during the construction phase of the project.
- 2) Construction manager: The legal entity which proposes to enter into a construction management at risk contract.

- 3) Design-build contract: A contract which is subject to qualification-based selection between the City and a design-builder to furnish:
  - a. Architectural, engineering, and related design services for a project pursuant to the policy; and
  - b. Labor, materials, supplies, equipment, and construction services for a project.
- 4) Design-builder: The legal entity which proposes to enter into a design-build contract which is subject to qualification based selection.
- 5) Letter of interest: A statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project.
- 6) Performance-criteria developer: Any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineers and Architects Regulation Act who is selected by the City to assist the City 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 City to represent its interest in relation to a project.
- 7) City: City of Papillion, Nebraska.
- 8) Project performance criteria: The performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements include the following, if required by the project:
  - 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
  - m. Storm water retention and disposal
  - n. Parking requirements
  - o. Applicable governmental code requirements
  - p. Other criteria for the intended use of the project
- 9) Proposal: An offer in response to the request for proposals:
  - a. By a design-builder to enter into a design-build contract for a project pursuant to the policy, or
  - b. By a construction manager to enter into a construction management at risk

contract for a project pursuant to the policy.

- 10) Qualification-based selection process: A process of selecting a design-builder based first on the qualifications of the design-builder and then on the design-builder's proposed approach to the design and construction of the project.
- 11) Request for letters of interest: The documentation or publication by which the City solicits letters of interest.
- 12) Request for proposals: The documentation by which the City solicits proposals.

#### **IV. PROCEDURES**

##### **PERFORMANCE-CRITERIA DEVELOPER CONTRACTS**

The City, if wishing to select and hire a performance-criteria developer to assist the City in soliciting and executing a design-build contract or construction management at risk contract for a proposed public facilities project, shall make such selection in compliance with the Nebraska Consultants' Competitive Negotiation Act, Neb. Rev. Stat. §§ 81-1701 et seq. A performance-criteria developer shall be ineligible to be included as a provider of any services in a proposal for a project on which it has acted as a performance-criteria developer, or is employed by or has a financial or other interest in a design-builder or construction manager who will submit a proposal.

The selected performance-criteria developer shall agree and provide assurances to the City that its own employees who are providing architectural or engineering professional services are licensed to practice in Nebraska and will comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering. The performance-criteria developer shall also submit proof of sufficient professional liability insurance.

##### **DESIGN-BUILD CONTRACTS**

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

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

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

Letters of interest shall be reviewed by the City in consultation with the performance-criteria developer. The City shall select prospective design-builders in accordance with this policy and any procedures and standards adopted by the City. At least three (3) prospective design-builders shall be selected, except that if only two (2) design-builders have submitted letters of interest, the City 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 City shall prepare a request for proposal for each design-build contract. 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.

Notice of the request for proposal shall be published in a newspaper of general circulation within the City at least thirty (30) days prior to the deadline for receiving and opening proposals.

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

- 1) A statement that the City intends to build the project and that the Mayor and Papillion City Council will execute a design-build contract;
- 2) The policies adopted by the Mayor and Papillion City Council to be used when executing a design-build contract;
- 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) The project performance criteria;
- 6) The budget parameters for the project;
- 7) Any bonds and insurance required by law or as may be additionally required by the City;
- 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 agrees 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 Mayor and Papillion City Council 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 Mayor and Papillion City Council;
- d. 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
- 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 such act.

11) Other information which the City chooses to require.

#### Proposal Evaluation

Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals. Proposals may be withdrawn at any time prior to acceptance. The City shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Act. The City may thereafter solicit new proposals using the same or different project performance criteria.

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

- 1) The Mayor and/or Members of the Papillion City Council;
- 2) Members of the administration or staff of the City;
- 3) The performance-criteria developer;
- 4) Any person having special expertise relevant to selection of a design-builder under the Act; and
- 5) A resident of the City other than any individual listed above.

Any selection committee member designated under item “4” or item “5” 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 City or the performance-criteria developer.

The City shall evaluate and rank, in order of preference, each proposal of the design-builders pursuant to the criteria in the request for proposals and taking into consideration

the recommendation of the selection committee. At least three (3) prospective design-builders shall be selected, except that if only two (2) design-builders have submitted Requests for Proposals, the City shall select at least two (2).

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

- 1) The financial resources of the design-builder to complete the project, ten percent (10%);
- 2) The ability of the proposed personnel of the design-builder to perform, thirty percent (30%);
- 3) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder, thirty percent (30%);
- 4) The quality of performance by the design-builder on previous projects, thirty percent (30%);
- 5) The ability of the design builder to perform within the time specified, thirty percent (30%);
- 6) The previous and existing compliance of the design-builder with laws relating to the contract, ten percent (10%); and
- 7) Such other information as may be secured having a bearing on the selection, twenty percent (20%).

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

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

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

## **CONSTRUCTION MANAGEMENT AT RISK CONTRACTS**

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

The City, if wishing to enter into a construction management at risk contract, shall prepare a request for letters of interest for construction management at risk proposals. Requests shall describe the project in sufficient detail to permit the construction manager to submit a letter of interest. The details should include applicable project performance criteria items listed under the definition section of this policy.

Requests for letters of interest shall be published in a newspaper of general circulation within the City at least thirty (30) days prior to the deadline for receipt of letters of interest. Requests for letters of interest should also be sent via first class mail to any construction manager upon request.

Letters of interest shall be reviewed by the City in consultation with the performance-criteria developer. The City shall select prospective construction managers in accordance with this policy and any procedures and standards adopted by the City. At least three (3) prospective construction managers shall be selected, except that if only two (2) construction managers have submitted letters of interest, the City shall select at least two (2). Selected construction managers shall then be considered prequalified and eligible to receive a request for proposal.

### **Request for Proposal**

The City shall prepare a request for proposal for each construction management at risk contract. The request for proposals shall be sent only to the pre-qualified construction managers selected. Construction managers shall submit proposals as required by the request for proposals.

Notice of the request for proposal shall be published in a newspaper of general circulation within the City at least thirty (30) days prior to the deadline for receipt and opening of proposals.

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

- 1) The City intends to build the project and that the Mayor and Papillion City Council will execute a construction management at risk contract;
- 2) The policies adopted by the Mayor and Papillion City Council to be used when executing a construction management at risk contract;
- 3) The proposed terms and conditions of the construction management at risk 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 City;
  - 5) General information about the project which will assist the City in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule and estimated budget;
  - 6) The criteria for evaluation of proposals and the relative weight of each criterion; and
  - 7) A description of any other information which the City chooses to require.

### Proposal Evaluation

Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals. Proposals may be withdrawn at any time prior to acceptance. The City shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Act. The City may thereafter solicit new proposals using the same or different project performance criteria.

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

- 1) The Mayor and/or Members of the Papillion City Council;
- 2) Members of the administration or staff of the City;
- 3) The City'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 City other than any individual listed above.

Any selection committee member designated under item "4" or item "5" 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 City or the performance-criteria developer.

The City shall evaluate and rank, in order of preference, each proposal of the construction managers pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee. At least three (3) prospective construction managers shall be selected, except that if only two (2) construction managers have submitted Requests for Proposals, the City shall select at least two (2).

The City 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 below:

- 1) The financial resources of the construction manager to complete the project, ten percent (10%);
- 2) The ability of the proposed personnel of the construction manager to perform, thirty percent (30%);
- 3) The character, integrity, reputation, judgment, experience, and efficiency of the construction manager, thirty percent (30%);
- 4) The quality of performance by the construction manager on previous projects, thirty percent (30%);
- 5) The ability of the construction manager to perform within the time specified, thirty percent (30%);
- 6) The previous and existing compliance of the construction manager with laws relating to the contract, ten percent (10%); and
- 7) 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 City 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 City is unable to negotiate a satisfactory contract with the highest ranked construction manager, the City may terminate negotiations with that construction manager. The City 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 City is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the City may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

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

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

**V. LEGAL REFERENCE**

Nebr. Rev. Stat.	13-2901	Act, how cited
	13-2902	Purpose
	13-2903	Terms, defined
	13-2904	Contracts authorized; governing body; resolution required
	13-2905	Political subdivision; policies; requirements
	13-2906	Letters of interest; requirements
	13-2907	Design-build contract; request for proposals; requirements
	13-2908	Design-build contract; evaluation of proposals; requirements
	13-2909	Construction management at risk contract; request for proposals; requirements
	13-2910	Construction management at risk contract; evaluation of proposals; requirements; negotiations
	13-2911	Contract proposals; evaluation; selection committee; duties
	13-2912	Contracts; refinements; changes authorized
	13-2913	Act; bonding or insurance requirements
	13-2914	Projects excluded