

Board of Education Special Meeting  
Monday, April 1, 2013 7:30 PM Central

Board Room  
1301 Centennial Avenue  
Utica, NE 68456-0187

Mark Avery: Present  
Jodi Cast: Present  
Wayne Heine: Present  
Larry Paxson: Present  
Julie Sorensen: Present  
Doug Tonniges: Present  
Present: 6.

#### 1. MEETING CALL TO ORDER

##### 1. Reading of Public Meeting Notice

##### 1. Open Meetings Act

##### 2. Roll Call

#### 2. OLD BUSINESS

#### 3. NEW BUSINESS

##### 1. ADOPT RESOLUTION TO SELECT THE CONSTRUCTION MANAGER AT RISK DELIVERY METHOD

Motion to adopt a resolution selecting the construction at risk delivery method for the construction project Passed with a motion by Doug Tonniges and a second by Jodi Cast.

Mark Avery: Yea, Jodi Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Julie Sorensen: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

##### 2. APPROVE POLICY 706.05 - CONSTRUCTION MANAGEMENT AT RISK CONTRACTS

Motion to approve Policy 706.05 - Construction Management At Risk Contracts Passed with a motion by Wayne Heine and a second by Julie Sorensen.

Mark Avery: Yea, Jodi Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Julie Sorensen: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

#### 4. ADJOURN

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## MEMORANDUM

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39539-1

TO: Superintendent Tim DeWaard  
FROM: Steve Williams  
DATE: March 25, 2013  
RE: Construction Delivery Methods

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One of the first decisions a school district must make after deciding to build is to determine which construction method it will use. This decision is often based on which individual the school district contacts first (a contractor, a construction manager, an architect, the school's lawyer, etc.), by contacting a neighboring district that recently went through the construction process, or some other random basis. The best approach would be to review and consider each of the available methods with construction professionals to determine the best method for the project under consideration by the school district. Following are descriptions of the three most common construction delivery methods.

**1) Design-Bid-Build or "Traditional" or "Competitive Bid" Method.** Under this approach, the school hires an architect or other design professional to **design** plans and specifications that are detailed enough to allow contractors to submit a bid for the project. The design phase typically has three stages: (1) schematic design, (2) design development, and (3) construction documents.

Once the design is complete, the school advertises and requests **bids** from contractors. Contractors bid the project exactly as designed. The bid is awarded to the lowest responsible and responsive bidder, with price typically being the most important factor. The bid period is generally the shortest phase of the process.

Once the general contractor (“GC”) is selected and has received notice from the owner, the **build** phase begins. This phase is the longest of the three phases. During this phase, the architect or other design professional’s role can range from almost no role in the process up to complete contract administration services. Common contract administration services include visiting the construction site to determine conformance with the plans, evaluating contractor requests for payment, responding to requests for information from contractors, issuing substantial completion certificates, and evaluating change order requests.

The design-bid-build process is typically considered best for less complicated projects that are budget sensitive but not schedule sensitive. The school district also has complete control over the design.

### **Advantages.**

- The delivery method is common and familiar.
- The process is relatively easy to manage.
- The contractual relationship between all parties is uncomplicated. You have one contract with the architect or other design professional and one with the contractor. The duties of everyone are pretty clear.
- The project scope for the design and construction is fully defined.
- Creates the most bidding opportunities for general contractors and subcontractors which generally results in competitive bidding which generally results in the best price.
- Uniform and detailed plans and requirements allow the school to more easily compare bids and bid prices.
- Checks and balances. The architect can evaluate the GC and its progress, and the GC can point out design problems.

### **Disadvantages.**

- The design, bid, and build sequence is linear which means the process generally takes longer than the other approaches.
- Budgets and estimates are created during the design phase without input from contractors, but the price is not established until the bids are received. If all of the bids exceed the estimates, the school may have to redesign and rebid the project.
- If the design is not sufficiently complete, contractors will not be able to properly bid the work. Contractors will be forced to add (sometimes significant) contingency amounts to the bids.
- Can create adversarial relationships between the parties. When problems occur, the architect will blame the contractor and vice

versa. Either the project comes to a halt, or construction continues at the risk of not knowing which party is correct. This can result in costly remedial measures and uncertainty about who will be responsible for the cost. Litigation is a common result of this type of dispute, and the school district has no single entity to hold responsible.

- Change orders and claims may increase the final cost.
- This method is not particularly flexible for scheduling purposes.

**2. Design-build.** In Nebraska, school districts utilizing the design-build construction method must follow the procedural requirements of the Nebraska Political Subdivisions Construction Alternatives Act (the “Act”) (NEB. REV. STAT. § 13-2901 through § 13-2914). Under this method, the school district uses a qualification-based selection process to contract with a design-builder (an architect and contractors as one entity) to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services to deliver a complete project. The school first hires a performance criteria developer (“PCD”), usually an architect or engineer, who assists the school in hiring a design-build entity. During the negotiation process, the design-builder agrees to complete the project and provide additional services for a fixed price or guaranteed maximum price (“GMP”). The design-builder then develops the drawings that satisfy the criteria and complete the design while staying below the agreed upon price. The design-builder then awards subcontracts. The team works together throughout the project, and construction begins before final design is complete, thus allowing completion in a shorter time frame.

The Act requires the school board to follow specific and potentially tedious procedures including the following:

1. The board must adopt a resolution selecting the design-build delivery system with at least a two-thirds vote.
2. The board must adopt policies which contain specific procedures the district must follow when using the design-build method of construction.
3. The district must follow specific procedures to select and hire a PCD to assist it in the development of project performance criteria, requests for proposals, evaluation of proposals, evaluation of construction under the design-build contract to determine adherence to the performance criteria, and any additional services requested by the district to represent its interests in relation to a project.

4. The district must prepare and publish requests for letters of interest that describe the project in sufficient detail to permit a design-builder to submit a letter of interest.
5. The district must review the letters of interest with the PCD and select at least three (sometimes two) prospective design-builders in accordance with the district's policy to "prequalify" them to receive and respond to the request for proposals.
6. The district must prepare and publish a notice of a request for proposals ("RFP") for the design-build contract. The district must file the notice of the RFP with the Nebraska Department of Education and send a copy to the prequalified design-builders only.
7. The district must refer proposals for recommendation to a selection committee. The composition of the committee is controlled by and subject to specific statutory requirements.
8. The selection committee must evaluate the proposals taking into consideration specified criteria and subject to a maximum percentage of total points for evaluation which may be assigned to each criterion.
9. The district finally selects a design-builder and negotiates a contract. However, the district may only proceed to negotiate and enter into a design-build contract if there are at least two proposals from prequalified design-builders. The district is required to rank the design-builders in order of preference according to the RFP and taking into consideration the selection committee's recommendation. If the district cannot negotiate a satisfactory design-build contract with the highest ranked design-builder, the district may negotiate with the second highest ranked design-builder. If the district cannot negotiate a satisfactory design-build contract with the second highest ranked design-builder, the district may negotiate with the third highest ranked design-builder, if any. If the district is unable to negotiate a satisfactory contract with any of the ranked design-builders, the district may revise the RFP and solicit new proposals or cancel the design-build process. The district must file a copy of all design-build contract documents with the Nebraska Department of Education if an agreement is reached.

Many of the steps identified above are also subject to specific statutory timelines.

The design-build method is typically considered best for time sensitive new construction projects, projects with smaller user groups or less need for user reviews, and portions of ongoing construction projects resulting from design changes.

## **Advantages.**

- One entity is responsible for design and construction.
- Selection of the design-builder is based upon specific criteria, including qualifications and experience.
- The contractor provides input in the design phase for budget and planning.
- The project can be completed faster than the traditional method and slightly faster than the construction manager at risk method.
- Guaranteed price is available earlier in the process.
- The final price generally matches the quality of the project (but can also be a disadvantage).
- Change orders written for design builder errors and omissions are covered through an allowance in the GMP (owner is still responsible for other changes).

## **Disadvantages.**

- The potential exists for reduced quality and conflict between school district and design builder because the design builder is one entity. In other words, there are no checks and balances between the contractor and architect.
- The school district may have difficulty determining whether an optimum price was paid for the work done.
- Initial costs are likely higher than the traditional bid method.
- The process results in an inflexible budget making changes more difficult and expensive to make once the phased construction has begun.
- The process is more complex than the traditional bid method.
- The school district has no input on the selection of the proposed design team.
- Cheaper projects may result in poorer quality.
- The speedier construction process may result in more mistakes.
- Staff and users have reduced time for reviews which may result in quick decision making.

**3. Construction Management.** “Construction management” often means different things to different people because this relationship can be organized in a variety of ways. Following are three of the most common arrangements.

**A. Construction Manager as Advisor.** The construction manager (“CM”) is a construction expert who protects the school district’s interests and takes the lead in coordinating the design and construction services. The school district would maintain separate contracts with the architect and a contractor. The CM’s authority may vary under this approach, but the CM as advisor generally has no financial authority or responsibility. The CM does not directly perform the design or construction work. The CM’s contractual duties would include the obligation to supervise, coordinate, and inspect the work in its capacity as the school district’s agent. The CM may also provide services in areas such as design, scheduling, estimating, environmental compliance, permitting, site investigation, value engineering, bid solicitation, contractor qualification review, bid proposal analysis and review, budget and cost control, and other services. Since the CM does not contract directly with the contractors or architect, the CM is not responsible for their acts or omissions. The CM is not responsible for the means or methods of construction and does not guarantee a maximum project price, time, or quality of the work.

**B. Construction Manager as Agent.** This approach is similar to CM as advisor except that either (1) the CM contracts directly with the architect and general contractor as the school district’s agent or (2) the school district enters the contracts and assigns them to the CM. Since the CM is in contractual privity with the architect and contractor, it will be responsible for their acts and omissions. In theory, the CM’s interest in ensuring that the project is completed properly is increased.

**C. Construction Management at Risk.** School districts utilizing the construction manager at risk (“CM@R”) method must comply with the procedural requirements of the Nebraska Political Subdivisions Construction Alternatives Act (the “Act”) (NEB. REV. STAT. § 13-2901 through § 13-2914). 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 construction manager 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 is contracted separately from the design team and reports directly to the school district.

First, CM@R allows the school district to select a fee-based CM based upon qualifications, project approach, and fees before the design and bidding documents are completed. The CM then works with the design team to develop and estimate the design. A GMP is submitted to the school by the CM. The CM then receives proposals from subcontractors and awards them jobs. 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 board to follow specific and potentially tedious procedures including the following:

1. The board must adopt a resolution selecting the construction manager at risk delivery method with at least a two-thirds vote.
2. The board must adopt policies which contain specific procedures the district must follow when using the CM@R method of construction.
3. The district must prepare and publish a notice of the RFP for the CM@R contract. The district must file the notice of the RFP with the Nebraska Department of Education.
4. The district must refer proposals for recommendation to a selection committee. The composition of the committee is controlled by and subject to specific statutory requirements.
5. The selection committee must evaluate the proposals taking into consideration specified criteria and subject to a maximum percentage of total points for evaluation which may be assigned to each criterion.
6. The district finally selects a construction manager and negotiates a contract. The district is required to rank the construction managers in order of preference according to the RFP and taking into consideration the selection committee's recommendation. If the district cannot negotiate a satisfactory CM@R contract with the highest ranked CM, the district may negotiate with the second highest ranked CM. If the district cannot negotiate a satisfactory CM@R contract with the second highest ranked CM, the district may negotiate with the third highest ranked CM, if any. If the district is unable to negotiate a satisfactory contract with any of the ranked construction managers, the district may revise the RFP and solicit new proposals or cancel the CM@R process. The district must file a copy of all CM@R contract documents with the Nebraska Department of Education if an agreement is reached.

Many of the steps identified above are also subject to specific statutory timelines.

The CM@R is typically considered best for large or new construction projects that are subject to change or time sensitive. They are also suited for projects which require a high level of construction management due to complexity, multiple phases, or multi-disciplinary coordination.

### **Advantages.**

- The construction manager is selected based upon qualification, experience, and training.
- The construction manager will provide the school with design phase assistance in budget and planning.
- The school may control the budget throughout the project.
- Subcontractors are screened prior to hiring.
- The schedule is faster than in the traditional method with fast track construction possible.
- The GMP is established early in the process albeit later than in the design-build method.
- Design team and contractor work together.
- Changes to the design and scope of the project are feasible.
- Possibility of reduced changes and claims once in the construction phase.

### **Disadvantages.**

- The school may have difficulty determining whether optimum price was paid for the work done.
- Costs of the project will be higher than the traditional method due to reduced competition in the pricing of contractor overhead, fee, and subcontractor costs.
- Costs often increase due to the GMP being too vague or broad.
- The construction manager has the ability to expand the budget in hopes of creating future savings.

### **Conclusion**

This memo provides a broad overview of the process for entering into each of the three construction delivery methods. Each method has its own advantages and disadvantages which the school should weigh when making a decision to build. The design-build method and construction manager at risk method are subject to more statutory requirements than the traditional method,

and such requirements should be weighed into the decision making process. Many districts have decided to use the traditional method upon learning of the extra statutory requirements, but the other methods are becoming increasingly popular. Of course, we will be happy to assist you in any way you decide to proceed. Please do not hesitate to contact us with questions or concerns.

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**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.

**Source:** Laws 2002, LB 391, § 1; R.S.1943, (2003), § 79-2001; ; Laws 2008, LB889, § 1.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 2; R.S.1943, (2003), § 79-2002; ; Laws 2008, LB889, § 2.;  
Effective date July 18, 2008

**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, 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.

**Source:** Laws 2002, LB 391, § 3; R.S.1943, (2003), § 79-2003; ; Laws 2008, LB889, § 3.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 4; R.S.1943, (2003), § 79-2004; ; Laws 2008, LB889, § 4.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 5; R.S.1943, (2003), § 79-2005; ; Laws 2008, LB889, § 5.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 6; R.S.1943, (2003), § 79-2006; ; Laws 2008, LB889, § 6.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 7; R.S.1943, (2003), § 79-2007; ; Laws 2008, LB889, § 7.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 8; R.S.1943, (2003), § 79-2008; ; Laws 2008, LB889, § 8.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 9; R.S.1943, (2003), § 79-2009; ; Laws 2008, LB889, § 9.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 10; R.S.1943, (2003), § 79-2010;; Laws 2008, LB889, § 10.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 11; R.S.1943, (2003), § 79-2011; ; Laws 2008, LB889, § 11.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 12; R.S.1943, (2003), § 79-2012; ; Laws 2008, LB889, § 12.;  
Effective date July 18, 2008

**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.

**Source:** Laws 2002, LB 391, § 13; R.S.1943, (2003), § 79-2013; ; Laws 2008, LB889, § 13.;  
Effective date July 18, 2008

**13-2914. Projects excluded.**

A political subdivision 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, except that a city of the metropolitan class may use a design-build contract or construction management at risk contract for the purpose of complying with state or federal requirements to control or minimize overflows from combined sewers.

**Source:** Laws 2008, LB889, § 14.; Effective date July 18, 2008

WHEREAS, the board of education desires to use the construction management at risk contract delivery system provided under the Political Subdivisions Construction Alternatives Act (NEB. REV. STAT. § 13-2901 through § 13-2914);

WHEREAS, NEB. REV. STAT. § 13-2904 requires the board of education to adopt a resolution selecting the construction management at risk contract delivery system by an affirmative vote of at least two-thirds of the board members; and

WHEREAS, NEB. REV. STAT. § 13-2905 requires the board of education to adopt a policy for entering into a construction management at risk contract;

NOW, THEREFORE, BE IT RESOLVED that the board selects the construction management at risk contract delivery system and adopts the Construction Management at Risk Contract Policy.

After the above resolution was read, \_\_\_\_\_ moved and \_\_\_\_\_ seconded the motion to adopt it. After discussion, and on roll call vote, the following members voted in favor of the motion:

\_\_\_\_\_.

The following members voted against the motion: \_\_\_\_\_.

The following members did not vote: \_\_\_\_\_.

Having been consented to by at least two-thirds of the board members, the board president declared the motion to have been passed and adopted.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
President, Board of Education

## **CONSTRUCTION MANAGEMENT AT RISK CONTRACTS**

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

### 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 Centennial 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 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.
- 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.
    - (3) Appeals Board shall mean an independent panel of three disinterested individuals appointed by the Superintendent, which individuals shall have a thorough knowledge of the purchasing

process and practices and laws applicable thereto.

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 bid opening or if the protest is based on the selection of the lowest responsible bidder, not later than five working days following the selection of the lowest responsible bidder. 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 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.

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 appeal to the Appeals 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 issue a decision in writing within five working days. The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review as provided by the Appeals Board. A copy of the decision shall be mailed or otherwise furnished immediately to the interested party and any other party intervening protester and all other bidders. If not satisfied with the

decision of the Superintendent, any interested party protester may appeal to the Appeals Board, but the decision shall be final unless the interested party protester files a timely appeal with the Appeals Board.

- D. Appeals Board Procedures. Any interested party protester, within five working days of receipt of a decision of the Superintendent, may file with the Superintendent a written notice of appeal for a hearing before the Appeals Board. The Notice of Appeal must clearly state the action protested and the basis of appeal. Upon receipt of an appeal from an interested party protester, the Superintendent shall convene the Appeals Board within ten working days or as soon thereafter as reasonably possible to conduct an administrative review of the appeal. The Appeals Board shall decide whether the solicitation being appealed was in accordance with all applicable laws and regulations and the terms and conditions of all applicable specifications, and whether waiver of specifications, conditions or defects in a bid, if any, were justified and in the best interest of the school district. Within ten working days of hearing such appeal, the Appeals Board shall submit its findings and recommendations to the school district board of education. Should it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the school district board of education without Appeals Board action. No determination by the Appeals Board concerning an issue of law or fact shall be final or binding on the school district.
  - E. Finality of Decision. The school district board of education shall consider the recommendations of the Superintendent and the Appeals Board 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.

Approved \_\_\_\_\_ Reviewed \_\_\_\_\_ Revised \_\_\_\_\_