



## **3641.1: CONSTRUCTION – CONSTRUCTION MANAGEMENT AT RISK**

**This applies to those construction projects that the District determines to use the construction management at risk (CMR) construction delivery process.**

**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 District; (b) acts as a construction consultant to the District during the design development phase of the project when the District’s architect or engineer designs the project; and (c) is the builder during the construction phase of the project.**

**The District shall follow all requirements in the selection of a CMR, including, but not limited to, those set forth in this Rule and as provided by law.**

**The District shall comply with all required filings with the Nebraska Department of Education related to CMR processes.**

**The Superintendent or designee shall promulgate CMR regulations detailing the following procedures.**

**Following the acquisition of professional architectural or engineering services as required for the select project, the District shall publish a request for letters of interest which shall be published in a newspaper of general circulation within the District at least thirty days prior to the deadline for receiving letters of interest and send such request for letters of interest by first-class mail to any prospective construction manager upon request.**

**Letters of interest shall be reviewed by the District in consultation with the architect/engineer. The District shall select at least three prospective construction managers, except that if only two prospective construction managers have submitted letters of interest, the District shall select at least two prospective construction managers. The selected prospective construction managers shall then be considered pre-qualified and eligible to receive requests for proposals.**

**After selecting pre-qualified construction managers, the District shall prepare a request for proposals for each CMR contract at least thirty days prior to the deadline for receiving and opening proposals. Notice of the request for proposals shall be published and filed as required by law. The request for proposals shall be sent only to the construction managers selected under the pre-qualification procedures of this policy. The request for proposals shall contain all elements required by law.**

**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 District shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Nebraska Schools Construction Alternatives Act.**

**The District 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. The selection committee shall be a group of at least five persons designated by the District and shall include, at a minimum, the following:**

- 1. A member of the Board;**
- 2. A member of the school administration or staff;**
- 3. The school's architect or engineer;**
- 4. Any person chosen by the District for providing expertise relevant to selection of a construction manager under the Nebraska Schools Construction Alternatives Act; and**
- 5. A resident of the District not included in the four preceding subsections.**

**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 District or the District's architect/engineer.**

**The selection committee shall evaluate proposals, taking into consideration the criteria enumerated with the maximum percentage of total points for evaluation which may be assigned to each as required by law.**

**The selection committee shall keep and maintain minutes and permanent records of the committee proceedings.**

**In the event of a dispute, an interested party may submit a written protest to the Superintendent or the Superintendent's designee. The protest shall be submitted on company letterhead. Protests based on alleged improprieties in a solicitation or other request for proposals must be filed at least five (5) days before the closing date for the receipt of proposals. In all other cases, the protest must be filed within five (5) working days following the selection of the CMR. To expedite the handling of protests, the envelope containing the protest should be clearly labeled "Protest." The written protest shall include at a minimum the following:**

- 1. The name and address of the interested party;**
- 2. An appropriate identification of the relevant solicitation;**
- 3. A statement of the reasons for the protest; and**
- 4. Supporting evidence or documents to substantiate any claims.**

**The Superintendent or designee shall decide whether or not the award of the contract shall be delayed or whether the performance of the contract should be suspended while evaluating the protest of an interested party. The Superintendent or designee shall issue a decision to any protest within ten (10) working days. The decision of the Superintendent or his designee shall be final.**

**The 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. If the District is unable to negotiate a satisfactory contract with the highest ranked construction manager, the District may terminate negotiations with that construction manager and undertake negotiations with the next highest ranked construction manager and may enter into a construction management at risk contract after negotiations.**

**A construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the District, in agreement with the construction manager, to make changes in the project without invalidating the contract.**

#### **Date of Adoption**

**April 20, 2020**

#### **Date of Revision**

**October 5, 2020**

#### **Related Policies and Rules**

**[3641: Construction Procedures - Delivery System](#)**

#### **Legal Reference**

**Neb. Rev. Stat. § 13-2901 et seq.**