

3003.2 Construction Management-at-Risk

1. **Applicable Projects.** The District may engage a construction manager-at-risk (CM@R), in accordance with South Dakota law and this policy, if the District is planning, designing, or constructing a public improvement, or if the District is improving, altering, or repairing a public improvement.
2. **CM@R Actually Performing Construction.** A CM@R contracts directly with subcontractors and suppliers. A CM@R may contract to perform actual construction on the public improvement project.
3. **Scope of Potential CM@R Services.** The services provided by the CM@R may include the following:
 - 3.1. **Planning and Design Phase.**
 - 3.1.1. Consulting with, advising, assisting, and making recommendations to the District and architect or engineer on all aspects of planning for project construction;
 - 3.1.2. Reviewing all plans and specifications as they are being developed and making recommendations with respect to construction feasibility, availability of material and labor, time requirements for procurement and construction, and projected costs;
 - 3.1.3. Making, reviewing, and refining budget estimates based on the District's program and other available information;
 - 3.1.4. Making recommendations to the District and the architect or engineer regarding the division of work in the plans and specifications to facilitate bidding and awarding of contracts;
 - 3.1.5. Soliciting the interest of capable contractors and assisting the District in taking bids on the project;
 - 3.1.6. Analyzing the bids received and awarding contracts; and
 - 3.1.7. Preparing and monitoring a progress schedule during the design phase of the project and preparation of a

proposed construction schedule;

3.2. Construction Phase.

- 3.2.1. Maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the contractors on the project;
- 3.2.2. Observing the work as it is being performed for general conformance with working drawings and specifications;
- 3.2.3. Establishing procedures for coordinating among the District, architect or engineer, contractors, and construction manager with respect to all aspects of the project and implementing labor policy in conformance with the requirements of the District's policy and making recommendations;
- 3.2.4. Reviewing and processing all applications for payment by involved contractors and material suppliers in accordance with the terms of the contract;
- 3.2.5. Making recommendations for and processing requests for changes in the work and maintaining records of change orders;
- 3.2.6. Scheduling and conducting job meetings to ensure orderly progress of the work;
- 3.2.7. Developing and monitoring a project progress schedule, coordinating and expediting the work of all contractors, and providing periodic status reports to the owner and the architect and engineer;
- 3.2.8. Establishing and maintaining a cost control system and conducting meetings to review costs;
- 3.2.9. Performing general conditions of the construction contract as required by the District;
- 3.2.10. Contracting for, and actually performing, construction on the public improvement project; and
- 3.2.11. Contracting directly with subcontractors and suppliers.

4. **Initial Board Action.** Prior to engaging a CM@R, the Board must first determine:

4.1. It is in the public interest to utilize the services of a CM@R; and

4.2. The CM@R's services would not unreasonably duplicate, and be in addition to, the normal scope of separate architect or engineer contracts.

5. **Qualifications-Based Selection Procedures.** Unless otherwise provided herein, the District's engagement of a CM@R must be pursuant to the solicitation and qualification-based request for proposals method of procurement as provided in this section 5.

5.1. **Advanced Publication.** This policy shall constitute the District's procedures for the solicitation and award of a CM@R contract. This policy shall be adopted and published prior to the District issuing any request for proposal (RFP) to enter into a CM@R contract.

5.2. **Qualifications.** Only qualified CM@Rs will be eligible to have their proposals accepted by the District. All interested CM@Rs must submit in their proposals evidence demonstrating the extent to which the CM@R satisfies the following standards and criteria:

5.2.1. The financial resources of the CM@R to complete the project;

5.2.2. The ability of the proposed personnel of the CM@R to perform;

5.2.3. The character, integrity, reputation, judgment, experience, and efficiency of the CM@R;

5.2.4. The quality of the CM@R's performance on previous projects;

5.2.5. The ability of the CM@R to perform within the time specified;

5.2.6. The previous and existing compliance of the CM@R with laws relating to the contract; and

- 5.2.7. Such other information as may be secured having a bearing on the selection.
- 5.3. **Notice of RFP.** The Notice of RFP will include information about how interested CM@R firms may obtain the complete RFP, which will include the instructions for preparing and submitting proposals. The District shall advertise the Notice of RFP as a legal notice in the District's appointed legal newspaper. The advertisement shall be printed at least twice, with the first publication at least ten days before the deadline for the submission of proposals. The first publication shall be in each official newspaper of the District, and the second publication may be in any legal newspaper of the state chosen by the District. If the District has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the jurisdiction of the District to be selected by the District. The advertisement shall state the time and place where the proposals will be opened or the deadline for the submission of proposals. In each notice, the District shall reserve the right to reject any or all proposals. The notice must include the approximate cost of the publication and a statement that the notice may be viewed free of charge on a statewide public notice website.
- 5.4. **Preparing and Submitting Proposals.** All interested CM@Rs must prepare and submit proposals in accordance with the specific details and instructions contained in the RFP. At a minimum, the proposals must include evidence demonstrating the extent to which the CM@R satisfies the qualifications standards and criteria described above. Proposals must also identify in writing any of the terms of the proposed CM@R agreement to which the proposer objects and/or seeks to amend.
- 5.5. **Request for Proposals (RFP).** Among other components, an RFP must include the following elements:
- 5.5.1. The identity of the District;
 - 5.5.2. A description of the proposed public improvement;
 - 5.5.3. A description of the qualifications the construction manager will be required to have as described above;
 - 5.5.4. The procedures to be followed for submitting proposals, the criteria for evaluation of a proposal and its relative

weight, and procedures for making awards;

5.5.5. The proposed terms and conditions for the construction management services contract, including a description of the scope of services to be provided; and

5.5.6. All requirements for proposals.

5.6. **Evaluation of Proposals.** All proposals submitted will be reviewed by the board of education or its designee(s) and evaluated using the qualification standards describe above and the specific requirements stated in the RFP. The board or its designees may communicate with the CM@Rs, including but not necessarily limited to seeking clarifications or supplemental information from what was presented in the proposal. At the board's sole discretion, the board or its designee(s) may conduct interviews of one or more CM@Rs that have submitted proposals. At the end of the review process and any interviews, the board, in its sole discretion, will identify the CM@Rs that it deems are qualified (based on the standards above and the requirements of the RFP) and the number of CM@R firms with which it is interested in engaging in negotiations toward a potential CM@R contract, which determinations may be revisited at the board's option.

5.7. **Negotiations Between District and CM@Rs.** The board may authorize its administration or designee, in consultation with the District's legal counsel, to conduct the negotiations with one or more CM@Rs, if any. Nothing herein shall preclude the District from simultaneously negotiating with more than one CM@R provided that all CM@Rs with whom the District is negotiating must have been deemed qualified by the board. Ultimately, the terms of any actual CM@R contract are subject to the review and approval of the board of education.

5.8. **Confidential and Proprietary Information.** If the CM@R believes that any of the information that it is disclosing to the District throughout this process, whether in writing, orally, or otherwise, is confidential or proprietary information, then the CM@R shall identify in writing to the District the specific confidential or proprietary information and the basis for such confidentiality or proprietary nature. After receiving the identity of such information, the District will endeavor to avoid disclosing such information to the extent the District is permitted to do so

under SDCL Ch. 1-27.

- 5.9. **Accepting Proposal and Awarding CM@R Contract.** If, through negotiations, the District and its preferred CM@R can reach acceptable terms on an updated proposal, then a CM@R contract will be updated and finalized to reflect as much. This proposed contract should be, but is not necessarily required to be, signed by the successful CM@R. The board of education will typically consider accepting the proposal and entering into the CM@R contract at a duly noticed public meeting. If the board accepts the proposal and enters into the CM@R contract, it will provide written notice to the CM@R submitting the accepted proposal and simultaneously notify in writing the other CM@Rs that their proposals were not accepted. The board's action to approve the proposal and enter into the corresponding CM@R contract will constitute acceptance of the proposal and awarding of the CM@R contract. The decision to accept a proposal and enter into a CM@R contract, and the terms of each, are ultimately subject to the board of education's approval.
 - 5.10. **Construction Bonds.** The CM@R must furnish payment and performance bonds for the public improvement project.
 - 5.11. **Competitive Bidding the Work.** The CM@R must competitively bid all work to be performed under the CM@R contract as required by any statute governing bidding and bonding for public improvement projects.
 - 5.12. **District Right to Reject Any or All Proposals.** The District reserves the right to reject any or all proposals submitted.
6. **Limited Exceptions to Qualifications-Based Selection Procedures.** Notwithstanding the foregoing, the District may engage a CM@R outside of the Qualifications-Based Selection Process described above in one of the following two circumstances:
- 6.1. **Emergency Procurement.** The District may award a contract to a CM@R on an emergency basis if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons, and such emergency procurement must be made with such competition as is practicable under the circumstances. Failure to abide by the applicable bid provisions required by state law in a timely manner does not constitute an emergency. A written determination of the

basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

- 6.2. **No Bids Received.** If, after advertising for bids, no firm bids are received, then District may negotiate a contract with a CM@R for the purchase of the supplies, services, or public improvement projects at the most advantageous price, if the specifications of the original bid or are met.

Adopted on: 8/15/2023

Revised on: _____

Reviewed on: _____