

# CONSTRUCTION MANAGER-AT-RISK SELECTION PROCEDURES

(Adopted by the State Building Commission on 2/26/02)

## GENERAL PROVISIONS

### AUTHORITY

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by public law (G.S. 143-135.26) to perform a multiplicity of duties with regard to the State's capital facilities development and management program. In the specific area of State capital improvement project construction manager-at-risk selection, the SBC is empowered to adopt rules establishing standard procedures and criteria to assure that the construction manager-at-risk selected for each State capital improvement project has the qualifications and experience necessary for that capital improvement project. The SBC is responsible and accountable for the final selection of the construction manager-at-risk. The exceptions are the University of North Carolina and the General Assembly which shall be responsible and accountable for the final selection of construction manager-at-risk for capital projects in which they are the funded agencies.

### POLICY

It is the policy of the SBC to select construction manager-at-risk for State capital improvement projects as defined in G.S. 143-128.1, based on criteria contained herein and to make available to every firm, duly licensed as a general contractor in the State of North Carolina, the opportunity to be considered for providing construction management-at-risk services for those departments and agencies under its jurisdiction. It is also the policy of the SBC to select a construction manager-at-risk for State capital improvement project who is in compliance with the minority business participation requirements as prescribed in G.S. 143-128.2. The SBC considers that the selection of competent construction manager-at-risk is vital to providing the State of North Carolina with the best and most appropriate facilities consistent with authorized funds. These procedures are intended to provide a basis for the fair and uniform selection of construction managers-at-risk. The construction manager-at-risk shall use standard form of contract for the owner, construction manager-at-risk, and first-tier subcontractor authorized by the SBC.

### DEFINITIONS

For purposes of this subchapter, the following definitions shall apply:

1. **Capital Projects Coordinator** means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matter presented to the SBC. The individual so designated for purposes of these rules may have other titles within his agency but shall carry out the duties assigned herein to the capital projects coordinator. Whenever the capital projects coordinator is referenced herein, it shall be understood to include a designated assistant or representative.
2. **Construction Manager-at-Risk** means a person, corporation, or entity that provides construction management at risk services.
3. **Construction Management-at-Risk Services** means services provided by a person, corporation, or entity that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.

4. **First-Tier Subcontractor** means a subcontractor who contracts directly with the Construction Manager-at-Risk.
5. **Contact person** means the person named in the public advertisement who shall be the Capital Projects Coordinator or his/her designee.
6. **Funded agency** means the department, agency, authority or office that is named in the legislation appropriating funds for the design and/or construction project.
7. **Using agency** means the subdivision of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus or similar body, as determined by the administrative head of the funded agency.
8. **Minority Business** means: (a) in which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and (b) of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
9. **Socially and economically disadvantaged individual** means the same as defined in 15 U.S.C. 637.

#### **PROJECT DESCRIPTION**

It shall be the responsibility of each Capital Projects Coordinator to provide the State Construction Office with a written description of the construction management-at-risk services desired, the program or scope of work, schedule requirements, amount of authorized funds and other appropriate information for each project requiring construction management-at-risk services. This information should be provided to the State Construction Office for publication on *State Construction Office website*. The Capital Projects Coordinators is responsible for prompt initiation of the Construction Manager-at-Risk selection process and shall make his/her best effort to enable the completion of the selection process within 60 days of the date of the above notification.

#### **PUBLIC ANNOUNCEMENT**

Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for construction management-at-risk services, a designated contact person in the using agency and the closing date on the *State Construction Office website*. Public announcement is required prior to Construction Manager-at-Risk selection.

The closing date for being considered for construction management-at-risk services shall be minimum of 21 days from date of publication on the *State Construction Office website*.

Responses to RFP for each project must be received by the Capital Project Coordinator prior to a firm's being considered for construction management-at-risk services.

#### **CONSTRUCTION MANAGER-AT-RISK QUALIFICATIONS**

All firms desiring to provide construction management-at-risk services shall submit all information required in the Request for Proposal (RFP) for the owner's review and evaluation. Firms shall be required to submit evidence of compliance with the minimum requirements of the RFP.

#### **CM AT RISK SELECTION**

Each firm shall meet the minimum requirements of the RFP prior to being considered by the selection committee as one of the firms most qualified to perform construction manager-at-risk services. Failure of any firm to furnish all necessary information in the RFP shall disqualify response.

#### **PRE-SELECTION COMMITTEE**

A pre-selection committee shall be established for all projects requiring construction management-at-risk services. The pre-selection committee shall consist of at least the capital projects coordinator, a representative of the using agency and one representative from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design or construction professional.

The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The capital projects coordinator shall state in his submission that the established rules for public announcement and selection have been followed or shall state full particulars if exceptions have been taken.

#### **SELECTING CRITERIA**

In selecting the three firms to be presented to the SBC, the pre-selection committee should take into consideration in the evaluation of the Proposals such factors as:

- (1) Workload that is fully able to accommodate the addition of this project.
- (2) Record of successfully completed projects of similar scope without major legal or technical problems.
- (3) Previous experience with the Owner, a good working relationship with Owner representatives, have completed projects in a timely manner and have performed an acceptable quality of work.
- (4) Key personnel that have appropriate experience and qualifications.
- (5) Relevant and easily understood graphic or tabular presentations.
- (6) Completion of CM-at-Risk projects in which there was little differences between the GMP and final cost.
- (7) Projects that were completed on or ahead of schedule.
- (8) Recent experience with project costs and schedules.
- (9) Construction administration capabilities.
- (10) Proximity to and familiarity with the area where the project is located.
- (11) Quality of compliance plan for minority business participation as required by G.S. 143-128.2.
- (12) Other factors that may be appropriate for the project.

## **CONSTRUCTION MANAGER-AT-RISK SELECTION FOR UNC SYSTEM PROJECTS**

In selecting Construction Manager-at-Risk for its projects, the UNC system shall comply with the policies and selection procedures outlined herein, except that: (1) the pre-selection committees need not include a representative of the State Construction Office, and (2) the final selection of Construction Manager-at-Risk shall be made by the Board of Trustees of the funded institution.

## **CONSTRUCTION MANAGER-AT-RISK SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS**

Upon receipt of a letter from the capital projects coordinator listing three firms in priority order along with recommendations and selection information, as requested by the SBC, the secretary of SBC, upon determination that all information has been submitted, will place the request for consideration on the agenda for the next SBC meeting.

The capital projects coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the standard procedures and criteria have been properly followed, the SBC will:

- (1) Affirm the selection of the firms in the priority order recommended by the state or agency, or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

## **CONTRACT NEGOTIATION**

After the three have been notified of the selection action by the SBC or the University of North Carolina, a representative from the State Construction Office, the capital projects coordinator, and a representative from the using agency will discuss with the selected construction manager-at-risk appropriate services and information about the project.

The State Construction Office will request in writing a detailed fee proposal from the selected Construction Manager-at-Risk. The State Construction Office in coordination with the capital projects coordinator and the using agency will attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked Construction Manager-at-Risk, the process will be repeated with the third-ranked Construction Manager-at-Risk. If a fee still cannot be agreed upon, the SBC shall review the history of negotiations and make appropriate determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the original selection order, or call will be made for the capital projects coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process will continue until a fee has been determined that is agreed to by the State Construction Office, the using agency and the Construction Manager-at-Risk.

Following execution of the contract, the State Construction Office will publish on the State Construction Office website, the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.