

SARPY COUNTY AND CITIES WASTEWATER AGENCY

CONSTRUCTION ALTERNATIVES POLICY AND PROCEDURES

Effective November 17, 2021

Adopted by Sarpy County and Cities Wastewater Agency on November 17, 2021 Pursuant to Resolution No. 2021-043

PURPOSE

The purpose of this policy is to authorize the Agency, pursuant to the Political Subdivisions Construction Alternatives Act, Neb. Rev. Stat. §13-2901 et seq. (the “Act”), to enter into a design-build contract which is subject to qualification-based selection or a construction management at risk contract for wastewater and sewer construction projects and other projects authorized by the Formation Interlocal and in accordance with applicable law.

POLICY

It shall be the policy of the Agency that for any public facilities project in which the Agency wishes to use an alternative construction delivery system the Agency Board 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 Agency. The resolution shall require the affirmative vote of at least two-thirds of the Agency Board.

Nothing in the Act shall limit or reduce statutory or regulatory requirements regarding bonding or insurance.

DEFINITIONS

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

1) Agency: the Sarpy County and Cities Wastewater Agency created pursuant to that the Formation Interlocal by the authority granted under the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. 13-801, et seq.

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

3) Construction manager: The legal entity which proposes to enter into a construction management at risk contract pursuant to the Act.

4) Design-build contract: A contract which is subject to qualification-based selection between the Agency 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.

5) Design-builder: The legal entity which proposes to enter into a design-build contract which is subject to qualification-based selection pursuant to the Act.

6) Formation Interlocal: that certain Interlocal Agreement Creating the Sarpy County and Cities Wastewater Agency dated September 19, 2017, as amended, by and between Sarpy County, Nebraska and the Cities of Bellevue, Gretna, La Vista, Papillion, and Springfield.

7) Letter of interest: 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.

8) 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 Agency to assist the Agency 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.

9) 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: 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.

10) Proposal: 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 Act or (b) by a construction manager to enter into a construction management at risk contract for a project pursuant to the Act.

11) 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.

12) Request for letters of interest: the documentation or publication by which the Agency solicits letters of interest.

13) Request for proposals: the documentation by which the Agency solicits proposals.

PROCEDURES

PERFORMANCE-CRITERIA DEVELOPER CONTRACTS

The Agency, if wishing to select and hire a performance-criteria developer to assist the Agency 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 Agency 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 Agency, 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 Agency 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 Agency in consultation with the performance-criteria developer. The Agency shall select prospective design-builders in accordance with this policy and any procedures and standards adopted by the Agency. At least three (3) prospective design-builders shall be selected, except that if only two (2) design-builders have submitted letters of interest, the Agency 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 Agency 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 Agency 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 Agency intends to build the project and that the Agency Board will execute a design-build contract;
- 2) The policies adopted by the Agency Board 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 Agency;
- 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 Agency Board 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 Agency Board;

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 Agency chooses to require.

Proposal Evaluation/Contract Negotiations

Proposals for design-build contracts shall be evaluated in accordance with the “PROPOSAL EVALUATION” section set forth below in this policy.

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

If the Agency is unable to negotiate a satisfactory contract with any of the ranked design-builders, the Agency 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 Agency 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 Agency, 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 and shall pre-qualify construction managers at risk in accordance with this section. 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 Agency's Jurisdiction 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 Agency in consultation with the performance-criteria developer. The Agency shall select prospective construction managers in accordance with this policy and any procedures and standards adopted by the Agency. At least three (3) prospective construction managers shall be selected, except that if only two (2) construction managers have submitted letters of interest, the Agency shall select at least two (2). Selected construction managers shall then be considered pre-qualified and eligible to receive a request for proposal.

Request for Proposal

The Agency shall prepare a request for proposal for each construction management at risk contract. Construction managers shall submit proposals as required by the request for proposals as set forth below.

Notice of the request for proposal shall be published in a newspaper of general circulation within the Agency's Jurisdiction 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 Agency intends to build the project and that the Agency Board will execute a construction management at risk contract;
- 2) The policies adopted by the Agency Board to be used when executing a construction management at risk contract;
- 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 Agency;
- 5) General information about the project which will assist the Agency 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 Agency chooses to require.

Proposal Evaluation/Contract Negotiations

Proposals for construction management at risk contracts shall be evaluated in accordance with the "PROPOSAL EVALUATION" section set forth below in this policy.

The Agency 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 Agency is unable to negotiate a satisfactory contract with the highest ranked construction manager, the Agency may terminate negotiations with that construction manager. The Agency 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 Agency is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the Agency 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 Agency is unable to negotiate a satisfactory contract with any of the ranked construction managers, the Agency 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 Agency 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.

PROPOSAL EVALUATION

Proposals submitted for a design-build contract or construction management at risk contract delivery system 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 Agency shall have the right to reject any and all

proposals except for the purpose of evading the provisions and policies of the Act. The Agency may thereafter solicit new proposals using the same or different project performance criteria.

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

- 1) Members of the Agency Board,
- 2) The members of the administration or staff of the Agency,
- 3) The performance-criteria developer when evaluating proposals from design-builders under the Act or the Agency's architect or engineer when evaluating proposals from construction managers under the Act,
- 4) Any person having special expertise relevant to selection of a design-builder or construction manager under the Act, and
- 5) A resident of that resides within the Agency's Jurisdiction other than an individual listed above.

Any selection committee member designated under item "4" or "5" above 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 Agency or any of its Members or the performance-criteria developer.

The Agency 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 Agency 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 or construction manager to complete the project, ten percent (10%);
- 2) The ability of the proposed personnel of the design-builder or construction manager to perform, thirty percent (30%);
- 3) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder or construction manager, thirty percent (30%);
- 4) The quality of performance on previous projects, thirty percent (30%);
- 5) The ability of the design-builder or construction manager to perform within the time specified, thirty percent (30%);

6) The previous and existing compliance of the design-builder or construction manager 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 selection committee may interview any of the proposers if necessary in order for the selection committee to properly evaluate the proposals or any proposal. Advance notice of such interview date(s) and/or time(s) shall be provided to the subject proposer(s) and shall include reasonably sufficient time to prepare therefor.

The selection committee shall keep and maintain permanent records of the selection committee proceedings including, but not limited to, records of the minutes of meetings and documentation received or disclosed in open session of the meetings.

The selection committee shall appoint a committee member or Agency employee to keep the minutes of the selection committee meetings. The minutes of each meeting shall include, as a minimum, the following items: a record of the date, time, place, members present, action taken, and the vote of each member. The records of the selection committee in evaluation proposals and making recommendations shall be considered public records.

PROCEDURES FOR PROTESTS.

Disputes relating to the execution or solicitation of design-build or construction management at risk contracts shall be submitted to the Agency Administrator in writing. The Agency Administrator (or his/her designee) will, within ten (10) business days, meet with the protesting individuals or firms and attempt to resolve the issue. Within ten (10) business days after the meeting the Agency Administrator will issue a decision.

If the protesting parties are not satisfied with the decision, they can, in writing, ask for a meeting before a committee appointed by the Agency Board. This meeting will be scheduled within thirty (30) days of the written protest. The committee will hear the protest and issue a recommendation on the protest within thirty (30) days of the meeting. The Agency Board shall then vote on the committee recommendation at the next scheduled Agency Board meeting.