

1 **3042**

2 **Construction Management at Risk Contracts**

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4 This policy is adopted pursuant to the Political Subdivisions Construction
5 Alternatives Act (NEB. REV. STAT. § 13-2901 through § 13-2914).
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7 The board shall adopt a resolution by a two-thirds affirmative vote selecting
8 the construction management at risk contract delivery system prior to
9 proceeding with any of the steps involved with solicitation or execution of
10 any construction contract.
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12 **Definitions.** For purposes of this policy:

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14 1. Construction management at risk contract means a contract by
15 which a construction manager (a) assumes the legal
16 responsibility to deliver a construction project within a
17 contracted price to the school district, (b) acts as a construction
18 consultant to the school district during the design development
19 phase of the project when the school district's architect or
20 engineer designs the project, and (c) is the builder during the
21 construction phase of the project;
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23 2. Construction manager means the legal entity which proposes to
24 enter into a construction management at risk contract pursuant
25 to the Act;
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27 3. Proposal means an offer in response to a request for proposals
28 by a construction manager to enter into a construction
29 management at risk contract for a project pursuant to the act;
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31 4. Request for proposals means the documentation by which a
32 school district solicits proposals; and
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34 5. School district means Valentine Community Schools.
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36 **Procedures.**

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38 1. Procedures for the preparation and content of requests for
39 proposals shall include the following:
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41 A. At least thirty days prior to the deadline for receiving and
42 opening proposals, notice of the request for proposals shall
43 be published in a newspaper of general circulation within
44 the school district and filed with the State Department of

45 Education. The request for proposals shall contain, at a
46 minimum, the following elements:

- 47 1. The identity of the school district for which the
48 project will be built and the school district that will
49 execute the contract;
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- 51 2. Policies adopted by the school district pursuant to
52 the Act;
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- 54 3. The proposed terms and conditions of the contract,
55 including any terms and conditions which are subject
56 to further negotiation. The proposed general terms
57 and conditions shall be consistent with nationally
58 recognized model general terms and conditions
59 which are standard in the design and construction
60 industry in Nebraska. The proposed terms and
61 conditions may set forth an initial determination of
62 the manner by which the construction manager
63 selects any subcontractor and may require that any
64 work subcontracted be awarded by competitive
65 bidding;
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- 67 4. Any bonds and insurance required by law or as may
68 be additionally required by the school district;
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- 70 5. General information about the project which will
71 assist the school district in its selection of the
72 construction manager, including a project statement
73 which contains information about the scope and
74 nature of the project, the project site, the schedule,
75 and the estimated budget;
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- 77 6. The criteria for evaluation of proposals and the
78 relative weight of each criterion; and
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- 80 7. A description of any other information which the
81 school district chooses to require.
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84 2. Procedures for the preparation and submission of proposals by
85 the construction manager shall be determined on a project-by-
86 project basis and included within the requests for proposals.

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88 3. Procedures for evaluating requests for proposals submitted to

89 the school district by a construction manager shall include the
90 following:

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92 A. The school district shall refer the proposals for
93 recommendation to a selection committee. The selection
94 committee shall be a group of at least five persons
95 designated by the school district. Members of the
96 selection committee shall include (1) members of the
97 school board, (2) members of the school administration or
98 staff, (3) the school's architect or engineer (4) any person
99 having special expertise relevant to selection of a
100 construction manager under the Act, and (5) a resident of
101 the school district other than an individual included in
102 subdivisions (1) through (4) of this subsection. A member
103 of the selection committee designated under subdivision
104 (4) or (5) of this subsection shall not be employed by or
105 have a financial or other interest in a construction manager
106 who has a proposal being evaluated and shall not be
107 employed by the school district or the school's architect or
108 engineer.

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110 B. The selection committee and the school district shall
111 evaluate proposals taking into consideration the criteria
112 enumerated in subdivisions (1) through (7) of this
113 subsection with the maximum percentage of total points
114 for evaluation which may be assigned to each criterion set
115 forth following the criterion. (***)The percentages listed below must
116 be modified so that they add up to 100%. This can be done at the time the
117 school board designates the CM@R method for a specific project, or at a later
118 time but before the RFP is published and sent out.) The following
119 criteria shall be evaluated, when applicable:

- 120
121 (1) The financial resources of the construction manager
122 to complete the project **(up to ten percent)**;
- 123
124 (2) The ability of the proposed personnel of the
125 construction manager to perform **(up to thirty
126 percent)**;
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128 (3) The character, integrity, reputation, judgment,
129 experience, and efficiency of the construction
130 manager **(up to thirty percent)**;
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132 (4) The quality of performance on previous projects **(up**

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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 may 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

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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.
- 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

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selection of the construction manager. 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 detailed 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; and a list of all persons who have knowledge of facts relevant to the protest; and
- (5) The action(s) the protestor desires the school district to take to resolve the protest.

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 administrative review by the 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 create and deliver a Decision to the protestor within a reasonable time after the written protest was received. The Decision shall include a written summary of the Superintendent’s investigation and

265 a recommendation regarding the outcome of the protest.
266 The Decision shall (1) state the reasons for the action
267 taken, and (2) inform the interested party of their right to
268 the administrative review by the Board. A copy of the
269 Decision shall be mailed or otherwise furnished
270 immediately to the interested party and any other party
271 intervening protester and all other bidders. If not satisfied
272 with the decision of the Superintendent, any interested
273 party protester may appeal to the Board, but the decision
274 shall be final unless the interested party protester files a
275 timely appeal with the
276 Board.

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278 D. Board Appeal Procedures. Any interested party protester,
279 within five working days of receipt of a decision of the
280 Superintendent, may file with the Superintendent a written
281 notice of appeal for an administrative review before the
282 Board. The Notice of Appeal must clearly state the action
283 protested and the basis of appeal. The Board will conduct
284 an administrative review at its next regularly scheduled
285 meeting or at a special meeting. The school district board
286 of education shall consider the Decision of the
287 Superintendent and shall make the final decision on the
288 protest. The school district board of education's decision
289 shall be final.

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291 6. A construction management at risk contract may be conditioned
292 upon later refinements in scope and price and may permit the
293 school district in agreement with the construction manager to
294 make changes in the project without invalidating the contract.
295 Later refinements shall not exceed the scope of the project
296 statement contained in the request for proposals.

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298 **Prohibitions.** The school district shall not use a construction management
299 at risk contract for any construction project excluded by NEB. REV. STAT. §
300 13-2914 or any other applicable law.

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