

**PROPOSED AMENDMENT TO REGULATION GOVERNING THE AWARD AND REJECTION OF BIDS/OFFERS AND DEBARMENT OF CONTRACTORS FOR PUBLIC WORKS PROJECTS OF THE CITY OF ALBUQUERQUE TO PERMIT THE CONSTRUCTION MANAGER AT RISK AND DESIGN BUILD METHODOLOGIES FOR PUBLIC WORKS PROJECTS**

Section 3.5 is amended as follows:

- 3.5 Determination on Use of Methodologies: The Deputy Director will determine the appropriate methodology, for procurements managed by the CIP. The following methodologies may be used: Design Bid Build Delivery Method; Construction Manager at Risk Delivery Method; or Design Build Delivery Method.

Section 3.5.1 is replaced in its entirety as follows:

- 3.5.1 In selecting the appropriate methodology, the following requirements apply:

- 3.5.1.1 The determination on what methodology will be used for a specific Public Works Project shall be based on whether the proposed method is practicable and advantageous to the City.
- 3.5.1.2 The Design Build Delivery Method shall not be used for Public Works Projects estimated to cost less than five million dollars (\$5,000,000).
- 3.5.1.3 The Construction Manager at Risk Delivery Method shall not be used for Public Works Projects estimated to cost less than five million dollars (\$5,000,000), unless the CAO makes a written determination that use of such method for a project below that threshold is in the City's best interest.
- 3.5.1.4 The Construction Manager at Risk Delivery Method and the Design Build Delivery Method require the use of competitive sealed proposals.
- 3.5.1.5 For Design Bid Build Delivery Method projects, competitive sealed proposals may be used if the use of competitive sealed bids is either not practicable or advantageous to the City.

Section 3.5.3 is amended as follows:

3.5.3 The key element in determining an advantage to the City for purposes of whether to proceed with the use of competitive sealed proposals or competitive sealed bids under the Design Bid Build Delivery Method is the need for flexibility in selecting a Contractor. The competitive sealed proposal method differs from the competitive sealed bid method in significant ways, including but not limited to:

- 3.5.3.1 It permits interviews with competing offerors;
- 3.5.3.2 It allows comparative subjective evaluations to be made when selecting among acceptable proposals for award of a contract; and
- 3.5.3.3 It allows more extensive negotiations with the recommended offeror prior to final award.

Section 3.5.4 is amended as follows:

3.5.4 Factors which may, among others, be considered in the determination whether the use of competitive sealed proposals or competitive sealed bids is advantageous to the City are:

- 3.5.4.1 Specifications cannot be adequately prepared that permit the award on the basis of the lowest evaluated bid price;
- 3.5.4.2 The use of proposals would promote innovation, the use of state of the art technology or overall efficiencies to the benefit of the City;
- 3.5.4.3 The use of proposals would allow project schedule compression and concomitant savings; and
- 3.5.4.4 Evaluation of responsive offers is dependent on levels of performance, expertise, financial capability, approach to project, or other criteria and should not be based solely on lowest price alone.

Section 3.6 is added as follows:

- 3.6. Factors which may, among others, be considered in the determination of whether use of the Construction Manager at Risk or Design Build Delivery Methods is advantageous to the City are:
- 3.6.1 the size and cost of the project;
  - 3.6.2 the complexity of the project;
  - 3.6.3 project schedule;
  - 3.6.4 specialty skills needed for design, construction, or project oversight, and whether the City has inhouse expertise;
  - 3.6.5 the level of direct contact and control the City wants to maintain over the architectural and engineering Consultant; and
  - 3.6.6 the level of direct risk the City chooses to assume on the project.

Section 4.0, "DEFINITIONS," is amended as follows:

- 4.1 **CAO** means Chief Administrative Officer, Office of the Mayor, City of Albuquerque, or their designee.
- 4.2 **Construction Manager at Risk** means a person who, pursuant to a Contract with the City, provides the value engineering, pre-Construction Services, Construction Services, and Construction Management required in a Construction Manager at Risk Delivery Method project. Although the Construction Manager at Risk may be retained at any time, it is preferred that Construction Manager at Risk is retained early in the design process, usually at the schematic design phase.
- 4.3 **Construction Manager at Risk Delivery Method** means a project delivery method wherein a Construction Manager at Risk provides a range of value engineering services, pre-Construction Services (including cost estimation and consultation regarding the project design, scheduling, and cost control in accordance with the Maximum Allowable Construction Cost), Construction management services, and if acting as the general Contractor during Construction, details subcontractor scopes of work, enters into subcontracts, and provides Construction Services, all at a Guaranteed Maximum Price for which the Construction Manager at Risk is financially responsible. The CMAR may act as the general Contractor.

- 4.4 **Consultant** means the architect, engineer, landscape architect, or other professional person or firm who is responsible for the design of the Public Works Project or the construction inspection therefor or both. The Consultant may either be a City employee or a licensed professional person or firm with who the City has entered into an agreement to provide such services.
- 4.5 **Deputy Director** means the Deputy Director of the Department of Municipal Development, Engineering Group, or their designee or successor.
- 4.6 **Design Bid Build Delivery Method** means a project delivery method in which the City enters into separate contracts for design and construction of a Public Works Project. The Design Bid Build Method involves a linear process. The City will first select the Consultant through the Selection Advisory Committee Ordinance and Rules and Regulations, and once the design is complete through construction documents, the City will select a construction contractor pursuant to these Regulations.
- 4.7 **Design Build Delivery Method** means a project delivery method in which the City enters into a single contract for design and construction of a project. The Selection Advisory Committee Ordinance and Rules and Regulations govern the selection process for Design Build Contractors.
- 4.8 **Guaranteed Maximum Price** means the maximum amount to be paid by the City for the Construction of the project based on the agreed upon price for the scope of work included in the contract, including the cost of the work, the general conditions and the fees charged by the Construction Manager at Risk. Although the Construction Manager at Risk will have input into the design process and resulting estimated construction costs, the Construction Manager at Risk will not be responsible for determining the design costs, unless otherwise agreed.
- 4.9 **Maximum Allowable Construction Cost** means the total sum available for construction purposes and is set by the City.
- 4.10 **Offeror** means a business that submits a response to a competitive solicitation.
- 4.11 **Procurement Documents** means all documents, including those attached or incorporated by reference, utilized for soliciting bids or proposals for Public Works Projects.
- 4.12 **Public Works Project** means the constructing, altering, repairing, improving, or demolishing of any public structure, building, pipeline, drainage facility,

waste water treatment facility, water systems facility, or other public improvement of any kind to any public real property including airports, parks and streets, except the routine repair or maintenance thereof.

- 4.13 **Responsible Bidder** means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that the bidder's financial resources, appropriate licenses, machinery, plant and other equipment, personnel service reputation and experience are adequate to satisfactorily construct the Public Works project described in the Procurement Documents. A Contractor who is debarred under the procedures of Part II of this Regulation at the time they submit their Bid shall not be a Responsible Bidder.
- 4.14 **Responsible Offeror** means a business which has the capability in all respects to preform fully the contract requirements set out in the competitive solicitation, and the integrity and reliability which will assure good faith performance, and who has not violated or attempted to violate any provision of law or ethical conduct. Factors which may be considered in determining the offeror's capability to perform, among others, are its financial resources, production or service facilities, service reputation, and experience.
- 4.15 **Responsive Bid** means a bid which confirms in all material respects to the requirements set forth in the Procurement Documents.
- 4.16 **Responsive Offer** means a written offer to furnish goods, services, or construction in conformity with standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.

Section 5, "**ADVERTISING**," is amended so as to make the following additions to the third sentence:

At a minimum, the advertisement for bids or proposals shall specify the time and place for the receipt, opening and reading of the bids or receipt of proposals, the name and description of the Public Works Project, whether or not the Public Works Project will use the Design Bid Build Delivery Method or the Construction Manager at Risk Delivery Method, and the location where procurement documents may be obtained.

Section 10.0 shall be amended as follows:

10.1 Consideration of Bids

- 10.1.1 After the opening and reading of the bids, the Consultant shall review the bids for arithmetic accuracy, tabulate all bids (including costs of all alternates the City wishes to accept), review the bids for conformance and compliance with the requirements of the Procurement Documents, and make a tentative determination of the qualifications of the apparent low bidder to perform the work.
- 10.1.2 Alternates
- 10.1.2.1 The City shall include the ranking of Alternates in the Procurement Documents. Such ranking will typically be found in the Bid form but other formats are permissible. The term "Alternates" shall include additive, deductive and/or additive-deductive bid alternates.
- 10.1.2.2 When no alternates are to be accepted by the City, the award of bid shall be made to the Responsible Bidder submitting the lowest base bid, if the base bid is within the funds available for construction, and if the City determines that it will proceed with an award of the bid.
- 10.1.2.3 When Alternates are to be accepted by the City, the review of the bids by the Consultant, pursuant to Section 10.1 of this Regulation, shall include acceptance of alternates in the order in which they are listed in the Procurement Documents. Award of bid shall be made to the responsible bidder submitting the low combined bid which shall be the base bid and all accepted Alternates within the funds available for construction and if the City determines it will proceed with an award of bid.
- 10.1.2.4 Determination of the amount of funds available for construction shall be made by the City for all bid awards, whether Alternates are included or omitted, and such determination shall be final.
- 10.1.3 The Consultant shall submit a written recommendation of award of bid to the Deputy Director, together with the complete bid tabulation, including any deficiencies or discrepancies noted.

10.2 Evaluation of Proposals (except for Construction Manager at Risk Delivery and Design Build Delivery Methods)

- 10.2.1 The Mayor shall name an ad hoc advisory committee.
  - 10.2.1.1 A minimum of one member will be from the User department.
  - 10.2.1.2 The committee may include both City and non-City members.
  - 10.2.1.3 The CIP Division will be represented by a non-voting member designated by the Deputy Director to manage the procurement.
  - 10.2.1.4 The committee may include non-voting advisors to assist with the evaluation.
  - 10.2.1.5 All committee members shall sign a non-disclosure statement.
  
- 10.2.2 The evaluation shall be based on the evaluation factors and the relative weights set forth in the RFP. Numerical rating systems will be used unless waived by the Deputy Director. A written determination by the Deputy Director documenting the rationale for the waiver will become a part of the procurement file.
  
- 10.2.3 Interviews may be conducted with all offerors or only the short-listed offerors.
  
- 10.2.4 Before conducting interviews, a “short list” may be generated by conducting a preliminary scoring of proposals in accordance with the evaluation criteria set out in the RFP. The preliminary scoring may be based solely on the technical proposal. All responsive and responsible offerors who submitted proposals are eligible for the short list. Those responsive and responsible offerors who are selected for the short list are the “short-listed offerors”.
  
- 10.2.5 Interviews are held to:

- 10.2.5.1 Promote understanding of the City’s requirements and short-listed offerors’ proposals; and
    - 10.2.5.2 Facilitate arriving at a contract that will be most advantageous to the City, taking into consideration the evaluation factors set forth in the RFP.
  - 10.2.6 Short-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for interviews. The ad hoc advisory committee will establish the procedures and schedules for conducting interviews which shall be managed by the CIP Division representative. Any changes or clarifications required to the RFP as a result of the interviews will be transmitted to the CIP Division for development and distribution of an addendum to all offerors on the short-list. Any clarification requested by an offeror should be submitted in writing. Proposal changes shall not be permitted during interviews.
  - 10.2.7 The Deputy Director may permit the submittal of best and final offers from all offerors, or the short-listed offerors if short-listing has occurred, during evaluation of offers. Offerors shall be informed that if they do not submit a notice of withdrawal or a best and final offer, their immediately previous offer will be construed as their best and final offer.
- 10.3 Evaluation of Proposals – Construction Manager at Risk Delivery Method
- 10.3.1 The Mayor shall form an ad hoc committee of at least three members with at least one member being the City Architect or the Deputy Director for Engineering or their designee. The committee shall also include the Contract Specialist as a non-voting member. All committee members shall sign a non-disclosure statement.
  - 10.3.2 The ad hoc committee shall evaluate the submitted proposals and determine the offerors that qualify for the Construction Manager at Risk. The evaluation shall be based on the evaluation factors and the relative weights set forth in the RFP. Numerical rating systems will be used unless waived by the Deputy Director. A written determination by the Deputy Director documenting the rationale for the waiver will become a part of the procurement file.

- 10.3.3 The ad hoc committee shall interview up to three of the highest-ranked offerors. Interviews are held to:
  - 10.3.3.1 Promote understanding of the City's requirements and the offerors' proposals; and
  - 10.3.3.2 Facilitate arriving at a contract that will be most advantageous to the City, taking into consideration the evaluation factors set forth in the RFP.
- 10.3.4 Any changes or clarifications required to the RFP as a result of the interviews will be transmitted to the CIP Division for development and distribution of an addendum to all offerors selected for interviews. Any clarification requested by an offeror shall be submitted in writing. Proposal changes shall not be permitted during interviews.
- 10.3.5 In evaluating proposals and results of interviews, and in the final recommendation of a Construction Manager at Risk, the selection committee shall consider:
  - 10.3.5.1 the offeror's experience with construction of projects of similar size and scope;
  - 10.3.5.2 the qualifications and experience of the offeror's personnel and consultants and the role of each in the project;
  - 10.3.5.3 the plan for management actions to be undertaken on the project, including services to be rendered in connection with safety and the safety plan for the project;
  - 10.3.5.4 the offeror's experience with the Construction Manager at Risk Delivery Method;
  - 10.3.5.5 the offeror's performance under previous contracts with the City;
  - 10.3.5.6 the offeror's unit rate schedule with key personnel and unit rates, to be used until the Guaranteed Maximum Price is agreed upon;

10.3.5.7 the offeror's fees for previous Construction Management at Risk Delivery Method Projects of similar scope and size, and whether total costs exceeded the Guaranteed Maximum Price for those projects;

10.3.5.8 all other selection criteria, as stated in the RFP.

10.3.6 The ad hoc committee's recommendation of the offeror that will be most advantageous to the City shall be transmitted through the Contract Specialist to the Deputy Director, who will then make a recommendation to the CAO.

10.4 Evaluation of Design Build Proposals is governed by the SAC Ordinance and Regulations.

A new Section 13.4 shall be added as follows:

13.4 For Construction Manager at Risk Delivery Method Projects, upon completion of the design phase in its entirety or a portion of it, the contract with the Construction Manager at Risk shall be supplemented to specify the Guaranteed Maximum Price. The City shall negotiate the Guaranteed Maximum Price with the Construction Manager at Risk. The City may rely on a cost estimate prepared by an independent cost estimator in negotiating the GMP. If the City is unable to agree upon a GMP with the Construction Manager at Risk, the City may issue a request for bids or proposals pursuant to these regulations to select a contractor for the construction phase of the Project.