

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Engineering and Construction Management Department
AGENDA DATE: September 18, 2012

CONTACT PERSON/PHONE: R. Alan Shubert, 915-541-4423

DISTRICT AFFECTED: City Wide

SUBJECT:

Discussion and action approving a resolution that approves the City of El Paso Construction Manager-At-Risk Procurement Policy as an alternative construction project delivery method for the construction, rehabilitation, alteration, or repair of a facility as permitted by state law.

BACKGROUND / DISCUSSION:

State law allows the City to use the Construction Manager-at-Risk method for the design, construction, rehabilitation, alteration or repair of a facility (i.e. an improvement to real property also know as "vertical construction). As a project delivery system, Construction Manager-at-Risk allows the City, Construction Manager and Architect/Engineer to work as a unified team and has the potential to expedite construction schedules when established as the method that will produce the best value for a selected City project. The proposed resolution requests that the City Council formally approve the policy to utilize the Construction Manager-at-Risk method and specifies that the City Council must first authorize its use for a project. The proposed policy follows the latest statutory requirements.

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

BOARD / COMMISSION ACTION:

(N/A)

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____



Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, on July 20, 2004, the City Council adopted a resolution approving the use of alternate project delivery methods for construction projects pursuant to Section 271.113 of the Texas Local Government Code (now Section 2267 of the Texas Government Code);

WHEREAS, City staff has proposed that the Council adopt this resolution adding Construction Manager-at-Risk as an approved alternate project delivery method for construction projects and that the Council approve the Construction Manager-at-Risk Procurement Policy for City facilities, attached as *Exhibit A* to this Resolution, and designate the City Engineer to determine, before advertising, which alternative project delivery method for construction provides the best value to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City hereby adds Construction Manager-at-Risk as an alternate project delivery method for construction projects, adopts the City of El Paso Construction Manager-at-Risk Procurement Policy for City facilities which is attached hereto as *Exhibit A* and incorporated herein by reference, and designates the City Engineer to determine, before advertising, which alternative project delivery method for construction provides the best value to the City, provided that the Council shall approve the issuance of a Solicitation for any Design-Build project prior to its issuance.

ADOPTED this _____ day of _____, 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E. City Engineer
Engineering and Construction Management

EXHIBIT A

THE CITY OF EL PASO

CONSTRUCTION MANAGER-AT-RISK
PROCUREMENT POLICY

**CITY OF EL PASO
ENGINEERING & CONSTRUCTION MANAGEMENT DEPARTMENT
CONSTRUCTION MANAGER-AT-RISK PROCUREMENT POLICY**

I. Introduction

State law allows the City to use the Construction Manager-at-Risk method for the design, construction, rehabilitation, alteration, or repair of a facility (i.e. an improvement to real property aka “vertical” construction).

A Construction Manager-at-Risk selected for any City project serves as the general contractor and must be a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price and provides consultation to the City regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

The City will separately contract with an architect or engineer to prepare construction documents.

II. The Procurement Process

The City Engineer will determine, before advertising, which alternative project delivery method for construction provides the best value to the City. The City Council shall approve the issuance of a Solicitation for any Construction Manager-at-Risk project prior to its issuance. Following City Council approval of the Construction Manager-at-Risk method for a specific facility project, the City shall prepare a request for proposals (RFP) for the Construction Manager-at-Risk project. The Construction Manager-at-Risk will be selected via a one-step evaluation process pursuant to the Government Code Chapter 2267, Subchapter F.

Request for Proposals

1. The City shall prepare a single request for proposals (RFP) that includes at a minimum the following information:
 - a. Information on the project site
 - b. Scope of work
 - c. Estimated Budget
 - d. Schedule
 - e. Time and place for receipt of proposals
 - f. Proposed fees and prices for fulfilling the general conditions
 - g. That the City is using a one-step selection process
 - h. Other information that may assist the City in selection a Construction-Manager-at-Risk

The City may also request additional information - either as part of the initial RFP or as a part of the interview of the short - list of qualifying proposers relevant to the scoped project.

2. The RFP shall clearly identify the evaluation criteria and scoring system and relative weight thereof. The criteria shall be established to meet the specific needs of a particular project and will include the following evaluation factors:
 - a. The price
 - b. The proposer’s experience and reputation

- c. The quality of the proposer's goods or services
 - d. The impact on the ability of the City to comply with rules relating to historically underutilized businesses
 - e. The proposer's safety record
 - f. The proposer's proposed personnel
 - g. The health benefits proposer provides to its employees
 - h. Whether the proposer's financial capacity is appropriate to the size and scope of the scoped project
 - i. Any other relevant factor specifically listed in the RFP
3. Detailed instructions for preparing the RFP shall be formatted in the manner listed in the RFP instructions.
 4. The RFP shall include the following:
 - a. An executive summary outlining the proposed solution, firm's capability to obtain bonding and limits of bonding capacity, insurance and acceptance of the requirements and terms of the request. The Executive Summary will not exceed one (1) page in length and should not contain pricing information.
 - b. The proposer's experience
 - c. Fee Proposal, including:
 - i. Cost of onsite management, administrative personnel, insurance, bonds, equipment, utilities and incidental work, including minor field labor and materials and related services to be supplied or performed by the proposer (i.e. the General Conditions).
 - ii. Fee to be charged by the proposer as payment for overhead and profit in performing its construction manager services.
 - iii. Costs to include a lump sum fee for pre-construction services to aid the design team and project owners in developing plans, costs and schedule for the project. Standing meetings will be required throughout design, pre-construction process and construction of the project.
 5. Prior to the posted deadline for submittal of proposals, the City shall conduct an industry review workshop to be advertised on the RFP document.
 6. The City shall receive, publicly open and read aloud the names of proposers, fees and prices of any proposals submitted.
 7. The City staff shall review the proposals and submit a short-list of proposers that provide the best value to the City on the basis of the published selection criteria and its ranking evaluations to the City Engineer or designee.
 8. The City Engineer or designee shall receive and tabulate all score sheets based on the submitted proposals and the published selection criteria in the RFP document. Each proposer shall be ranked 1, 2, 3, etc. The sum of rankings shall be used as the official score to identify the short-list of the top-ranked proposers.
 9. The City Engineer or designee shall notify the top-ranked proposers (probably no more than 5) if the City's elects to interview the short-list proposers for final selection of a Construction Manager-at-Risk for the scoped project.
 10. Not later than the 45th day after opening the proposals, the City shall evaluate and score each response to the RFP and the results of any interview that City may conduct and will select the highest ranked Construction-Manager-at-Risk for the scoped project for contract negotiations.
 11. The City Engineer or designee shall notify the highest ranked Construction Manager-at-Risk proposer that the City will commence contract negotiations and schedule negotiating meetings as appropriate.

12. The City shall hold scoping meeting(s) and attempt to negotiate a contract with the selected firm.
13. If the City is unable to negotiate a satisfactory contract with the selected Construction Manager-at-Risk, the City shall, formally in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of selection ranking until a contract is reached or negotiations with all ranked firms end.
14. Any final Construction Manager-at-Risk contract shall be posted for the award of contract by the City Council and shall not be effective until the Council approves such contract and authorizes its execution.
15. All rankings of proposals submitted for Construction Manager-at-Risk shall be made public no later than the seventh day after the award of the contract.

III. Responsibilities of the City

1. On or before the selection of a Construction Manager-at-Risk, the City shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has the full responsibility for complying with Chapter 1001 or 1051 of the Occupations Code, as applicable.
 - a. If the engineer or architect is not a full-time employee of the City, the City shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004 of the Government Code.
 - b. The City's engineer, architect or construction manager-agent for a project may not serve, alone or in combination with another, as the Construction Manager-at-Risk unless the engineer or architect is hired to serve as the Construction Manager-at-Risk under a separate or concurrent procurement conducted according to the law.
2. The City shall provide or contract for independently of the Construction Manager-at-Risk the inspection services, testing of construction materials engineering and the verification testing services necessary for acceptance of the facility by the City. The City shall select those services for which it contracts with in accordance with Section 2254.004 of the Government Code.

IV. Selection Process for Trade Contractors and Subcontractors

1. The selected Construction Manager-at-Risk shall publicly advertise and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.
 - a. The selected Construction Manager-at-Risk may seek to perform portions of the work itself if the Construction Manager-at-Risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the City determines that the selected Construction Manager-at-Risk's bid or proposal provides the best value for the City.
2. The Construction Manager-at-Risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager-at-Risk, engineer, architect or governmental entity. A copy of all bids shall be provided to the City at the time received by the Construction Manager-at-Risk.
3. If the Construction Manager-at-Risk reviews, evaluates and recommends to the City a contractor or subcontractor but the City requires another bid or proposal to be

accepted, the City shall compensate the Construction Manager-at-Risk by a change in price, time or guaranteed maximum cost for any additional cost and risk that the Construction Manager-at-Risk may incur due to the City's requirement that another bid or proposal be accepted.

V. Trade Contractor or Subcontractor Default

If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager-at-Risk may, without advertising, fulfill the contract requirements itself or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

VI. Payment and Performance Bonds

1. If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the City must each be in an amount equal to the project budget, as specified in the request for proposals.
1. The Construction Manager-at-Risk shall deliver the bonds not later than the 10th day after the date the Construction Manager-at-Risk executes the contract unless the Construction Manager furnishes a bid bond or other financial security acceptable to the City to ensure that the Construction Manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.



Construction Manager-at-Risk Proposed COEP Procurement Policy



September 18, 2012



Overview

- Requesting City Council's approval of two resolutions to:
 - Adopt Procurement policy for Construction Manager-at-Risk (CMAR) as a method of construction procurement
 - Specifically authorize use of CMAR two-step process for Ballpark construction project
- Allows City Engineer to issue a Request for Qualifications followed by a Request for Proposals



Intent

- Responsive to consistent City Council direction to identify and implement a range of modernized procurement methods
 - Potential to reduce costs and construction schedules
 - Facilitate individual project needs while providing best value to the City
 - Address variant needs of projects planned and programmed for execution in the near and immediate horizon



Why Construction Manager-at-Risk?

- Ability to expedite construction schedule
 - Eliminates step of separate bidding process
- Requires an ongoing interactive approach
 - EX: Ballpark Project
 - COEP
 - Design Team
 - Construction Manager
 - Ownership Group
 - Concessionaire
 - Baseball Team



Why Construction Manager-at-Risk?

- Constructability reviews embedded in process
 - More flexibility to tailor project phasing
- Potential for change orders decreased



Purpose

- State law allows this method for design, construction, rehabilitation, alteration, or repair of a facility
 - Improvement to real property (“vertical” construction)
- CMAR serves as general contractor
 - Must be a sole proprietorship, partnership, corporation, or other legal entity
 - Assumes risk for construction, rehabilitation, alteration, or repair of a facility at contracted price
 - Provides consultation to the City regarding construction during and after the design of the facility
 - The contracted price may be a guaranteed maximum price
- The City will separately contract an architect or engineer to prepare construction documents



Required Authorizations

- The City Engineer will determine, before advertising, which alternative project delivery method for construction provides the best value to the City
- The City Council shall authorize the Construction Manager-at-Risk method for a specific facility project
- The City Council shall authorize the issuance of a Solicitation for any Construction Manager-at-Risk project prior to its issuance
 - Establishes if a one or two-step process will be used
- Any final contract shall be posted for the award of contract by the City Council
 - Shall not be effective until Council approves such contract and authorizes its execution



Process Overview

- The procedure for the selection of a Construction Manager-at-Risk can be a one or two-step process:
 - One-Step Process: ***Request for Proposals only***
 - Qualifications & cost evaluated to short-list
 - » Fewer than five selected
 - Fee is negotiated with top-ranked proposer
 - Two-Step Process: ***Initial Request for Qualifications followed by Request for Proposals***
 - Phase One- Request for Qualifications (RFQ) to short-list
 - » Cost can not be considered
 - » Fewer than five selected
 - Phase Two-Request for Proposal (RFP) based on fee proposal



Responsibilities of Construction Manager

- Shall publicly advertise and receive bids or proposals from trade contractors or subcontractors for performance of all major elements of the work
 - Does not include minor work included in general conditions
 - CMAR may seek to perform portions of work itself
 - A bid or proposal must be submitted in same manner as all other trade contractors or subcontractors
 - City must determine that the CMAR's bid or proposal provides the best value for the City



Evaluation Criteria

- Criteria established to meet specific project needs
- Will include the following evaluation factors:
 - The proposer's experience and reputation
 - The quality of the proposer's goods or services
 - Ability to comply with rules relating to historically underutilized businesses
 - The proposer's safety record
 - The proposer's proposed personnel
 - The health benefits proposer provides to its employees
 - Whether the proposer's financial capacity is appropriate to the size and scope of the scoped project
 - Any other relevant factor specifically listed



Overview-Recap

- Requesting City Council's approval of two resolutions to:
 - Adopt Procurement policy for Construction Manager-at-Risk (CMAR) as a method of construction procurement
 - Specifically authorize use of CMAR two-step process for Ballpark construction project
- Allows City Engineer to issue a Request for Qualifications followed by a Request for Proposals



Comments/Questions