

CHAPTER 4a – PROCUREMENT OF ALTERNATIVE PROJECT DELIVERY BUILDING CONSTRUCTION

- 1.0 Eligibility Requirements and Procedures for Alternative Project Delivery Building Construction
 - 1.1 A state agency, after evaluating the type of project contemplated and the alternative project delivery method desired for building construction, shall submit a written request including justification to the State Building Advisory Commission (SBAC) for review and approval.
 - 1.2 To be eligible to use an alternative project delivery building construction ([K.S.A. 75-75-37,141](#) et seq.) on state construction projects, the state agency requesting such delivery must demonstrate the project is appropriate for either a construction management at-risk or a design-build delivery method. The SBAC will consider the following factors:
 - 1.2.1 The likelihood that the alternative project delivery method of procurement selected will serve the public interest by providing substantial savings of time or money over the traditional design-bid-build delivery process.
 - 1.2.2 The ability to overlap design and construction phases is required to meet the needs of the end-user.
 - 1.2.3 The use of an accelerated schedule is required to make repairs resulting from an emergency situation.
 - 1.2.4 The project presents significant phasing or technical complexities, or both, requiring the use of an integrated team of designers and constructors to solve project challenges during the design or preconstruction phase.
 - 1.2.5 The use of an alternative project delivery method will not encourage favoritism in awarding the public contract or substantially diminish competition for the public contract.
 - 1.2.6 The ability of the state agency to fund the stipend offered to qualified design-build proposers.
 - 1.3 To be eligible for design-build services, a contractor must be pre-qualified by the Division of Facilities Management to do construction work for the State of Kansas. If the project requires architectural and/or engineering services, a professional, with general liability insurance, licensed by the Kansas Board of Technical Professions, must be part of the team. Eligibility requirements for construction management at-risk are dependent upon the scope of the project.
- 2.0 Annual Statement of Qualifications
 - 2.1 The Secretary of Administration annually encourages firms engaged in the lawful practice of design build or construction management at-risk to submit a statement of qualifications (SOQ) and performance data. A request for qualifications is published each December in the *Kansas Register* and is available on the DFM website at <http://da.ks.gov/fp/construction.htm>.
 - 2.2 The State of Kansas Professional Qualifications FPDC Form 050 to be used is available on the DFM website at www.da.ks.gov/fp/. The following minimum information is required. Supplemental information regarding each firm may also accompany the form.
 - 2.2.1 The firm's capacity and general experience, including specific roles on similar or related projects.
 - 2.2.2 The capabilities and other qualifications of the firm's personnel.

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- 2.3 For completing Form 050 use the information in Chapter 4, paragraph, 2.4, plus adjustments necessary to accurately and adequately state the qualifications of the design build team or the construction management firm.
 - 2.4 Each completed annual SOQ Form 050 and supplemental information received by DFM will be filed and made available to the SBAC and Negotiating Committees.
 - 2.5 Eligible firms, which have never sought State work, are encouraged to contact DFM regarding the State's eligibility, qualification, nomination and selection procedures and policies.
- 3.0 Announcement of Public Hearing on Proposed Alternative Project Delivery Building Construction
- 3.1 Upon receipt of a written program statement and draft advertisement from a state agency of a project which has been funded and approved by the Kansas Legislature, DFM will submit an advertisement to be published in the *Kansas Register* announcing the SBAC will hold a public hearing with opportunity of comments on the request for an alternative project delivery method. The notice shall be published at least 15 days prior to the hearing.
 - 3.2 If the SBAC determines the eligibility criteria for use of an alternative project delivery method is not met and the project does not qualify, the agency will be notified to use the traditional design-bid-build delivery method.
 - 3.3 If the SBAC determines the eligibility criteria for use of an alternative project delivery method is met, the agency will be notified they can proceed with the proposed alternative method of project delivery.
- 4.0 Announcement of Alternative Project Delivery Building Construction
- 4.1 Upon approval of the use of an alternative project delivery method, DFM will submit an advertisement to be published in the *Kansas Register* requesting proposals for the approved method from construction management at-risk or design-build firms interested in the project. The *Kansas Register* is the **official** publication where all requests for alternative delivery methods for state-funded building construction projects are announced.
 - 4.2 The *Kansas Register* is published every Thursday by the Kansas Secretary of State. The *Kansas Register* is available on line at http://www.kssos.org/pubs/pubs_kansas_register.asp and is available in many libraries throughout the state. Subscriptions to the *Kansas Register* may be obtained by contacting the Kansas Secretary of State on the internet at <http://www.kssos.org>, by e-mail at kansasregister@kssos.org, or by telephone at 785-296-3489.
- 5.0 SBAC Guidelines for Proposal Submittals
- 5.1 When requests for alternative project delivery services are advertised in the *Kansas Register*, all qualified firms are encouraged to submit proposals to the SBAC indicating their interest in being selected to provide the advertised services.
 - 5.2 Each proposal for advertised services shall consist of the following:
 - 5.2.1 A one-page letter of interest including a synopsis of qualifications; completed State of Kansas Capital Improvement Project Qualifications FPDC Forms 051, 052, 053, and 054; any photographs or information relevant to the advertised services; and information specifically requested in the advertisement FPDC Forms 051, 052, 053, and 054 can be altered to accommodate each firm's qualifications.

- 5.2.2 A maximum of forty (40) pages of **readable** surfaces, which may be double-sided. Double-sided proposals do **not** increase the forty (40) page readable surfaces limit. Covers, separation tabs and the Professional Qualification FPDC Form(s) 050 do not count toward the forty (40) page readable surface limit.
- 5.2.3 An **updated** State of Kansas Professional Qualifications FPDC Form 050, for each proposing firm and each consulting firm should be included at the end of each proposal.
- 5.3 Proposal Submittals for advertised services shall consist of the following:
 - 5.2.4 Five (5) sets of the proposal, each bound with a plastic or spiral binder, stapled, or submitted in a loose-leaf binder.
 - 5.2.5 **One** .PDF file of the entire proposal less than 7 MB in size.
 - 5.2.5.1 The .PDF file can be submitted either by e-mail to DFM or on a CD / DVD accompanying the five proposals. Do not provide .ZIP files.
- 5.3 For completing FPDC Forms 051, 052,053, and 054, use the information in Chapter 4, paragraph 4.2, 4.3 and 4.4.
- 5.4 DFM will receive, review and deliver all submittals to the SBAC. Improper and late submittals will be noted and delivered to the SBAC but may not receive consideration.
 - 5.6.1 Firms interested in tracking the delivery of their submittal should do so through their delivery service, not DFM.
 - 5.6.2 The SBAC requests an explanation for late submittals. A written letter or e-mail to DFM from the firm explaining why the submittal is late will be delivered to the SBAC.
- 6.0 Construction Management At-Risk Project Delivery Procedures
 - 6.1 General Information
 - 6.1.1 DFM shall determine the scope and level of detail required to permit qualified construction managers or general contractors to submit construction management at-risk proposals in accordance with the agency's proposal.
 - 6.1.2 Construction manager or general contractor shall be selected as early as during the schematic design phase and prior to completion of the construction documents phase.
 - 6.1.3 The project design professional may be employed or retained by the agency to assist in the construction manager at-risk selection process. The design professional shall be selected and contracted separately ([K.S.A. 75-1257](#)).
 - 6.1.4 DFM on behalf of the agency shall publish a notice of a request for Statement of Qualification (SOQ) and a Request for Proposal (RFP) for the required project services at least 15 days prior to the commencement of such requests in the *Kansas Register*. The notice shall include a description of the project, the procedures for submittal, the selection criteria to be used, the time and place and other specific instructions for the receipt of the proposals. Proposals not submitted in strict accordance with such instructions shall be subject to rejection.
 - 6.2 DFM shall solicit proposals on behalf of the agency in a three-stage qualifications-based selection process.

- 6.2.1 Phase I shall be the solicitation of qualifications and pre-qualifying a minimum of three but not more five construction managers or general contractors to advance to Phase II.
- 6.2.2 Phase II shall be the solicitation of a Request for Proposal (RFP) for the project.
- 6.2.3 Phase III shall include an interview with each proposer to present their qualifications and to answer questions.
- 6.3 Phase I Requirements. Submit a Statement of Qualifications (SOQ) with the following minimum information.
 - 6.3.1 Similar project experience.
 - 6.3.2 Experience in this type of project delivery system.
 - 6.3.3 Reference from design professionals and owners from previous projects.
 - 6.3.4 Description of the construction manager or general contractor project management approach.
 - 6.3.5 Financial statements may be required by the selected firm, pursuant to [K.S.A. 45-221\(a\)\(33\)](#).
 - 6.3.6 Bonding capacity, including providing a public works bond ([K.S.A. 60-1111](#)) and evidence of such bonding capacity submitted to SBAC with the SOQ. Failure to present such evidence will deem the firm as unqualified for selection under this subsection.
- 6.4 Phase II Process. Pre-qualified firms selected in Phase I shall receive a RFP requiring a more in-depth response including the following minimum information.
 - 6.4.1 Company overview.
 - 6.4.2 Experience or references, or both, relative to the project under consideration.
 - 6.4.3 Resumes of proposed project personnel.
 - 6.4.4 Overview of pre-construction services.
 - 6.4.5 Overview of construction planning.
 - 6.4.6 Proposed safety plan.
 - 6.4.7 Fees, including fees for pre-construction services, fees for general conditions, fees for overhead and profit, and fees for self-performed work.
- 6.5 Phase III Process
 - 6.5.1 Upon receipt of all proposals, the negotiating committee shall interview all proposers, allowing firms to present their proposed team members, qualifications, project plan, and to answer questions. Interview scores shall not account for more than 50% of the total possible score.

- 6.5.2 The negotiating committee shall select the firm providing the best value based on the proposal criteria and weighting factors identified by the agency in the RFP instructions to proposers to emphasize important elements of the project.
 - 6.5.3 The negotiating committee shall proceed to negotiate with and to enter into contract with the firm receiving the best total score to provide the construction management at-risk services.
 - 6.5.3.1 Negotiations procedure shall be the same process undertaken to contract with design professionals ([K.S.A. 75-1250](#)).
 - 6.5.3.2 Should the PNC be unable to negotiate a satisfactory contract with the firm scoring the best score, negotiations with that firm will terminate and the committee will begin negotiations with the firm with next best score.
 - 6.5.4 If the negotiating committee determines that it is not in the best interest of the agency to proceed with the project pursuant to the proposals offered, the committee shall reject all proposals. If all proposals are rejected, DFM may solicit new proposals using different design criteria, budget constraints, or qualifications.
 - 6.5.5 The contract to perform construction management at-risk (CM) services shall be prepared by the secretary of administration and entered into between the agency and the firm performing the services. A contract utilizing a cost-plus guaranteed maximum price shall return all savings under the guaranteed maximum to the agency.
- 6.6 Construction Phase Process
- 6.6.1 DFM shall publish a construction services bid notice in the *Kansas Register* and in such other appropriate manner for the construction manager as may be determined by the state agency.
 - 6.6.1.1 Each bid notice shall include the request for bids and other bidding information prepared by the CM and the agency with the assistance of DFM.
 - 6.6.1.2 Current statements of qualifications and performance data, along with all information and evaluations developed by the secretary of administration under K.S.A. 75-3783 of firms submitting bid proposals shall be made available to the construction manager and the agency. If a firm submitting a bid proposal fails to submit the requested information, such firm will be deemed unqualified for selection.
 - 6.6.1.3 The agency may allow the CM to self-perform construction services provided the CM submits a bid proposal under the same conditions as all other competing firms.
 - 6.6.1.4 The CM shall evaluate the bids to determine the lowest responsible bidder, except the agency and DFM shall determine the lowest responsible bidder for self-performed work.
 - 6.6.1.5 The CM will enter into a contract with each firm performing construction services for the project and make a public announcement of each firm selected.

7.0 Design-Build Project Delivery Procedures

7.1 General Information

- 7.1.1 DFM shall determine the scope and level of detail required to permit qualified persons to submit design-build proposals in accordance with the agency's request for proposal.
- 7.1.2 DFM on behalf of the agency shall publish a notice of a Request for Proposal (RFP) for the required project services at least 15 days prior to the commencement of such request in the *Kansas Register*. The notice shall include a description of the project, the procedures for submittal, the selection criteria to be used, the time and place and other specific instructions for the receipt of the proposals. Proposals not submitted in strict accordance with such instructions shall be subject to rejection.
- 7.1.3 Request for Proposal (RFP) shall be prepared by the agency containing the following minimum information.
 - 7.1.3.1 Procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards.
 - 7.1.3.2 Proposed terms and conditions of the design-build contract.
 - 7.1.3.3 Design criteria package.
 - 7.1.3.4 Description of drawings, specifications, or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the submittal that will be acceptable.
 - 7.1.3.5 Schedule for planned commencement and completion of the design-build contract.
 - 7.1.3.6 Budget limits for the design-build contract.
 - 7.1.3.7 Requirements, including any available ratings for security (bid) bonds, performance bonds, payment bonds, and insurance.
 - 7.1.3.8 Other information the agency chooses to supply, such as surveys, soil reports, drawings of existing structures, environmental studies, photographs, or references to public records.

7.2 SBAC shall evaluate submitted proposals as in accordance with the requirements of the RFP and as follows.

- 7.2.1 Assign points to each proposal in each Phase in accordance with the instructions of the RFP.
- 7.2.2 SBAC shall have discretion to disqualify any proposer that lacks the minimum qualifications required to perform the work.
- 7.2.3 Qualified proposers selected will proceed to Phase II of the selection process.
- 7.2.4 Proposers lacking the necessary qualifications shall not proceed to Phase II.
- 7.2.5 If three qualified proposers cannot be identified, the contracting process shall cease.

- 7.2.6 Price or fee shall not be considered as part of the Phase I prequalification criteria.
 - 7.2.7 Designers shall be evaluated in accordance with the requirements of [K.S.A. 74-7003](#).
 - 7.2.8 Points assigned in the Phase I evaluation process shall not carry forward to Phase II of the process.
 - 7.2.9 Qualified proposers shall be ranked on points given in Phases II and III only. The two-phase evaluation and scoring process shall be combined to determine the greatest value to the state agency.
- 7.3 DFM shall solicit proposals in a three-stage qualifications-based selection process.
- 7.3.1 Phase I shall be the solicitation of qualifications and pre-qualifying a minimum of three but not more five design-build teams to advance to Phase II.
 - 7.3.2 Phase II shall be the solicitation of a technical proposal including conceptual design for the project.
 - 7.3.3 Phase III shall be the proposal for the construction cost.
- 7.4 Phase I Requirements. Submit a Statement of Qualifications (SOQ) with the following minimum information.
- 7.4.1 Demonstrate ability to perform projects comparable in design, scope, and complexity.
 - 7.4.2 References from owners for whom building-design projects have been performed.
 - 7.4.3 Qualifications of personnel who will manage the design and the construction aspects of the project.
 - 7.4.4 Names and qualifications of the primary design consultants and contractors with whom the design-builder proposes to (sub) contract. Identified consultants or contractors may not be replaced without the written approval of the agency.
 - 7.4.5 Bonding capacity, including providing a public works bond ([K.S.A. 60-1111](#)) and evidence of such bonding capacity submitted to SBAC with the SOQ. Failure to present such evidence will deem the firm as unqualified for selection under this subsection.
- 7.5 Phase II Process. Pre-qualified firms selected in Phase I shall receive a RFP requiring their technical proposal and conceptual design for the project. Proposals for cost of construction shall also be required.
- 7.5.1 Proposals for Phase II and Phase III shall be submitted concurrently. Cost proposals shall be opened only after the design proposals have been evaluated and assigned points.
 - 7.5.2 Proposers shall submit their design for the project to the level of detail required in the RFP.
 - 7.5.3 Design submittal shall be evaluated and assigned points in accordance with the requirements of the RFP.

- 7.5.4 Maximum of 20% of the points awarded in Phase II may be based on proposer's qualifications and ability to design, construct, and deliver the project on time and within budget.
- 7.5.5 Design proposal shall not contain any reference to cost of the proposal.
- 7.6 Phase III Process
 - 7.6.1 Proposal for a firm fixed cost of construction shall be accompanied by bid security and any other submittals as required by the RFP.
 - 7.6.2 Proposed contract time, in calendar days, for completing the project as designed by the proposer shall be considered as an element of evaluation. The RFP shall establish any acceptable alternates to the design and corresponding contract time criteria. The RFP shall establish a user delay value for each calendar day.
 - 7.6.3 Cost and schedule proposals shall be submitted in accordance with the RFP. Failure to submit a cost proposal on time shall be cause to reject the proposal.
 - 7.6.4 Cost and schedule shall be opened and read aloud at the time and place specified in the RFP. Evaluation team shall make public its scoring of Phase II at the opening.
- 7.7 Selection Process
 - 7.7.1 Cost proposals shall be evaluated in accordance with the RFP. Each proposer's adjusted score shall be determined by adding Phase III cost proposal to the product of the proposed contract time and the user delay cost, and dividing that sum by the Phase II score.
 - 7.7.2 Responsive proposer with the lowest total number of points shall be awarded the contract.
 - 7.7.3 If DFM determines that it is not in the best interest of the agency to proceed with the project pursuant to the proposals offered by the proposer with the lowest total number of points, DFM shall reject all proposals. If all proposals are rejected, all qualified proposers with higher point totals shall receive a stipend and the proposer with the lowest number of points shall receive an amount equal to two times such stipend.
 - 7.7.4 If all proposals are rejected, DFM may solicit new proposals using different design criteria, budget constraints, or qualifications.
- 7.8 Stipend
 - 7.8.1 Agency shall pay a stipend as an inducement to qualified proposers for design-build proposals, to each pre-qualified proposer whose proposal is responsive but not accepted.
 - 7.8.2 Stipend amount shall be established in the RFP.
 - 7.8.3 Upon payment of the stipend to an unsuccessful design-build proposer, the state shall acquire a nonexclusive right to use the design submitted by the proposer. The proposer shall have no further liability for its use by the state in any manner.
 - 7.8.4 If proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

7.9 Record of Selection Process

7.9.1 Bids conforming to the terms of the advertisement for design-build services, together with the name of the bidders and with the successful bidder indicated, shall be recorded and made available to public inspection upon request after the letting of the bid.

7.9.2 DFM shall, within five days after award of the contract, publish the name of the successful bidder. The public notice shall show the phase II and III scores and the adjusted final score.

7.9.3 DFM shall, within five days after award of contract, have the names of all proposers whose bids were not selected, together with phase II and III scores and the final adjusted score for each, available for public review.

8.0 Kansas Open Records Act

8.1 Requests for copies of public records should be addressed in writing to the Director of Division of Facilities Management, 900 Jackson, Room 600, Topeka, Kansas 66612, in accordance with the Kansas Open Records Act (K.S.A. 42-15 et seq.) at <http://da.ks.gov/purch/KSOpenRecAct.doc>.

8.2 Advance payment of a fee is required to receive copies of public records.

8.3 When copies of project proposals received by DFM are requested, firms will be able to purchase paper copies or a CD / DVD from the State's contracted printing company after paying in advance.

8.4 Copies of the proposals will be available after a contract is signed between the selected firm and the Secretary of Administration.

9.0 Approval and Selection Process Outlines

9.1 Construction Management At-Risk

Activity	Time Sequence / Requirements	Target Week	Days Allocated	Actual Project Time Example	
Annual Statement of Qualifications (submit annually or for specific project)	January of each year	-	-		
PRE-PHASE - Project Approval/Disapproval (5 weeks / 35 days)	Agency submits to DFM written program and request to utilize Alt. Delivery Method	Minimum 1 week prior to SBAC meeting	-1	7	
	DFM / Agency drafts advertisement for public hearing regarding using CM At-Risk	Complete prior to SBAC meeting	-	-	
	SBAC establishes a date/time for public hearing at next scheduled meeting	Second Wednesday of each month	0	0	
	DFM submits advertisement to <i>Kansas Register</i>	NLT Wednesday of each week	-	-	
	Kansas Register published	Thursday following the Wednesday deadline	1	8	
	SBAC conducts public hearing (typically on date of and prior to next meeting)	Minimum 15 days after advertisement	4	20	
	SBAC determines if project meets criteria	Process continues - Yes/No	-	-	
PHASE I - SOQ & Nominations (6 weeks / 40 days)	DFM / Agency drafts advertisement for SOQ from CM At-Risk firms	Complete prior to ad submittal date	5	7	
	DFM / Agency drafts RFP for CM At-Risk firms	RFP can be written prior to SBAC nominations	-	-	
	DFM submits advertisement to <i>Kansas Register</i> to request SOQ	NLT Wednesday of each week	-	-	
	Kansas Register published	Thursday following the Wednesday deadline	6	8	
	Firms submit SOQ	Minimum 15 days after advertisement	8	15	
	SBAC receives proposals for review and nominations at next meeting	Minimum 10 days before 2nd Wednesday of month	10	10	
	Firms notified of selection	After meeting	-	-	
PHASE II - RFP (4 weeks / 30 days)	DFM / Agency prepares final RFP	RFP can be finalized earlier	-	-	
	DFM distributes RFP to nominated firms	Approved RFP available	-	-	
	Firms submit RFP	Minimum 30 days after advertisement	14	30	
PHASE III - Selection, Negotiation & Contract (5 weeks / 35 days)	PNC receives RFQ for review, interviews and selection	Time required depends on project complexity	15	7	
	PNC establishes interview dates and conducts interviews	Time required depends on availability of PNC & firms	16	7	
	PNC selects best value proposal and negotiates final contract	Time required depends on project complexity	17	7	
	DFM prepares contract		18	7	
	CM At-Risk & Agency sign contract	End of Process	19	7	
	CM At-Risk starts work	(20)	140		

9.2 Design Build

Activity	Time Sequence / Requirements	Target Week	Days Allocated	Example Actual Project Time	
Annual Statement of Qualifications (submit annually or for specific project)	January of each year	-	-		
PRE-PHASE - Project Approval/Disapproval (5 weeks / 35 days)	Agency submits to DFM written program and request to utilize Alt. Delivery Method	Minimum 1 week prior to SBAC meeting	-1	7	
	DFM / Agency drafts advertisement for public hearing regarding using Design-Build	Complete prior to SBAC meeting	-	-	
	SBAC establishes a date / time for public hearing at next scheduled meeting	Second Wednesday of each Month	0	0	
	DFM submits advertisement to <i>Kansas Register</i>	NLT Wednesday of each week	-	-	
	Kansas Register published	Thursday following the Wednesday deadline	1	8	
	SBAC conducts public hearing (typically on date of and prior to next meeting)	Minimum 15 days after advertisement	4	20	
	SBAC determines if project meets criteria	Process continues - Yes/No	-	-	
PHASE I - SOQ & Nominations (6 weeks / 40 days)	DFM / Agency drafts advertisement for SOQ from Design-Build firms	Complete prior to ad submittal date	5	7	
	DFM / Agency drafts RFP for Design-Build firms	FRP can be written prior to SBAC nominations	-	-	
	DFM submits advertisement to <i>Kansas Register</i> to request SOQ	NLT Wednesday of each week	-	-	
	Kansas Register published	Thursday following the Wednesday deadline	6	8	
	Firms submit SOQ	Minimum 15 days after advertisement	8	15	
	SBAC receives proposals for review and nominations at next meeting	Minimum 10 days before 2nd Wednesday of month	10	10	
	Firms notified of selection	After meeting	-	-	
PHASE II - RFP (6 weeks / 45 days)	DFM / Agency prepare final RFP	RFP can be finalized earlier	-	-	
	DFM distributes RFP to nominated firms	Approved RFP available	-	-	
	Firms submit RFP	Minimum 45 days after advertisement	16	45	
PHASE III - Selection, Negotiation & Contract (5 weeks / 35 days)	PNC receive RFQ for interviews and selection	Time required depends on project complexity	17	7	
	PNC establishes interview dates and conducts interviews	Time required depends on availability of PNC & firms	18	7	
	PNC selects best value proposal and negotiates final contract	Time required depends on project complexity	19	7	
	DFM prepares contract		20	7	
	Design-Builder & Agency sign contract	End of Process	21	7	
Design-Builder starts work	NTP issued	(22)	155		

END OF CHAPTER 4a