

## 2023 Kansas Statutes

**75-37,144. Same; construction management at-risk project delivery procedures.** Construction management at-risk project delivery procedures shall be conducted as follows:

(a) The director shall determine the scope and level of detail required to permit qualified construction manager or general contractors to submit construction management at-risk proposals in accordance with the request for proposals given the nature of the project.

(b) Prior to completion of the construction documents, but as early as during the schematic design phase, the construction manager or general contractor shall be selected. The project design professional may be employed or retained by the agency to assist in the selection process. The design professional shall be selected and its contract negotiated in compliance with K.S.A. 75-1257 and 75-5804, and amendments thereto.

(c) The agency shall publish a notice of the request for qualifications and proposals for the required project services at least 15 days prior to the commencement of such requests in the Kansas register in accordance with K.S.A. 75-430a, and amendments thereto, notify all active general contractor industry associations in the state of such request at the same time of the notice and publish in such other appropriate manner as may be determined by the agency.

(d) The director shall solicit proposals in a three stage qualifications based selection process. Phase I shall be the solicitation of qualifications and prequalifying a minimum of three but no more than five construction manager or general contractors to advance to phase II. Phase II shall be the solicitation of a request for proposal for the project, and phase III shall include an interview with each proposer to present their qualifications and answer questions.

(1) Phase I shall require all proposers to submit a statement of qualifications which shall include, but not be limited to:

- (A) Similar project experience;
- (B) experience in this type of project delivery system;
- (C) references from design professionals and owners from previous projects;
- (D) description of the construction manager or general contractor's project management approach;
- (E) financial statements; and
- (F) bonding capacity. Firms submitting a statement of qualifications shall be capable of providing a public works bond in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bonding capacity to the state building advisory commission with their statement of qualifications. If a firm fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection.

(2) The state building advisory commission shall evaluate the qualifications of all proposers in accordance with the instructions of the request for qualifications. The state building advisory commission shall prepare a short list containing a minimum of three and maximum of five qualified firms, which have the best and most relevant qualifications to perform the services required of the project, to participate in phase II of the selection process. If three qualified proposers cannot be identified, the selection process shall cease. The state building advisory commission shall have discretion to disqualify any proposer that, in the state building advisory commission's opinion, lacks the minimal qualifications required to perform the work.

(3) Phase II of the process shall be conducted as follows:

(A) Prequalified firms selected in phase I shall be given a request for proposal. The request for proposal shall require all proposers to submit a more in depth response including, but not be limited to:

- (i) Company overview;
- (ii) experience or references, or both, relative to the project under question;
- (iii) resumes of proposed project personnel;
- (iv) overview of preconstruction services;
- (v) overview of construction planning; and
- (vi) proposed safety plan.

(B) All proposers shall submit proposed fees, in a format required by the department of administration including fees for preconstruction services, fees for general conditions, fees for overhead and profit and fees for self-performed work, if any, directly and only to the secretary of administration. The secretary of administration shall consider and make recommendations to the negotiating committee on the fees. The recommendations of the secretary of administration to the negotiating committee shall be open for public view. The scores on fees shall not account for more than 25% of the total possible score.

(4) Phase III shall be conducted as follows:

(A) Once all proposals have been submitted, the negotiating committee shall interview all of the proposers, allowing the competing 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.

(B) The negotiating committee shall select the firm providing the best value based on the proposal criteria, weighting factors utilized to emphasize important elements of each project and recommendation of the secretary of administration. All scoring criteria and weighting factors shall be identified by the agency in the request for proposal instructions to proposers. The negotiating committee shall proceed to negotiate with and attempt to enter into contract with the firm receiving the best total score to serve as the construction manager or general contractor for the project. The negotiations shall proceed in accordance with the same process with which negotiations are undertaken to contract with design professionals under K.S.A. 75-1250 and 75-5804, and amendments thereto, to the extent that such provisions are consistent with this act. Should the negotiating committee be unable to negotiate a satisfactory contract with the firm scoring the best total score, negotiations with that firm shall be terminated, and the committee shall undertake negotiations with the firm with the next best total score, in accordance with this act.

(C) 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 negotiating committee shall reject all proposals. If all proposals are rejected, the director may solicit new proposals using different design criteria, budget constraints or qualifications.

(D) The contract to perform construction management at-risk services for a project shall be prepared by the secretary of administration and entered into between the agency and the firm performing such construction management at-risk services. A construction management at-risk contract utilizing a cost plus guaranteed maximum price contract value shall return all savings under the guaranteed maximum price to the agency.

(E) The director shall publish a construction services bid notice in the Kansas register and in such other appropriate manner for the construction manager or general contractor as may be determined by the state agency. Each construction services bid notice shall include the request for bids and other bidding information prepared by the construction manager or general contractor and the state agency with the assistance of the division of facilities management. The current statements of qualifications of and performance data on the firms submitting bid proposals shall be made available to the construction manager or general contractor and the state agency by the state building advisory commission along with all information and evaluations developed regarding such firms by the secretary of administration under K.S.A. 75-3783, and amendments thereto. The agency may allow the construction manager or general contractor to self-perform construction services provided the construction manager or general contractor submits a bid proposal under the same conditions as all other competing firms. If a firm submitting a bid proposal fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection. At the time for opening the bids, the construction manager or general contractor shall evaluate the bids and shall determine the lowest responsible bidder except in the case of self-performed work for which the agency and the department of administration shall determine the lowest responsible bidder. The construction manager or general contractor shall enter into a contract with each firm performing the construction services for the project and make a public announcement of each firm selected in accordance with this subsection.

**History:** L. 2006, ch. 80, § 4; L. 2015, ch. 11, § 3; July 1.