

## ATTACHMENT A

### **Ozarks Technical Community College Pre-Established Criteria for Construction Management and Design Build Construction Projects**

Pursuant to Revised Statute of Missouri Section 8.250(3), Ozarks Technical Community College, as an “agency of the state” per Chapter 8 R.S.Mo., establishes the following criteria for its use with certain construction projects.

- (I) Ozarks Technical Community College (“OTC”) may require prequalification of bidders when the construction project to be bid:
  - a. Is highly specialized as to the work to be performed;
  - b. Requires significant experience in the method of construction specified;
  - c. Requires specialized equipment and experience with such equipment;
  - d. Requires specific expertise in the installation of sophisticated equipment, systems or controls;
  - e. Requires a minimum level of training or certification from specified equipment manufacturers;
  - f. Must be completed within a critical time frame; or
  - g. Requires higher than “industry standard” quality control.
  
- (II) The OTC Director shall select those projects for which pre-qualification of bidders is appropriate. The pre-qualification process shall be a one-step process. OTC shall prepare a request for qualifications or proposals for specific selected projects. Notice of the request for qualifications or proposals shall be advertised in accordance with Section 8.250, RSMo Supp. 2007. OTC shall publish a notice of the request for qualifications or proposals with a description of the project, the rationale for the decision to pre-qualify bidders, the procedures for submittal and the selection criteria to be used, which may include, but is not necessarily limited to:
  - a. Experience of the bidder with similar projects;
  - b. Experience of key personnel proposed for project;
  - c. List of recent projects of similar scope and value;
  - d. Bonding capacity;
  - e. List of specific equipment available to bidder;
  - f. References;
  - g. Safety records;

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- h. Previous project completion schedules;
  - i. Previous project contract change rates; and
  - j. Qualifications of subcontractors proposed for specified areas of work.
- (III) An evaluation team shall be elected by the director to evaluate the qualifications submitted by all potential bidders. The team shall consist of at least three (3) representatives of OTC.
- a. The evaluation team shall review the submittals of the potential bidders and assign points to each submittal in accordance with the criteria established for the project and as set out in the instructions of the request for qualifications.
  - b. All potential bidders obtaining a pre-determined number of points shall be pre-qualified to submit a bid on the project on a date specified.
  - c. Only bids from pre-qualified bidders will be accepted and opened. Bid evaluation shall be on the basis of the lowest, responsive, responsible bidder.
- (IV) Definitions:
- a. “Best value performance based contracting,” a project procurement method that allows OTC to consider factors in addition to price, such as, past performance, risk assessment and designer/contractor interviews when selecting a designer/contractor. The process uses performance information to select the best value designer/contractor in conjunction with price proposals;
  - b. “Competitive bid,” a process of advertising for bids in accordance with section 8.250, RMSo or solicitation of bids from a minimum of three (3) contractors in which an award is based on the lowest responsive, responsible bid or other pre-established criteria where cost is a factor;
  - c. “Construction manager-at-risk (CMar),” a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at a guaranteed maximum price (GMP) as a construction manager and provides consultation to the Architect/Engineer and OTC regarding construction during and after the design of the facility;
  - d. “Design-build,” a project for which the design and construction services are furnished under one contract;
  - e. “Design-build contract,” a contract between OTC and a design-builder, to furnish the architecture or engineering and related design services required for a given public construction project and to furnish the labor, materials, and other construction services for the same public project;

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- f. “Design-builder,” any individual, partnership, joint venture, corporation, or other legal entity that furnishes the architectural or engineering services and construction services, whether itself or through subcontracts;
- g. “Design criteria consultant,” a person, corporation, partnership, or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to Chapter 27, RSMo, and who is employed by contract to OTC to provide professional design and administrative services in connection with the preparation of the design criteria package;
- h. “Design criteria package,” performance-oriented program, scope and specifications for the public construction project sufficient to permit a design-builder to prepare a response to OTC’s request for proposals for a design-build project;
- i. “Design services,,: services that are:
  - 1. Within the practice of professional engineering as defined in section 327.181, RSMo or the practice of architecture as defined in section 327.091, RSMo;
  - 2. Performed by a registered architect or professional engineer in connection with the architect’s or professional engineer’s employment or practice;
- j. “Director,” the Vice Chancellor of Administrative Services for OTC;
- k. “OTC,” Ozarks Technical Community College;
- l. “Evaluation team,” a group of people selected by the director to evaluate the proposals of the offerors responding to an RFP. The team shall consist of the director, the College Architect on staff at OTC and at least one (1) other representative;
- m. “Job order contracting (JOC),” is a firm fixed priced competitively bid procurement process with an indefinite quantity for small to medium sized construction and repair projects with the allowable size established by statute;
- n. “Proposal,” an offer to enter into a design-build or construction manager-at-risk contract;
- o. “Construction project,” the process of designing, constructing, reconstructing, altering or renovating an OTC-owned building, structure, facility or lot;
- p. “Request for proposals,” (RFP) the document by which OTC solicits proposals for a design-build or a construction manager-at-risk contract; and
- q. “Stipend,” an amount paid to the unsuccessful offerors to defray the cost of submission of phase II of the design-build or CMar proposal.

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- (V) The director shall select those projects for which the use of the design/bid/build, design-build procurement, job order contracting, construction management agency or construction manager-at-risk process is appropriate. In making that determination, the director shall consider:
- a. The likelihood of whether either method of procurement will serve the public interest by providing substantial savings of time or money over the traditional design/bid/build delivery process;
  - b. The time available to complete the project and meet the needs of OTC and any need to expedite the delivery process;
  - c. The type of project and its suitability of either method;
  - d. The size of the project; and
  - e. The availability of OTC staff to manage the project.
- (VI) Best Value Performance Based Contracting.
- a. OTC may use the best value performance based contracting method for a project when it is determined necessary to have higher than minimum standard performance and quality within a highly defined schedule and budget. In using this method, OTC shall follow the procedures prescribed by this chapter.
  - b. Best value performance based contracts may be a multi-phased procurement process consisting of the evaluation of proposers based on:
    1. Past performance information
    2. Experience;
    3. References;
    4. Current capacity—
      - A. Risk assessment plan;
      - B. Interviews of staff, subconsultants and subcontractors; and
      - C. Schedule; and
    5. Bid proposal (except for consultant selections).
  - c. Past performance experience, references may account for twenty to forty percent (20-40%) of the evaluation; current capacity may account for thirty to fifty percent (30-50%) of the evaluation and cost may account for twenty to forty percent (20-40%) of the evaluation, except when consultants are selected and cost is not a factor, in which case, past performance, experience, references and current capacity will account for one hundred percent (100%) of evaluation.
  - d. A request for proposals shall be prepared for each best value performance based contract containing, at a minimum the following elements:

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1. The procedures to be followed for submitted proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;
  2. The procedures for obtaining the plans and specifications for the project;
  3. A schedule of the planned commencement and completion of the contract;
  4. Budget limits of the contract; and
  5. Affirmative action and minority or women's business enterprise requirements for the contract.
- e. Notice of request for proposals shall be advertised in accordance with state statute.
  - f. The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with the instructions of the request for proposals.
  - g. Sealed cost proposals shall be submitted in accordance with the instructions of the request for proposal and publicly opened as set forth in the request for proposal, except for consultant selections.
  - h. OTC may require offerors to submit additional information related to contract planning and performance after the intent to award notification but prior to award of the contract.
  - i. OTC may reject an offeror's proposal and rescind the intent to award if the additional information is inadequate or not provided within the time established in the request for proposal.
  - j. OTC may move to the next highest scoring proposer or reject all proposals and solicit new proposals following the procedures for this method of procurement.

### (VII) Construction Management Agency

- a. As provided in sections 8.675 to 8.687, RSMo Supp. 2007.

### (VIII) Construction Manager-at-Risk

- a. OTC may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, OTC shall follow the procedures prescribed by this section.
- b. Before or concurrently with selecting a construction manager-at-risk, OTC shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with all state laws, as applicable. If the engineer or architect is not a full-time employee

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of OTC, OTC shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by sections 8.285 or 8.291, RSMo. OTC's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk. This subsection does not prohibit an OTC engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

- c. OTC may provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by OTC.
- d. OTC shall select the construction manager-at-risk in either a one (1)-step or two (2)-step process. OTC shall prepare a request for proposals, in the case of a one (1)-step process, or a request for qualifications, in the case of a two (2)-step process, that includes general information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one (1)-step process or two (2)-step process; and other information that may assist OTC in its selection of a construction manager-at-risk. OTC shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one (1)-step process is used, OTC may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two (2)-step process is used, OTC may not request fees or prices in step one. In step two, OTC may request that five (5) or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions. By either method, past performance, experience, references and capacity shall account for a minimum of sixty percent (60%) of the evaluation. Cost shall account for a maximum of forty percent (40%) of the evaluation.
- e. OTC shall publish the request for qualifications in a manner prescribed by OTC.
- f. At each step, OTC shall receive, publicly open, and read aloud the names of offerors. Within forty-five (45) days after the date of opening the proposals, OTC or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.
- g. OTC or its representative shall select the offeror that submits the proposal that offers the best value for OTC based on the published selection criteria and on its ranking evaluation. OTC or its representative shall first attempt to negotiate a contract with the selected offeror. If OTC or its representative is unable to negotiate a satisfactory contract with the selected offeror, OTC or its representative shall, formally and in writing, end negotiations with that offeror

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and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

- h. A construction manager-at-risk shall publicly advertise, in the manner prescribed by Chapter 8, RSMo 2000, 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 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 OTC determines that the construction manager-at-risk's bid or proposal provides the best value for OTC.
- i. The construction manager-at-risk and OTC or its representative shall review all trade contractors or subcontractors 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 OTC. All bids or proposals shall be made public after the award of the contract or within seven (7) days after the date of final selection of bids and proposals, whichever is later.
- j. If the construction manager-at-risk reviews, evaluates, and recommends to OTC a bid or proposal from a trade contractor or subcontractor but OTC requires another bid or proposal to be accepted, OTC may 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 because of OTC's requirement that another bid or proposal be accepted.
- k. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.
- l. 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 OTC must each be in an amount equal to the project budget, as set forth in the request for qualifications. The construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to OTC to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.

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### (IX) Design-Build.

- a. If a design-build process is selected, the director shall determine the scope and level of detail required to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the project.
- b. A design criteria consultant may be employed or retained by OTC to assist in preparation of the request for proposal, perform periodic site visits, prepare progress reports, review, and approve progress and final pay applications of the design-builder, review shop drawings and submittals, decide disputes, interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections and to provide any other professional service where the director deems it to be in the public interest to have an independent design professional assisting with the project administration. The consultant shall be selected and its contract negotiated in compliance with sections 8.285 to 8.291, RSMo Supp. 2007.
- c. Notice of requests for proposals shall be advertised in accordance with section 8.250, RSMo Supp. 2007. OTC shall publish a notice of a request for proposal with a description of the project, the rationale for the decision to use the design-build method of procurement, the procedures for submittal and the selection criteria to be used.
- d. The director shall establish in the request for proposal a time, place, and other specific instructions for the receipt of proposal. Proposals not submitted in strict accordance with those instructions shall be subject to rejection.
- e. A request for proposals shall be prepared for each design-build contract containing at minimum the following elements:
  1. The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;
  2. The proposed terms and conditions for the design-build contract;
  3. The design criteria package;
  4. A description of the drawings, specifications, or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or other information that will be acceptable;
  5. A schedule for planned commencement and completion of the design-build contract;
  6. Budget limits for the design-build contract, if any;



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7. Affirmative action and minority or women business enterprise requirements for the design-build contract, if any;
  8. Requirements including any available ratings for performance bonds, payment bonds, and insurance; and
  9. Any other information that OTC in its discretion chooses to supply, including, without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs, or references to public records, or affirmative action and minority business enterprise requirements consistent with state and federal law.
- f. The director shall solicit proposals in a three (3)-stage process. Phase I shall be the solicitation of qualifications of the design build team. Phase II shall be the solicitation of a technical proposal including conceptual design for the project, and phase III shall be the proposal of the construction cost.
- g. The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with this document and as set out in the instructions of the request for proposal.
- h. Phase I shall require all proposers to submit statement of qualification which shall include, but not be limited to:
1. Demonstrated ability to perform projects comparable in design, scope, and complexity;
  2. References of owners for whom design-build projects have been performed;
  3. Qualifications of personnel who will manage the design and construction aspects of the project; and
  4. The names and qualifications of the primary design consultants and the contractors with whom the design-builder proposes to subcontract. The design-builder may not replace an identified subcontractor or subconsultant without the written approval of the director.
- j. The evaluation team shall evaluate the qualifications of all proposers in accordance with the instructions of the request for proposal. Architectural and engineering services on the project shall be evaluated in accordance with the requirements of sections 8.285 and 8.291, RSMo. Qualified proposers selected by the evaluation team may proceed to phase II of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to phase II of the process. Under no circumstances shall price or fee be a part of the prequalification criteria. Points assigned in the phase I

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evaluation process shall not carry forward to phase II of the process. All qualified proposers shall be ranked on points given in phases II and III only.

- k. The director shall have discretion to disqualify any proposer, which in the director's opinion, lacks the minimal qualifications required to perform the work.
- l. Once a sufficient number of qualified proposers have been selected, the proposers shall have a specified amount of time with which to assemble phase II and phase III proposals.
- m. Phase II of the process shall be conducted as follows:
  - 1. The director shall invite the top qualified proposers to participate in phase II of the process;
  - 2. Proposers must submit their design for the project to the level of detail required in the request for proposal. The design proposal should demonstrate compliance with the requirements set out in the request for proposal;
  - 3. The ability of the proposer to meet the schedule for completing a project as specified by the owner may be considered as an element of evaluation in phase II;
  - 4. Up to twenty percent (20%) of the points awarded to each proposer in phase II may be based on each proposer's qualifications and ability to design, contract, and deliver the project on time and within budget of the Office of Administration;
  - 5. Under no circumstances should the design proposal contain any reference to the cost of the proposal; and
  - 6. The design submittals will be evaluated and assigned points in accordance with the requirements of the request for proposal. Phase II shall account for no less than forty percent (40%) of the total point score as specified in the request for proposal.
- n. Phase III shall be conducted as follows:
  - 1. The phase III proposal must provide a firm, fixed cost of construction. The proposal must be accompanied by bid security and any other required submittals, such as statements of minority participation as required by the request for proposal;
  - 2. Cost proposals must be submitted in accordance with the instructions of the request for proposal. The director shall reject any proposal that is not

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submitted on time. Phase III shall account for not less than forty percent (40%) of the total point score as specified in the request for proposal;

3. Proposals for phase II and phase III shall be submitted concurrently at the time and place specified in the request for proposal. The phase III cost proposals shall be opened only after the phase II design proposals have been evaluated and assigned points;
  4. Cost proposals will be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team will make public its scoring of phase II. Cost proposals will be evaluated in accordance with the requirements of the request for proposal. In evaluating the cost proposals, the low bidder shall be awarded the total number of points assigned to be awarded in phase III. For all other bidders, cost points will be calculated by reducing the maximum points available in phase III by two percent (2%) or more for each percentage point of the low bid by which the bidder exceeds the low bid and the points assigned will be added to the points assigned for phase II for each proposer;
  5. If the director determines that it is not in the best interest of OTC to proceed with the project pursuant to the proposal offered by the proposer with the highest total number of points, the director shall reject all proposals. In such event, all qualified proposers with lower point totals shall receive a stipend and the proposer with the highest total number of points shall receive an amount equal to two (2) times such stipend. If the director determines to award the project, the responsive proposer with the highest number of points shall be awarded the contract; and
  6. If all proposals are rejected, the director may solicit new proposals using different design criteria, budget constraints or qualifications.
    - o. As an inducement to qualified proposers, OTC may pay a reasonable stipend, the amount of which shall be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted. Upon payment of the stipend to any unsuccessful design-build proposer, OTC shall acquire a nonexclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by OTC in any manner. If the design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.
- (X) Job Order Contracting (JOC).
- a. OTC may award JOC for the maintenance, construction, repair, rehabilitation, renovation or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks.

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- b. OTC may establish contractual unit prices for a JOC by:
  - 1. Specifying one (1) or more published construction unit price books and the applicable divisions or line items; or
  - 2. Providing a list of work items and requiring the offerors to bid or propose one (1) or more coefficients or multipliers to be applied to the price book or work items as the price proposal.
- c. OTC shall advertise for, receive, and publicly open sealed proposals for JOC.
- d. OTC may require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.
- e. OTC may award JOC to one (1) or more contractors in connection with each solicitation of bids or proposals.
- f. An order for a job or project under the JOC must be signed by OTC's Director and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.
- g. The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.
- h. The base term of a JOC is for the period and with any renewal options that OTC sets forth in the request for proposals. The base term may not exceed two (2) years and is not renewable without further advertisement and solicitation of proposals.
- i. If a JOC or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering or the practice of architecture, those services shall be provided in accordance with applicable law.