

Resolution 21-113

A Resolution Establishing Procedures for City of Brookings Construction Manager-At-Risk Projects

Be It Resolved by the City Council of the City of Brookings, South Dakota as follows:

Section 1. Purpose

In order to comply with State law requirements for construction manager-at-risk ("CMAR") projects, the City of Brookings adopts these procedures and will select CMAR firms to provide construction management services for authorized projects in accordance with the following procedures:

Section 2. Findings and Determinations

The City of Brookings makes the following determinations:

- a. It is in the City's interest to utilize the services of a construction manager for the renovation or replacement of the Brookings Police Department Building; and
- b. That the construction management services would not unreasonably duplicate and would be in addition to the normal scope of separate architect or engineer contracts concerning the renovation or replacement of the Brookings Police Department Building; and
- c. The construction manager shall be a CMAR and be solicited through a qualification-based request for proposals method of procurement as provided in SDCL § 5-18B-44. The CMAR, for any actual construction contracted by the CMAR to be performed on the project shall provide payment and performance bonds and competitive bids for the work as required by any statute governing bidding and bonding for public improvement projects.

Section 3. Definitions

For purposes of these procedures, the following definitions apply:

- a. "City" means the City of Brookings.
- b. "CMAR" means construction manager-at-risk
- c. "Department" is defined as any department of the City of Brookings, including the Swiftel Center.
- d. "Firm" is defined as any individual, firm, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice construction contracting in the State of South Dakota.
- e. "Project" is defined as that project described in the public announcement.

Section 4. Minimum Qualification Requirements for Firms Providing CMAR Services

Firms providing CMAR services shall be registered with the Department of Revenue prior to contract award. Where required by State law, the CMAR shall be able to provide construction management services by licensed or registered individuals.

Section 5. Public Announcement Procedures

Except in emergency situations, the Department will publish an announcement in accordance with SDCL §5-18B-1. The announcement will set forth a general description of the project requiring construction management services and will define the time frame and procedures for interested qualified firms to apply for consideration. The public announcement will further state whether construction management firms will be pre-qualified for the project.

Section 6. Request for Proposals

(1) The City will prepare a Request for Proposal ("RFP"). The RFP developer may be either a private firm retained by the City or may be a staff member of the City. The RFP developer is prohibited from being part of the bidding entity. The RFP may include the following:

- Background and Description of the project
- Preliminary Project Schedule
- Outline of CMAR Best Value selection process and timeline
- Detailed description of the scope of services for each phase of the project
- RFP evaluation criteria and requirements of RFP response

(2) The purpose of the RFP is to furnish sufficient information for firms to prepare qualitative proposals and price proposals. The firm submitting the successful proposal shall develop a detailed proposal based on the criteria in the RFP. All Requests for Proposals shall also comply with the City's Purchasing Policy Guide.

Section 7. Evaluation Criteria for Shortlisting Construction Management Firms

The City's selection committee will review proposals from all candidate firms and shortlist no more than three firms who will be invited to be interviewed. Shortlisting will be based the following qualifications:

- a. Company background
- b. Applicable and relevant experience and education of proposed key team members
- c. Team / personnel experience working together and on similar projects
- d. Project approach including working in South Dakota on CMAR projects for public sector clients
- e. Demonstrated knowledge of the local and regional subcontractor market

To be considered for the shortlist selection, the firm must demonstrate the ability to provide a performance and payment bond as described in the RFP.

Section 8: Criteria for Selecting Construction Manager Firm

The City's selection committee will rely on the information contained and presented in the proposals, interviews, and reference checks in making the decision to select the best value and the most qualified firm to provide services for this project. Selection criteria will be based on:

- a. Experience, qualifications, and availability of proposed team leaders
- b. Broader team structure

- c. History of project team working together
- d. Technical work process
- e. Proposal, interview and response
- f. Price Proposal

Section 9. Construction Manager-at-Risk Proposal Requirements

(1) The RFP shall outline proposal submittal requirements including but limited to the following:

- a. Letter signed by an individual authorized to commit the proposed team to the scope of work proposed consortiums, joint ventures, or teams submitting proposals must establish contractual responsibility solely with one company or one legal entity. Each submittal should indicate the entity responsible for execution on behalf of the proposal team.
- b. Identification of proposed team members with proposed roles and responsibilities.
- c. Project approach and management capabilities.
- d. Relevant project experience
- e. Statement from a surety company authorized to do business in South Dakota indicating the firm(s) bonding capacity and ability to obtain a performance and payment bond in the amount specified in the RFP.
- f. Certification statement that proposal response will remain in effect for 30 days, and all representations stated in the Response to RFP are true and accurate, and acknowledge that all costs associated with preparation of the Response to RFP will be the responsibility of the proposing CMAR.

(2) Each firm submitting a proposal shall submit a Qualitative Proposal and a Price Proposal. Proposals shall be segmented into two packages;

Qualitative Proposal. A qualitative proposal shall include management plan, schedule, and other data requested in response to the RFP. Qualitative proposals shall be submitted in a sealed package, which identifies the project and the construction management firm on the outside of the package. Each firm shall place the words "QUALITATIVE PROPOSAL" on the outside of the package.

Price Proposal. Price proposals shall include CMAR fee per phase of the project, a detailed description of management staff general conditions, a detailed description of certain reimbursable general conditions and other cost related questions that pertain the performance of the requested scope of services. Each firm shall submit its price proposal in a separate sealed package. Each firm shall place the words "PRICE PROPOSAL" on the outside of the package.

Section 10. Negotiating Owner / Construction Manager at Risk Agreement and Preservation of Confidential Information

The procedures for negotiations between the City of Brookings and those submitting proposals prior to the acceptance of a proposal are as follows:

Upon completion of the interviews, the firms will be ranked. The City will start negotiations of the contract with the highest-ranking firm. If an agreement for services cannot be reached with the highest ranked firm, the City will move to the second ranked firm. The same process will be repeated with the other ranked firms if no such agreement can be reached. The City reserves the right to not select a firm as part of this process if an agreement cannot be reached with the interviewed firms.

The procedures shall also contain safeguards to preserve confidential information and proprietary information supplied by those submitting proposals consistent with §5-18B-34, which are as follows:

Until a proposal is accepted, information in the proposal remain the property of the person making the proposal. The City will make reasonable efforts to maintain the secrecy and confidentiality of any proposal and all information contained in any proposal and the City will not disclose any proposal or the information contained in a proposal to the CMAR's competitors. The City will not disclose, except as may be permitted pursuant to Chapter 1-27, confidential and proprietary information contained in any proposal to the public until such time as the City takes final action to accept a proposal.

Section 11. Emergency Procedures

The procedures for awarding construction management firm contracts in the event of public emergencies as defined in § 5-18A-9 are as follows:

The City may make an emergency procurement without advertising the procurement if there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. An emergency procurement will be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor will be included in the contract file.

Passed and approved on the 14th day of December, 2021.

CITY OF BROOKINGS, SD

Oepke G. Niemeyer, Mayor

ATTEST:

Bonnie Foster, City Clerk