

**POLICIES  
AND  
PROCEDURES  
FOR  
DESIGN – BUILD  
&  
CONSTRUCTION MANAGEMENT AT RISK  
CONTRACTS**

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# CITY OF FREMONT, NEBRASKA

## A. PURPOSE

The purpose of the following is to propagate policies and procedures to allow the City of Fremont to be compliant with the Political Subdivision Construction Alternatives Act (§ 13-2901), to enter into a design-build contract which is subject to qualification-based selection, or a construction management at risk contract for public contracts.

## **B. Establish Construction Delivery Method**

1. Adopt Resolution selecting preferred construction delivery system
  - a. Design-Build contract, or
  - b. Construction Management at Risk contract
2. Must be affirmative vote of at least 2/3 of governing body
  - a. If Design-Build, proceed to Section C
  - b. If Construction Management at Risk, proceed to Section H

### *Definitions:*

**Design-Build contract** means a contract which is subject to qualifications-based selection between a City of Fremont and a design-builder to furnish:

- a) architectural, engineering and related design services for a project pursuant to the act
- b) labor, materials, supplies, equipment, and construction services for a project pursuant to the act.

**Design-Builder** means the legal entity which proposes to enter into a design-build contract which is subject to qualifications-based selection pursuant to the act.

**Construction Management at Risk contract** means a contract by which a construction manager:

- a) assumes the legal responsibility to deliver a construction project within a contracted price to the City of Fremont
- b) acts as a construction consultant to the City of Fremont during the design development phase of the project when the City of Fremont's architect or engineer designs the project
- c) is the builder during the construction phase of the project.

**Construction Manager** means the legal entity which proposes to enter into a construction management at risk contract pursuant to the act.

### *Resources:*

- Definitions of delivery systems, Neb. Rev. Stat. § 13-2903

## **C. Selection of Performance Criteria Developer (PCD)**

1. Selection to be consistent with Nebraska Consultants' Competitive Negotiation Act (81-1701-1721)
  - a. PCD is ineligible to be included as a provider of any services in a proposal for the project on which it has acted as PCD, and
  - b. Is not employed by or does not have a financial or other interest in a design-builder or construction manager who will submit a proposal

### *Definitions:*

**Performance Criteria Developer (PCD)** means any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineers and Architects Regulation Act who is selected by a political subdivision to assist the political subdivision in the development of project performance criteria, requests for proposals, evaluation of proposals, evaluation of construction under a design-build contract to determine adherence to the performance criteria, and any additional services requested by the political subdivision to represent its interests in relation to a project.

**Project Performance Criteria** means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements include the following, if required by the project: capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the project.

### 2. The Performance-Criteria Developer

The Performance Criteria Developer will be the City Engineer. If the City Engineer is not designated as the PCD, the PCD will be selected in accordance with Resolution R98-128 if the estimated PCD fees are over \$10,000. If the fees are under \$10,000 the PCD will be selected by the City Engineer and City Administrator.

### *Resources:*

- Sample RFP for Performance Criteria Developer (See Exhibit 1)
- Nebraska Consultants' Competitive Negotiation Act (81-1701-1721)

## D. Prequalification of Design-Builder

1. Prepare a Request for Letters of Interest
  - a. Describe project in sufficient detail to permit a design-builder to submit a letter of interest
  - b. Request for Letters of Interest shall be
    - i. Published in the Fremont Tribune at least 30 days prior to the deadline for receiving letters of interest and sent by first-class mail to any design-builder on request form (See Exhibit 2.1)
  - c. Letters of Interest shall be reviewed by the City of Fremont in consultation with the performance-criteria developer
  - d. Select prospective design-builders in accordance with procedures and standards of the City of Fremont and pursuant to Neb. Rev. Stat. § 13-2905 and 13-2908 (See Exhibit 2.2)
  - e. The City of Fremont shall select at least three prospective design-builders
    - i. Except that if only two have submitted, the City shall select two prospective design-builders.
  - f. The selected design-builders shall be considered pre-qualified and eligible to receive requests for proposals

### **Definitions:**

**Letter of Interest** means a statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to Neb. Rev. Stat. § 13-2903

**Request for Letters of Interest** means the documentation or publication by which a political subdivision solicits letters of interest.

### **Resources:**

- Sample Letter of Interest (See Exhibit 2)
- Performance criteria prepared by the Performance Criteria Developer, Budget and Schedule Parameters and Bond & Insurance required by law or political subdivision (See Exhibit 3.1)

## **E. Request for Proposals for Design-Build Contract**

1. The Request for Proposal (RFP) shall contain at a minimum the requirements of Neb. Rev. Stat. § 13-2907 (See Exhibit 3)
2. Notice of the RFP's shall be published in the Fremont Tribune at least thirty days prior to the deadline for receiving and opening proposals. (See Exhibit 3.1a)

### *Definitions:*

**Proposal** means an offer in response to a request for proposals:

- a) by a design-builder to enter into a design-build contract for a project pursuant to the Act
- b) by a construction manager to enter into a construction management at risk contract for a project pursuant to the act.

**Request for Proposals (RFP)** means the documentation by which the City of Fremont solicits proposals.

### *Resources:*

- Sample Request for Proposal for Design-Builder (See Exhibit 3)
- Performance criteria prepared by the Performance Criteria Developer, Budget and Schedule Parameters and Bond & Insurance required by law or political subdivision (See Exhibit 3.1.)

## **F. Evaluation of Proposals for Design-Build Contracts**

1. The City of Fremont shall refer the proposals for recommendation to a selection committee composed of a group of at least seven persons designated by the City of Fremont. Members of the committee shall include:
  - a. One member of the City Council
  - b. City Administrator
  - c. The Performance Criteria Developer
  - d. City Engineer
  - e. Department head responsible for the project after it is constructed
  - f. Any person having special expertise relevant to selection of a design-builder
  - g. A resident of the City of Fremont other than individuals listed aboveA member of the selection committee designated under subdivision (f) and (g) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.
2. The selection committee and the political subdivision shall evaluate proposals taking into consideration the criteria listed in Neb. Rev. Stat. § 13-2911 (See criteria weighting list Exhibit 3.3)
3. The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of 84-712.01.

### *Resources:*

- Evaluation Criteria List (See Exhibit 3.3)

## **G. Negotiation Process for Design-Build Contracts**

1. The RFP shall be sent only to the prequalified design-builders
2. The City of Fremont may only proceed to negotiate and enter into a design-build contract if there are at least two proposals from pre-qualified design-builders
3. Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the RFP
4. Proposals may be withdrawn at any time prior to acceptance. The City of Fremont shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Political subdivisions Policy act. The City of Fremont may thereafter solicit new proposals using the same or a different project performance criteria
5. The City of Fremont shall rank in order of preference the design-builders pursuant to the criteria in the RFP and taking into consideration the recommendation of the selection committee pursuant to Neb. Rev. Stat. § 13-2911
6. The City of Fremont may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the political subdivision and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the design-builder selects a subcontractor
7. If the City of Fremont is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the City of Fremont may terminate negotiations with that design-builder. The City of Fremont may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations.
8. If the City of Fremont is unable to negotiate a satisfactory design-build contract with the second highest ranked design-builder, the City of Fremont may terminate negotiations with that design-builder. The City of Fremont may then undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.
9. If the City of Fremont is unable to negotiate a satisfactory contract with any of the ranked design-builders, the City of Fremont may either revise the RFP and solicit new proposals or cancel the design-build process under the act.

### *Resources:*

- Evaluation Criteria List (See Exhibit 3.3)
- Process for evaluation of proposals (See Exhibit 3.2)
- Terms and conditions of the Design-Build contract (See Exhibit 3.4)
- Sample: **AIA A141- 2004, Agreement Between Owner and Design Builder**
- Sample: **ConsensusDOCS 400, 410 or 415 - Preliminary Owner/Design-Builder Agreement & General Conditions**
- Sample: **EJCDC D-510 or 520, Standard Form of Agreement Between Owner & Design/Builder for Preliminary Services**

## **H. Evaluation of Proposals for Construction Management at Risk Contracts**

1. The City of Fremont shall refer the proposals for recommendation to a selection committee composed of a group of at least six persons designated by the City of Fremont. Members of the committee shall include:
  - a. One member of the City Council of the City of Fremont
  - b. City Administrator
  - c. The City of Fremont's Engineer
  - d. Department head responsible for the project after it is completed
  - e. Any person having special expertise relevant to selection of a construction manager
  - f. A resident of the City of Fremont other than individuals listed aboveA member of the selection committee designated under subdivision (e) and (f) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.
2. The selection committee and the political subdivision shall evaluate proposals taking into consideration the criteria listed in Neb. Rev. Stat. § 13-2911. (See criteria weighting list Exhibit 4.3)
3. The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of 84-711.01.

### *Resources:*

- Evaluation Criteria List (See Exhibit 4.3)
- Process for receipt and evaluation of proposals for the CM@R contact (See Exhibit 4.2)

## I. Request for Proposals for Construction Management at Risk Contract

1. The Request for Proposal (RFP) shall contain at a minimum the requirements of Neb. Rev. Stat. 13 § 13-2909. (See Exhibit 4)
2. Notice of the RFP's shall be published in the Fremont Tribune at least thirty days prior to the deadline for receiving and opening proposals

### *Definitions:*

**Proposal** means an offer in response to a request for proposals:

- a) by a design-builder to enter into a design-build contract for a project pursuant to the Act
- b) by a construction manager to enter into a construction management at risk contract for a project pursuant to the act.

**Request for Proposals (RFP)** means the documentation by which a political subdivision solicits proposals.

### *Resources:*

Sample Request for Proposal (See Exhibit 4)

## **J. Negotiation Process for Construction Management at Risk Contracts**

1. The City of Fremont shall evaluate and rank each proposal on the basis of best meeting the criteria in the RFP's advertisement taking into consideration the recommendation of the selection committee pursuant to Neb. Rev. Stat. § 13-2911.
2. The City of Fremont shall attempt to negotiate a construction management at risk contract with the highest ranked construction manager and may enter into a construction management at risk contract after negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor.
3. If the City of Fremont is unable to negotiate a satisfactory contract with the first highest ranked construction manager, the City of Fremont may undertake negotiations with the next highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.
4. If the City of Fremont is unable to negotiate a satisfactory contract with any of the ranked construction managers, the City of Fremont may either revise the RFP and solicit new proposals or cancel the construction management at risk process under Act.

### ***Definitions:***

**Qualifications-based Selection Process** means a process of selecting a Construction Manager at Risk based first on the qualifications of the Construction Manager's proposed approach to the design and construction of the project.

### ***Resources:***

- Evaluation Criteria List (See Exhibit 4.3)
- Sample: **AIA A133 - 2009, Standard Form of Agreement Between Owner and Construction Manager at Risk where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**
- Sample: **ConsensusDOCS 500, Owner/Contractor Agreement/General Conditions (Guaranteed Maximum Price)**

## **K. Miscellaneous Provisions**

1. A design-build contract and a construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the City of Fremont in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract. Later refinements under this section shall not exceed the scope of the project statement contained in the RFP's pursuant to Neb. Rev. Stat. § 13-2907 or 13-2909.
2. Nothing in the Act shall limit or reduce statutory or regulatory requirements regarding bonding or insurance.
3. A City of Fremont shall not use a design-build or construction management at risk contract for a project in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction.

## EXHIBITS

EXHIBIT	NAME
1	Selection of Performance Criteria Developer (PCD)
2	Sample Letter of Interest for Design-Builder Contract
3	Sample Request for Proposal for Design-Builder Contract
4	Sample Request for Proposal for Construction Management at Risk Contract

**EXHIBIT 1**

**SAMPLE REQUEST FOR PROPOSAL (RFP)  
FOR SELECTION OF A  
PERFORMANCE CRITERIA DEVELOPER**

## **EXHIBIT 1**

### **REQUEST FOR PROPOSAL (RFP) FOR SELECTION OF A PERFORMANCE CRITERIA DEVELOPER**

The City of Fremont is requesting proposals from Performance Criteria Developers (PCD's) for [name of Project]. The PCD will be providing pre-design and consulting services to City of Fremont defining certain criteria to be provided to potential Design-Builders in their development of proposals for a Design-Build contract, and in providing consulting services to City of Fremont in the interests of the Project. The requirements of service as a PCD are pursuant to Nebraska LB 889 (2008) Political Subdivision Construction Alternative s Act.

The scope of the Project is [describe the intended end product, not the PCD's services, e.g. *The City of Fremont, Nebraska intends to construct a new city hall to replace the existing facility consisting of City offices, council chambers, conference rooms, lobby, public restrooms and support spaces, etc.*]

The services to be provided by the PCD include: [select or augment services requested and add special services as required]

- o Facility program including, capacity, durability, standards, ingress/egress requirements, interior space requirements, material quality standards, description of the site, surveys, soil and environmental information concerning the site, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, and applicable governmental code requirements
- o Assist the City of Fremont in establishing design and construction schedules
- o Assist the City of Fremont in establishing a project budget
- o Assist the City of Fremont in preparation of Design-Builder Requests for Proposal
- o Assist the City of Fremont in evaluation of Design-Builder proposals
- o Assist the City of Fremont in evaluation of construction under a Design-Builder contract to determine adherence to the performance criteria
- o Additional services requested by the City of Fremont

The PCD must be a person licensed or an organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineering and Architects Regulation Act.

The PCD will be ineligible to be included as a provider of any services in a Design-Builder proposal for the project, and the PCD shall not be employed by, or have a financial or other interest in a Design-Builder who will submit a proposal.

Submittal Requirements:

PCD Firm Information:

- Firm name, address, phone, fax and email
- Name of primary point of contact
- Proof of liability insurance

PCD Experience

- Resume of individual(s) providing PCD services
  - o Role
  - o Education
  - o Professional registration
  - o Years of experience
  - o List of 5 relevant projects on which the PCD provided pre-design services similar to those requested in this RFP. Provide project scope, budget, and year completed. Provide graphics or photos if available
  - o List of 3 client references (organization, name, address, phone, fax and e-mail) who have utilized your pre-design services
- Subconsultants
  - o The PCD shall list subconsultants, if any, including their role and any previous projects with the PCD.

PCD's Approach

- Briefly describe the PCD's approach in working with (City of Fremont) to develop the performance criteria for the project

PCD Fee Structure

- Describe the firm's methodology for pricing the scope of services for this project.

Point of Contact is \_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone #

\_\_\_\_\_  
Address

Submit 6 (six) copies of the proposal to The Fremont City Clerk, 400 East Military Avenue, Fremont, Nebraska

By

\_\_\_\_\_  
(date and time)

**EXHIBIT 2**

**SAMPLE**

**REQUEST FOR LETTERS OF INTEREST**

**FOR**

**PREQUALIFICATION OF DESIGN-**

**BUILDER**

## EXHIBIT 2

### REQUEST FOR LETTERS OF INTEREST FOR PREQUALIFICATION OF DESIGN-BUILDER

The City of Fremont is requesting Letters of Interest from prospective Design-Builders for [name of Project]. The information provided in the Letter of Interest will be used by the City of Fremont to select (prequalify) at least three prospective Design-Builders and they will be eligible to receive Requests for Proposals. If only two Design-Builders submit Letters of Interest, both will receive the Requests for Proposals. Those firms selected to receive Request for Proposals will be required to provide more detailed qualifying information per requirements of the act.

The Design-Builder ultimately selected by the City of Fremont will enter into a Design-Build contract with the City of Fremont to furnish a) architectural, engineering and related design services for the Project and b) labor, material, supplies, equipment, and construction services for the Project. This process is pursuant to Nebraska LB 889, Political Subdivision Construction Alternatives Act.

The scope of the Project is [e.g. *The City of Fremont, Nebraska intends to construct a new-city hall to replace the existing facility consisting of City offices, council chambers, conference rooms, lobby, public restrooms and support spaces, etc... with a projected budget of \$ \_\_\_\_\_]*

Prospective Design-Builders shall respond to all items in this questionnaire. Failure to do so will deem the Letter of Interest nonresponsive at the discretion of the City of Fremont. If the prospective Design-Builder team is a prime contractor-subcontractor relationship or joint venture, both entities must complete their relevant information on the questionnaire.

#### Submittal Requirements:

1. Design-Builder Firm Information:
  - a. Firm name, address, phone, fax and e-mail
  - b. Name of primary point of contact
  - c. Proof of bonding capacity and insurance coverage
2. Design-Builder's Subconsultant(s) Firm Information (If the Design-Builder is a contractor, then list the architectural-engineering team. If the Design-Builder is an Architect or Engineer, then list the general contractor):
  - a. Firm names, addresses, phone, fax and email addresses
  - b. Name of primary point of contact
  - c. Proof of liability insurance
3. Design-Builder Team and Experience
  - a. Resume of key team members (Project Manager, Project Superintendent, Design Architect or Engineer)
    - i. Name and title
    - ii. Role in the project
    - iii. Education
    - iv. Professional registration
    - v. Years of experience

b. List of three relevant projects on which the Design-Builder provided design and/or construction services similar to those requested in this RFP. Provide project scope, budget, year completed and form of project delivery (Design-Build, Design-Bid-Build, or Construction Management at Risk). Provide graphics or photos if available. Also, list client references for each of the three projects (organization, contact name, address, phone, fax and email).

i. If the Design-Builder subcontracts for design or construction services, list three relevant projects of the designer or contractor and information requested in paragraph above.

4. Design Builder's Approach

a. Briefly describe the Design-Builder's approach in working with the City of Fremont to design and build the proposed project.

5. Point of Contact is:

\_\_\_\_\_ Name

\_\_\_\_\_ Telephone Number

\_\_\_\_\_ Address

Submit 6 (Six) copies of the Letter of Interest to Fremont City Clerk, 400 East Military Avenue, Fremont, NE 68025

by \_\_\_\_\_  
date and time

Signed for [City of Fremont]



## **EXHIBIT 2.2**

### **PROCEDURE FOR PREQUALIFYING DESIGN BUILDERS AND CONSTRUCTION MANAGERS**

The Selection Committee for the city to prequalify design-builders and construction managers will consist of the following;

1. City Administrator
2. City Engineer
3. Performance Criteria Developer (for Design-Build)
4. Department head responsible for the project after it is constructed
5. One member of the City Council
6. Any person with special expertise relevant to selection of a design-builder or construction manager.
7. Resident of the City of Fremont other than individuals listed above

The Selection Committee will prequalify the design-builder or construction manager based upon the attached evaluation sheet, if more than five (5) valid Letters of Interest are received.

**EXHIBIT 2.2A**  
**PREQUALIFICATION EVALUATION SHEET**

1) \_\_\_\_\_  
*Project* *Design-Build Firm/Construction Manager*

2) \_\_\_\_\_  
*Address*

Score each Design-Build firm or Construction Manager in the six categories listed below. Score each category from 1 (lowest) to 10 (highest).

Each category is weighted equally.

Item	Criterion	Score
1	Completeness of submittal	
2	The ability of the proposed personnel of the design-builder/ construction manager to perform	
3	The character, integrity, reputation, judgment, experience and efficiency of the design builder/construction manager	
4	The quality of performance on previous projects	
5	Experience of design-builder/construction manager	
6	Approach of design-builder/construction manager to working with city to complete the project	

Total Score \_\_\_\_\_

\_\_\_\_\_  
 Scorer's Name

**EXHIBIT 3**

**SAMPLE  
REQUEST FOR PROPOSALS  
FOR  
DESIGN-BUILD PROJECT USING POLITICAL  
SUBDIVISIONS CONSTRUCTION ALTERNATIVES  
ACT PROCESS**

## **EXHIBIT 3**

### **REQUEST for PROPOSALS for DESIGN-BUILD PROJECT USING THE CITY OF FREMONT CONSTRUCTION ALTERNATIVES ACT PROCESS**

The City of Fremont is requesting Request for Proposals from prequalified Design-Builders for [name of Project]. The information provided in the Proposal will be used by the City of Fremont to select the Design-Builder utilizing criteria issued in the act and defined herein. The City of Fremont has already prequalified \_\_\_ firms. Proposals from other prospective Design-Builders will not be accepted.

The Design-Builder selected by the City of Fremont will enter into a Design-Build Contract with the City of Fremont to furnish a) architectural, engineering and related design services for the Project and b) labor, material, supplies, equipment, and construction services for the Project. This process is pursuant to the act.

The scope of the Project is [e.g. The City of Fremont, Nebraska intends to construct a new-city hall to replace the existing facility consisting of City offices, council chambers, conference rooms, lobby, public restrooms, and support spaces, etc..]

Location of supporting documents to this RFP are listed below:

- The performance criteria prepared by the Performance Criteria Developer, budget and schedule parameters and bond and insurance required by law or the City of Fremont are found in Exhibit 3.1
- The process for evaluation of proposals for the design-build contract are found in Exhibit 3.2 The criteria for evaluation of proposals and the relative weights of each criterion are found in Exhibit 3.3
- The terms and conditions of the design-build contract are found in Exhibit 3.4
- Policies adopted by the City of Fremont relevant to the project and those promulgated by LB889 are found in Exhibit 3.5

Prequalified prospective Design-Builders shall respond to all items in this questionnaire. Failure to do so will deem the Proposal nonresponsive at the discretion of the City of Fremont. If the prospective Design-Builder team is a prime contractor-subcontractor relationship or joint venture, both entities must complete their relevant information on the questionnaire.

## Submittal Requirements

1. **Cover Letter**
2. **Table of Contents**
3. **Financial Resources of the Design-Builder to Complete the Project** (Percentage of Total Points Available - 10%)
  - a. Surety - provide certification from surety that Design-Builder's bonding capacity is adequate to construct the proposed project
  - b. Insurance - provide certificates from your insurance carrier(s) for required coverage for both design and construction services
4. **Ability of the Proposed Personnel of the Design-Builder to Perform** (Percentage of Total Points Available - 30%)
  - a. For both the design and construction components of the Design-Builder team, provide an **organization** chart identifying the lead individual in each role classification. These include, but are not limited to, the following services (if applicable) for the project:
    - i. Design-Builder Principal
    - ii. Project Superintendent
    - iii. Project Foreman
    - iv. Project Architect
    - v. Design Architect
    - vi. Structural Engineer
    - vii. Mechanical Engineer
    - viii. Civil/Site Engineer
  - b. List any **specialty subconsultants** required for the project.
  - c. For each individual listed above, provide the following resume information:
    - i. Name and role in the project
    - ii. Relationship to Design-Builder (employee, subconsultant, subcontractor, etc.)
    - iii. Company
    - iv. Contact information (address, phone)
    - v. Professional registrations/certifications
    - vi. Years with current firm and with other firms
    - vii. List of five (5) relevant or similar projects including:
      1. Project name and brief scope of services provided
      2. Year completed
      3. Reference (name, title, phone and email address)
5. **Character, Integrity, Reputation, Judgment, Experience, and Efficiency of the DesignBuilder** (Percentage of Total Points Available - 30%)
  - a. Design-Builder shall list a reference in the following categories (provide name, company, address, phone, and relationship to the reference):
    - i. Financial (bank or surety)
    - ii. Project of similar scope (contractual point of contact for City of Fremont)
    - iii. Facility user of project of similar scope (such as school principal, department manager or facility manager)

- 6. Quality of Performance on Previous Projects** (Percentage of Total Points Available - 30%)  
The Design-Builder shall list five (5) completed projects of similar scope or budget and provide the following information for each:
- i. Project name - brief description of relevance to the project of this RFP
  - ii. Address
  - iii. Owner, contact name, title, address and phone
  - iv. Design Professional - firm name, contact name, address and phone
  - v. Type of project delivery (design-build, CM@Risk, design-bid-build)
  - vi. Project performance
    1. Budget
    2. Schedule (days/months)
    3. List three specific problems and how they were resolved
    4. Claims made by owner regarding budgets, schedule or performance
- 7. Ability of the Design-Builder to Perform Within the Time Specified** (Percentage of Total Points Available - 30%)
- a. Provide detailed information on the five (5) listed projects above with respect to:
    - i. Design schedule - proposed and actual (number of calendar days total for programming, preliminary design and final design)
    - ii. Construction schedule - proposed and actual
      1. Date of Substantial Completion
      2. Date of Final Completion
      3. Post-construction warranty work required
      4. Was the client inconvenienced by the delivery dates of any of the services provided by the Design-Builder?
- 8. Design-Builder's Approach to Design and Construction of the Project**  
Provide a written approach on how the design and construction team will take the information provided by the **City of Fremont and performance criteria developer** and develop final design, construction documents, budget control, schedule, and construction processes. The approach may contain graphic materials illustrating the proposed approach to design and construction, but shall not include price proposals.
- 9. Previous and Existing Compliance of the Design-Builder Relating to the Contract** (Percentage of Total Points Available - 10%)
- a. Has the Design-Builder, or any proposed member of the design-build team been cited for failure to comply with local, state or federal law of any nature in the last five (5) years? \_\_\_Yes\_\_\_No
    - i. If yes, explain in detail
  - b. Are there any civil or criminal actions pending against the Design-Builder or any proposed member of the design-build team? \_\_\_Yes \_\_\_No
    - i. If yes, explain in detail
- 10. Such Other Information as May be Secured Having a Bearing on the Selection** (Percentage of Total Points Available - 20%)
- a. Subcontractors: List the work on this project you expect to subcontract
  - b. Current capacity: provide a list of your firm's and your subconsultant's current contracted projects and the scope of those projects.

## Design-Builder's Agreement to the Following Conditions

Design-Builder's submittal of a proposal implies agreement to the following conditions:

1. An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services.
2. At the time of the design-build offering, the Design-Builder will furnish to the **City of Fremont** a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project.
3. The architect or engineer engaged by the Design-Builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the Design-Builder prior to the completion of the project without the written consent of the **governing body of the City of Fremont**.
4. A Design-Builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will:
  - a. Comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering; and
  - b. Submit proof of sufficient professional liability insurance.
5. The rendering of architectural or engineering services by a licensed architect or engineer employed by the Design-Builder will conform to the Engineers and Architects Regulation Act and rules and regulations adopted under the act.
6. Other information which the City of Fremont chooses to require.

### **3.1: Performance Criteria prepared by the Performance Criteria Developer, Budget and Schedule parameters and Bond and Insurance required by law or the City of Fremont**

List here in summary form, yet with enough detail for Design-Builder to properly respond to the questions of the RFP, the Project objectives, Performance Criteria Developer's program statement, performance criteria, site information, and such graphic plans (site and building) as may have been prepared by the Performance Criteria Developer.

List the budget parameters established by City of Fremont and the Performance Criteria Developer.

The City of Fremont shall list bonds and insurance requirements of the Design-Builder.

**EXHIBIT 3.1a**

**ADVERTISEMENT FOR REQUEST FOR PROPOSALS**

CITY OF FREMONT  
400 EAST MILITARY AVENUE (Fremont Municipal Building)  
Fremont, Nebraska 68025

Proposals from Design-Builder Teams/Firms for the construction of \_\_\_\_\_ will be received by the City of Fremont, Nebraska at the Office of the City Clerk until 5:00 o'clock p.m., \_\_\_\_\_, 20\_\_\_\_, and then reviewed by the Selection Committee.

The Details of the Project may be examined at the following location:  
Office of the City Engineer  
400 East Military Avenue  
Fremont Municipal Building  
Fremont, Nebraska 68025

Copies of the proposal details may be obtained from the office of the City Engineer, City of Fremont, 400 East Military Avenue, Fremont, NE 68025, 402-727-2630.

\_\_\_\_\_, Mayor  
Date \_\_\_\_\_ City of Fremont, Nebraska

Publish

Two Affidavits of Publication

### **3.2: Process for Evaluation of Proposals for the Design-Build Contract**

The City of Fremont shall evaluate proposals for a design-build contract in accordance with the following:

1. The request for proposal is being sent only to the prequalified design-builders selected as part of the prior prequalification process
2. Design-builders shall submit proposals as required by the Request for Proposals. The City of Fremont may only proceed to negotiate and enter into a design-build contract if there are at least two proposals from prequalified design-builders.
3. Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals.
4. Proposals may be withdrawn at any time prior to acceptance. The City of Fremont shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Act. The City of Fremont may thereafter solicit new proposals using the same or different project performance criteria.
5. In evaluating proposals in accordance with criteria in Exhibit 3.3 of the request for proposals, the City of Fremont shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least seven persons designated by the City of Fremont. Members of the selection committee shall include:
  - a. One member of the City Council
  - b. City Administrator
  - c. The Performance Criteria Developer
  - d. City Engineer
  - e. Department head responsible for the project after it is constructed
  - f. Any person having special expertise relevant to selection of a design-builder
  - g. A resident of the City of Fremont other than individuals listed above

A member of the selection committee designated under subdivision (f) and (g) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.

6. The City of Fremont shall rank in order of preference the design-builders pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to Neb. Rev. Stat. § 13-2911.
7. The City of Fremont may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the Selection Committee and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the design-builder selects a subcontractor. If the City of Fremont is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the City of Fremont may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the City of Fremont is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the City of Fremont may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.
8. If the City of Fremont is unable to negotiate a satisfactory contract with any of the ranked design-builders, the City of Fremont may either revise the request for proposals and solicit new proposals or cancel the design-build process under the act.

### 3.3: Criteria for Evaluation of Proposals and the Relative Weights of each Criterion and Other Criteria Required by the City of Fremont

The selection committee shall evaluate proposals taking into consideration the criteria enumerated below with the maximum percentage of total points for evaluation which may be assigned to each criterion.

<b>Item</b>	<b>Criterion</b>	<b>Weight (points)</b>
1	The financial resources of the design-builder to complete the project	10
2	The ability of the proposed personnel of the design-builder to perform	30
3	The character, integrity, reputation, judgment, experience and efficiency of the design-builder	30
4	The quality of performance on previous projects	30
5	The ability of the design-builder to perform within the time specified	30
6	The previous and existing compliance of the design-build with laws relating to the contract	10
7	Such other information as may be secured having a bearing on the selection	20

(See Exhibit 3.3a Score Sheet)

**Exhibit 3.3A**

**REQUEST FOR PROPOSALS EVALUATION SHEET**

1) \_\_\_\_\_  
*Project* *Design-Build Firm*

2) \_\_\_\_\_  
*Address*

Score each firm in the seven categories listed below. Score each category from 1 (lowest) to 10 (highest).

Each category is weighted.

<b>Item</b>	<b>Criterion</b>	<b>Weight (points)</b>	<b>Score</b>	<b>Weight X Score</b>
1	The financial resources of the design-builder to complete the project	10		
2	The ability of the proposed personnel of the design-builder to perform	30		
3	The character, integrity, reputation, judgment, experience and efficiency of the design builder	30		
4	The quality of performance on previous projects	30		
5	The ability of the or design-builder to perform within the time specified.	30		
6	The previous and existing compliance of the design-builder with laws relating to the contract	10		
7	Such other information as may be secured having a bearing on the selection	20		

Total Score \_\_\_\_\_

\_\_\_\_\_  
Scorer's Name

### **3.4: Terms and Conditions of the Design-Build Contract**

**Identify the document here the proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska.**

**A draft copy of AIA documents may be obtained from:**

American Institute of Architects – Nebraska, P. O. Box 8045  
Lincoln, Nebraska 68501, 402-472-1476, <http://www.aiane.org/>

**A draft copy of ConsensusDOCS documents may be obtained from:**

Associated General Contractors-Nebraska Building Chapter  
1327 H Street #202, Lincoln, Nebraska 68508, 402-438-0400, <http://www.agcnebuilders.com>

**A draft copy of EJCDC documents may be obtained from:**

American Council of Engineering Companies-Nebraska 301 South 13<sup>th</sup> Street, #101,  
Lincoln, Nebraska 68508, 402-476-2572, <http://www.acecnebraska.org>

### **3.5: Procedure for Evaluation of Construction, Under A Design-Build Contract by the Performance Criteria Developer to Determine Adherence to the Performance Criteria**

The Performance Criteria Developer (PCD) will develop as part of the request for proposals performance or product criteria that will be used to evaluate the construction under a design-build contact.

The PCD may refer to standard specifications i.e. Nebraska Department of Roads, AWWA, Uniform Plumbing Code or other specifications depending upon the project.

To ensure adherence to the performance criteria the PCD will conduct site visits at critical times to measure, observe, or count the material being placed in the project. Project labels will be checked against performance criteria. Also shop drawings will be required for adherence to the performance criteria.

Concrete and soil testing will be conducted by a Nebraska Department of Roads Certified Inspector and laboratory.

### **3.6 Procedures for Filing and Acting on Formal Projects Relating to the Solicitation or Execution of Design-Build or Construction Management at Risk Contracts**

Disputes relating to the execution of solicitation of design-builder or construction management at risk contracts will be submitted to the City Administrator in writing. The City Administrator will, within ten (10) working days, meet with the protesting individuals or firms and attempt to resolve the issue. Within ten (10) working days, after the meeting the City Administrator will issue a decision.

If the protesting parties are not satisfied with the decision, they can, in writing, ask for a hearing before the Public Property, Safety and Works Committee of the City Council. This meeting will be scheduled within sixty (60) days of the written protest. The Public Property, Safety and Works Committee will hear the protest and issue a recommendation on the protest within thirty (30) days of the hearing. The City Council shall then vote on the Public Property Safety and Works Committee recommendation at the next scheduled Council meeting.

If the protesting parties are not satisfied with the City Council's decision they can file legal action in the County or District Court.

### **3.7: Policies Adopted by the City of Fremont Relevant to the Project and Those Promulgated by the Act**

1. Procedures for selecting and hiring a Performance-Criteria Developer
2. Procedures for the preparation and content of requests for proposals
3. Procedures and standards to be used to prequalify design-builders and construction managers
4. Procedures for preparing and submitting proposals
5. Procedures for evaluating proposals in accordance with Neb. Rev. Stat. § 13-2908 to 13-2910
6. Procedures for negotiations between the City of Fremont and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal
7. Procedures for filing and acting on formal protests relating to the solicitation or execution of design-build contracts or construction manager at risk contracts; and
8. Procedures for evaluation of construction under a design-build contract by the performance-criteria developer to determine adherence to the performance criteria

**EXHIBIT 4**

**SAMPLE  
REQUEST FOR PROPOSALS  
FOR  
CONSTRUCTION MANAGEMENT AT  
RISK PROJECT  
USING THE CITY OF FREMONT'S  
CONSTRUCTION ALTERNATIVES ACT  
PROCESS**

## EXHIBIT 4

### SAMPLE REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT AT RISK PROJECT USING THE CITY OF FREMONT'S CONSTRUCTION ALTERNATIVES ACT PROCESS

The City of Fremont is requesting Request for Proposals from Construction Managers at Risk for [name of Project] The information provided in the Proposal will be used by the City of Fremont to select the Construction Manager at Risk utilizing criteria issued in the act and defined herein.

The Construction Manager at Risk selected by the City of Fremont will enter into a Construction Management at Risk contract with the City of Fremont to furnish a) consultation with [City of Fremont] architect or engineer related to construction cost, construction scheduling and phasing and best value practices and b) labor, material, supplies, equipment, and construction services for the Project. This process is pursuant to the act.

The scope of the Project is [e.g. *The City of Fremont, Nebraska intends to construct a new city hall to replace the existing facility consisting of City offices, council chambers, conference rooms, lobby, public restrooms and support spaces, etc.*]

Location of supporting documents to this RFP are listed below:

- The full project scope, budget and schedule parameters and bond and insurance required by law or the City of Fremont are found in Exhibit 4.1
- The process for evaluation of proposals for the Construction Management at Risk contract is found in Exhibit 4.2
- The criteria for evaluation of proposals and the relative weights of each criterion are found in Exhibit 4.3
- The terms and conditions of the Construction Management at Risk contract are found in Exhibit 4.4
- Policies adopted by the City of Fremont relevant to the project and those promulgated by LB889 are found in Exhibit 4.5

Prospective Construction Managers at Risk shall respond to all items in this questionnaire. Failure to do so will deem the Proposal nonresponsive at the discretion of the City of Fremont.

## Submittal Requirements

1. **Cover Letter**
2. **Table of Contents**
3. **Financial Resources of the Construction Manager at Risk to Complete the Project** (Percentage of Total Points Available - 10%)
  - a. Surety - provide certification from surety that Construction Manager at Risk's bonding capacity is adequate to construct the proposed project
  - b. Insurance - provide certificates from your insurance carrier(s) for required coverage for construction services
4. **Ability of the Proposed Personnel of the Construction Manager at Risk to Perform** (Percentage of Total Points Available - 30%)
  - a. Provide an **organization** chart identifying the lead individual in each role classification. These include, but are not limited to, the following services (if applicable) for the project:
    - i. Construction Manager at Risk Principal
    - ii. Project Superintendent
    - iii. Project Foreman
  - b. List any **specialty subconsultants** required for the project.
  - c. For each individual listed above, provide the following resume information:
    - i. Name and role in the project
    - ii. Relationship to Construction Manager at Risk (employee, subconsultant, subcontractor, etc.)
    - iii. Company
    - iv. Contact information (address, phone)
    - v. Professional registrations/certifications
    - vi. Years with current firm and with other firms
    - vii. List of five (5) relevant or similar projects including:
      1. Project name and brief scope of services provided
      2. Year completed
      3. Reference (name, title, phone and email address)
5. **Character, Integrity, Reputation, Judgment, Experience, and Efficiency of the Construction Manager at Risk** (Percentage of Total Points Available - 30%)

Construction Manager at Risk shall list a reference in the following categories (provide name, company, address, phone and relationship to the reference):

  - i. Financial (bank or surety)
  - ii. Project of similar scope (contractual point of contact for City of Fremont)
  - iii. Facility user of project of similar scope (such as school principal, department manager or facility manager)
6. **Quality of Performance on Previous Projects** (Percentage of Total Points Available - 30%)
  - a. Construction Manager at Risk shall list five (5) completed projects of similar scope or budget and provide the following information for each:
    - i. Project name - brief description of relevance to the project of this RFP
    - ii. Address of project
    - iii. Owner, contract name, title, address, and phone



#### **4.1: Project Scope, Budget and Schedule parameters and Bond and Insurance required by law or the City of Fremont**

List here in summary form, yet with enough detail for Construction Manager at Risk to properly respond to the questions of the RFP, the Project objectives, the facility program statement, performance criteria, site information, and such graphic plans (site and building) as may have been prepared by the design professional.

List the budget parameters established by the City of Fremont.

The City of Fremont shall list bonds and insurance requirements of the Construction Manager at Risk.

## **4.2: Process for Receipt and Evaluation of Proposals for the Construction Management at Risk Contract**

The **City of Fremont** shall receive and evaluate proposals for a construction management at risk contract in accordance with the following:

1. Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals.
2. Proposals may be withdrawn at any time prior to acceptance. The City of Fremont shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Act. The City of Fremont may thereafter solicit new proposals using the same or different project performance criteria.
3. In evaluating proposals in accordance with criteria in Exhibit 4.3 of the request for proposals, the City of Fremont shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least six persons designated by the City of Fremont. Members of the selection committee shall include:
  - a. One member of the City Council of the City of Fremont
  - b. City Administrator
  - c. The City of Columbus Engineer
  - d. Department head responsible for the project after it is completed
  - e. Any person having special expertise relevant to selection of a construction manager
  - f. A resident of the City of Fremont other than individuals listed aboveA member of the selection committee designated under subdivision (e) and (f) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.
4. The City of Fremont shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to Neb. Rev. Stat § 13-2911.
5. The City of Fremont shall attempt to negotiate a construction management at risk contract with the highest ranked construction manager and may enter into a construction management at risk contract after negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor. If the City of Fremont is unable to negotiate a satisfactory contract with the highest ranked construction manager, the City of Fremont may terminate negotiations with that construction manager. The City of Fremont may then undertake negotiations with the second highest rated construction manager and may enter into a construction management at risk contract after negotiations. If the City of Fremont is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the City of Fremont may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.
6. If the City of Fremont is unable to negotiate a satisfactory contract with any of the ranked construction managers, the City of Fremont may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process under the act.

**4.3: Criteria for Evaluation of Proposals and the Relative Weights of each Criterion and Other Criteria Required by the City of Fremont**

The selection committee and the City of Fremont shall evaluate proposals taking into consideration the criteria enumerated below with the maximum percentage of total points for evaluation which may be assigned to each criterion. **[The following criteria shall be evaluated, when applicable.]**

<b>Item</b>	<b>Criterion</b>	<b>Weight (points)</b>
1	The financial resources of the construction manager to complete the project	10
2	The ability of the proposed personnel of the construction manager to perform	30
3	The character, integrity, reputation, judgment, experience and efficiency of the construction manager at risk.	30
4	The quality of performance on previous projects	30
5	The ability of the or construction manager to perform within the time specified	30
6	The previous and existing compliance of the construction manager at risk with laws relating to the contract	10
7	Such other information as may be secured having a bearing on the selection	20

Score Sheet – Exhibit 4.3A



#### **4.4: Terms and Conditions of the Construction Management at Risk Contract**

**Identify the document here the proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. Complete all terms such exclusive project cost.**

**A draft copy of AIA documents may be obtained from:**

American Institute of Architects - Nebraska  
P. O. Box 8045  
Lincoln, Nebraska 68501, 402-472-1476, <http://www.aiane.org/>

**A draft copy of ConsensusDOCS documents may be obtained from:**

Associated General Contractors-Nebraska Building  
Chapter 1327 H Street #202  
Lincoln, Nebraska 68508, 402-438-0400, <http://www.agcnebuilders.com>

**A draft copy of EJCDC documents may be obtained from:**

American Council of Engineering Companies-  
Nebraska, 301 South 13 Street #101  
Lincoln, Nebraska 68508, 402-476-2572, <http://www.acecnebraska.org>

#### **4.5: Policies Adopted by the City of Fremont Relevant to the Project and Those Promulgated by the Act**

1. Procedures for the preparation and content of requests for proposals
2. Procedures for preparing and submitting proposals
3. Procedures for evaluating proposals in accordance with Neb. Rev. Stat. § 13-2908 to 13-2910
4. Procedures for negotiations between the City of Fremont and the construction manager at risk submitting proposals prior to the acceptance of a proposal
5. Procedures for filing and acting on formal protests relating to the solicitation or execution of construction management at risk contracts; and design-build contracts. (See Exhibit 3.6)