

Division of Capital Asset Management Procedures For The Procurement And Use Of Construction Management At Risk Services In Accordance With M.G.L. c. 149A

Below please find the Division of Capital Asset Management's ("DCAM") proposed construction manager at risk ("CM at Risk") procedures, in accordance with M.G.L. c. 149A. Said procedures will include, but will not be limited to, the following provisions:

1. DCAM will seek construction management at risk services from firms and other entities, including joint ventures that have the appropriate DCAM Certificate of Eligibility in the category of General Building Construction. DCAM will utilize a two-phase sealed competitive proposal selection process. The first phase will serve to "prequalify" entities through a Request for Qualifications ("RFQ"). The second phase will request proposals for the CM at Risk services, from the qualified firms, through a detailed Request for Proposals ("RFP"). At the end of the two-phase process, which is described in more detail below, DCAM will evaluate and rank the proposals through a selection committee. The selection committee will award a contract to the highest ranked proposer, with whom it is able to successfully negotiate.
2. Generally, **Phases 1 and 2** will proceed as follows: In **Phase 1**, DCAM will appoint a qualifications selection committee (QSC) to review and evaluate all of the firms responding to the RFQ. The QSC will be comprised of one representative of the designer, the DCAM project manager, and at least two other representatives of DCAM. After the appointment of the QSC DCAM will solicit CM at Risk firms by inviting firms to respond to a publicly advertised RFQ. CM at Risk firms will submit only their qualifications in the format established by the RFQ. The RFQ shall comply with the requirements of M.G.L. c. 149A, including matters of content and public advertising. The QSC will evaluate the qualifications of all CM at Risk firms and select firms to participate in **Phase 2** of the selection process. In **Phase 2**, DCAM will appoint a selection committee (which may be the same as the QSC). DCAM will provide the firms selected in **Phase I** with a Request for Proposals (RFP) for CM at Risk services. The RFP shall comply with the requirements of M.G.L. c. 149A, including matters of content. The selection committee will be comprised of one representative of the designer, the DCAM project manager, and at least two other representatives of DCAM and will evaluate and rank the proposals submitted in response to the RFP. The contract shall be awarded to the offeror that submits the highest ranked proposal with whom the selection committee is able to successfully negotiate.
3. DCAM will first advertise a **Phase 1** RFQ for CM at Risk firms. Public notice of the **Phase 1** RFQ will be published at least two weeks in the Central Register, in COMPASS and in at least one daily newspaper of general circulation in the county where the project is located. DCAM will make copies of each RFQ available to all interested CM at Risk firms on an equal basis.

4. The **Phase 1** RFQ will include as a minimum the following:
 - a. General description of the project;
 - b. Time, date and place for submission of response to RFQ;
 - c. Evaluation procedure and criteria;
 - d. Scope of services during design, pre-construction and construction;
 - e. General description of anticipated schedule and estimated construction cost;
 - f. Listing of DCAM's project team, including the designer and any outside project managers;
 - g. Criteria for selection including minimum experience, requirements for presentation if any, and schedule for selection process;
 - h. Prohibition against unauthorized contact with DCAM during the procurement;
 - i. Statement that the RFQ will be used to prequalify CM at Risk firms for the RFP process.
 - j. The date, time, and location of the pre-submission informational meeting, if any.

5. The RFQ will require interested firms to submit a Statement of Qualifications (SOQ) in a form similar to that attached as Exhibit A which will include at a minimum the following information:
 - a. an executive summary detailing the key elements and factors that differentiate the firm from other responders;
 - b. Qualifications application form developed by DCAM which is similar to the AIA Doc. 305, 1986 Ed.;
 - c. List of lawsuits and arbitrations to which the firm is a party in regard to construction contracts within the last three (3) years, including a list of all convictions or fines for state and federal law violations;
 - d. Audited financial statement and surety letter confirming bonding
 - e. Safety record including workers compensation modifier for the last 3 years;
 - f. Compliance record with MBE & WBE inclusion goals and workforce inclusion goals;
 - g. Experience on similar projects including references from owners and architects;
 - h. CM at Risk experience on similar projects;
 - i. List of all Projects where firm was terminated, failed to complete or paid liquidated damages within the past 5 years;
 - j. Examples of firm's project management reports and illustrations of operating philosophy;
 - k. DCAM Certificate of Eligibility with sufficient capacity limits and an Update Statement;
 - l. Signature under the penalties of perjury.

6. At the receipt of the statements of qualifications, DCAM will prepare a register of the names of the CM at Risk firms submitting qualifications, which will be available for public inspection. All financial statements submitted by CM at Risk firms in response to an RFQ shall remain confidential and shall not be a public record to the fullest extent permissible under the law.
7. The QSC shall prepare their evaluations based solely on the criteria set forth in the **Phase 1** RFQ. For each qualifications statement (Statement of Qualifications or “SOQ”) the QSC shall specify in writing on each evaluation criterion a rating qualified, not qualified or such additional rating as the committee finds reasonable. The QSC shall complete the **Phase 1** selection process by written notice to the CM at Risk firms selected to participate in **Phase 2** and by notice of rejection to all other proposers, if any. All CM at Risk firms achieving a rating of “qualified” will be selected to participate in Phase 2. The QSC in its discretion may choose to conduct an interview with any firm if necessary to determine whether such firm should achieve a rating of “qualified”. If in **Phase 1** the QSC is not able to rate a minimum of three (3) qualified CM at Risk firms as “qualified”, then DCAM will re-advertise the project pursuant to M.G.L. c. 149A or procure the project pursuant to M.G.L. chapter 149 sections 44A through J, as determined by the DCAM.
8. DCAM will issue a **Phase 2** RFP seeking CM at Risk proposals from the CM at Risk firms selected in the **Phase 1** qualification process. Before issuing the RFP DCAM will establish a selection committee. The **Phase 2** RFP will include at a minimum the following:
 - a. Relevant information that was provided in the RFQ as listed in paragraph 4, above;
 - b. The date, time and place for submission of proposals;
 - c. Clear description of submission requirements, including separate price and technical components;
 - d. Detailed information on project scope including preliminary design information, geotechnical reports, existing conditions surveys and specifications;
 - e. Specific information on project schedule, including design deliverable; site availability and occupancy expectations;
 - f. Detailed description of scope of work and deliverables expected during preconstruction phase;
 - g. MBE and WBE workforce inclusion goals for the project.
 - h. Communication guidelines during procurement process to assure open and fair competition;
 - i. Form of contract and general and supplemental conditions, including incentive provisions, liquidated damage provisions and damage for delay provisions;
 - j. The estimated construction cost for the project;

- k. Fully developed schedule of cost items listing agency's determination of what will be considered fee, cost of work and general conditions items;
 - l. Evaluation criteria including any point scale or measurement system. Timetable for establishing GMP, including status of design and limitations on the amount and use of contingency;
 - m. List of trade contractor classes of work to be included in the trade contractor prequalification plan.
9. The RFP will require the selected firms to submit a Proposal which must include at a minimum the following:
- a. A separate price component (fee/cost proposal) containing: the fee for preconstruction services with detail; the fee for construction services with explanation of basis; and the estimated cost for general conditions with details.
 - b. A separate technical component (technical proposal) containing:
 - i) Detailed project approach including preconstruction services.
 - ii) Supplemental relevant project references.
 - iii) Team members with position descriptions and time commitments of each.
 - iv) Construction management plan with approach to control cost, schedule, quality, documents and claims.
 - v) Preliminary defining of trade contractor and subcontractor bid packages and respective scopes of work.
 - vi) Affidavit of prevailing wage law compliance pursuant to c. 149, sections 26 and 27.
 - vii) Surety commitment letter for 110% of the budget for the building project.
 - viii) Technical challenges and solution plan.
 - ix) Any qualifications or exceptions to the terms of the form of contract or supplemental conditions contained in the RFP.
 - x) List of all current work with DCAM.
10. For the **Phase 2** procurement the selection committee shall prepare their evaluations based solely on the criteria set forth in the **Phase 2** RFP. If the selection committee elects to conduct an interview with a firm that has submitted a proposal in response to the RFP, then the selection committee will conduct interviews with each firm that submits a proposal to the RFP. Fee/cost proposals will be submitted separately from the technical proposals in a separately sealed envelope and at the same time as the technical proposals. For each technical proposal the selection committee shall specify in writing on each evaluation criterion a rating of highly advantageous, advantageous, not advantageous, or such additional rating as the committee finds reasonable, and shall specify in writing a composite rating for each proposal and the reasons for such composite rating. The selection committee will then consider the fee/cost proposals and re-

rank the firms' proposals in view of both the technical scores and fee/cost proposals.

11. The selection committee will commence non-fee negotiations with the highest ranked firm. If negotiations are not successful then the negotiations will be terminated and the same process will begin with the next highest ranked firm until a contract is awarded. The list and ranking of firms shall be certified and become public after final award of the contract.
12. Each RFP may incorporate documents by reference, in which case the RFP shall specify where offerors may obtain such documents.
13. An offeror's proposal shall be unconditionally accepted, though an offeror may correct, modify, or withdraw a proposal by written notice received in the office designated in the RFP prior to the time and date set for the opening of proposals. After the opening of proposals, a CM at Risk firm cannot correct, modify or withdraw any provisions of its proposal in a manner that would be prejudicial to the interests of the Commonwealth or to the equity of the request for proposals procedure. DCAM may waive minor informalities or allow the CM at Risk firm to correct them.
14. DCAM shall complete the selection process by written notice to the selected offeror and by notice of rejection to all other proposers. DCAM will reserve the right to reject any or all proposals if it is the public interest to do so.
15. DCAM will not open the **Phase 1** or **Phase 2** proposals publicly but will open them in the presence of one or more witnesses at the time specified in the RFQ and RFP. Until the completion of the selection process, the contents of the proposals will not be disclosed to competing teams and will not be public documents.
16. Prior to commencement of any construction services the selected firm shall furnish to DCAM a performance bond and a payment bond, each in the sum of the amount of its price proposal and issued by a surety company licensed by the Massachusetts Division of Insurance and whose name appears on the United States Treasury Department Circular 570. Provision will be made to increase the sum of each bond by the amount of any construction work performed prior to the agreement of a guaranteed maximum price ("GMP"). Upon agreement between DCAM and the selected CM at Risk firm of the GMP as set forth in paragraph 21 below, the selected CM at Risk firm shall furnish to DCAM a performance bond and a payment bond each in the amount of the guaranteed maximum price and issued by a surety company qualified to issue bonds in the commonwealth and whose name appears on the United States Treasury Department Circular 570. The GMP bonds shall be substituted for the prior bonds furnished by the CM at Risk firm.

17. If the selected firm fails to execute a contract or to furnish the necessary insurance and other documents within the time period specified in the request for proposals, DCAM will commence non-fee negotiations with the remaining highest ranked firm, provided they continue to meet the DCAM certification requirements. If negotiations are not successful then the negotiations will be terminated and the same process will begin with the next highest ranked firm until a contract is awarded. In the alternative, DCAM may proceed under G.L. c. 149.
18. Upon written request, the CM at Risk selection committee shall have conferences with the other qualified firms, describing relative strengths and weaknesses of each proposal.
19. DCAM' contract with the construction manager for the project shall utilize a cost-plus not to exceed guaranteed maximum price (GMP) form of contract in which DCAM shall be entitled to monitor and audit all project costs. There shall be no shared savings with the CM at Risk firm except that DCAM may include incentive clauses for various performance objectives, but not to exceed 1% of the estimated construction cost. The GMP shall:
 - a. Be based on design documents which are no less developed than 60 percent construction documents.
 - b. Be agreed to as a written amendment to the contract between DCAM and the CM.
 - c. Be executed before the commencement of any construction work; except construction may be commenced prior to the execution of the GMP, provided the work is the subject of a separate amendment to the contract with the CM at Risk firm. Such amendment will include the scope and cost of work, general conditions costs and fees, and the work will be subject to the trade contractor selection process.
 - d. Include a detailed line item cost breakdown by trade
 - e. Include dollar amounts for the CM firm's contingency.
 - f. Include dollar amounts for the general conditions and fees.
 - g. Include a list of all drawings, specifications and other information on which the GMP is based.
 - h. Include a list of allowances and a statement of their basis;
 - i. Include a list of any assumptions or clarifications on which the GMP is based;
 - j. Include the dates for substantial and final completion on which the GMP is based.
 - k. Include a schedule of applicable alternates and unit prices.
 - l. Require submission of payment and performance bonds each in the amount of the GMP within five (5) days of the execution of the GMP Amendment.
20. In the event that a GMP cannot be agreed upon between the selection committee and the construction manager, the selection committee may engage the next most

advantageous offeror in negotiations. If those negotiations are not successful then procurement of the Project will continue in accordance with M.G.L. c. 149, or other applicable law.

21. The contract between DCAM and the CM will require that payments be based on: the CM's fee, general conditions and the hard cost of the work. Payments for preconstruction "general conditions" and "fee" will be based on an agreed amount, on an approved schedule of values, and on the actual percentage of preconstruction work performed. Payment on account of the "hard work" (physical work performed by subcontractors) and the fee and general conditions associated with the hard work, will be based on the actual construction work performed. The GMP will be the maximum price subject to the change order provisions of the contract. The construction manager shall make periodic payment to the trade contractor as required by section 39F of chapter 30 and the trade contractor for this purpose, shall have all rights to pursue direct payments from DCAM as is accorded subcontractors demanding payment for general contractors under section 39F of said chapter 30. A certificate of the architect to the effect that the construction manager has fully or substantially completed the work shall be conclusive for the purposes of this section.
22. There shall be a trade contractor selection process incorporated into the contract terms for all filed sub-bid classes of work under M.G.L. c. 149, s. 44F ("Trade Contract/ Contractor). A request for qualifications ("RFQ") shall be issued for each such Trade Contract meeting the dollar threshold under section 44F (1). The prequalification process shall include the procedural requirements set forth in subsections b through k of Section 8 of M.G.L. c. 149A, including without limitation, the following:
 - a. A prequalification committee will be established to follow this process and will be comprised of a representative from the designer, a representative from the CM at Risk firm (the "CM"), and 2 representatives appointed by DCAM.
 - b. The CM will be required to provide DCAM with detailed information describing the work required by each trade contractor on the project, which shall serve as the basis for an RFQ. DCAM will give public notice, by newspaper, central register and COMPASS, of an RFQ for all such trades and solicit responses pursuant to Section 8(d) of c. 149A. The responses will be used to prequalify the trade contractors to participate on the Project. All trade contracts will be awarded to the lowest qualified bidder and be secured by performance and payment bonds in the full amount of the trade contract amount subject to Subsection (3) of Section 44F of Chapter 149. The form of contract required by Section 8(k) of M.G.L. c. 149A will be utilized for such trade contracts.

- c. DCAM will use discretion in allocating points among the following subcategories in the RFQ which categories are required by section 8(e): (1) Management Experience (50 points; minimum 25 required for approval); (2) References (30 points; minimum 15 required for approval); (3) Capacity to Complete Projects (20 points; minimum 10 required for approval); and (4) Mandatory Commitment Letter, Certificate of Eligibility and Update Statement (no points assigned).
- d. All trade contractors who achieve a score of 70 points or greater will be prequalified to submit a bid.
- e. The request for bids will require, without limitation: 1) date, time and place for submission; 2) fully detailed drawings and specifications by class of work; 3) detailed scope of work, including alternates and allowances, if any; 4) a project schedule showing the planned sequence and duration of each trade contractor's work; 5) a list of prequalified trade contractors; 6) a trade contractor bid form; 7) an affidavit that all sub-trade subcontractors named on the bid form have been prequalified by the trade contractor using criteria similar to the above; 8) an affidavit of tax compliance; 9) an affidavit of prevailing wage compliance; 10) a non-collusion affidavit; 11) a 5% bid bond from a surety company licensed to do business in the Commonwealth and whose name appears on the U.S. Treasury Department Circular 570; 12) the budget for the Project; 13) a DCAM Certificate of Eligibility and Update Statement ; and 14) a trade contractor agreement form as set out in Section 8(k) of G. L. c. 149A.
- f. Bids will be opened publicly by DCAM and will be awarded to the lowest prequalified bidder; but, if DCAM prequalifies fewer than 3 trade contractors in a particular trade, DCAM will re-invite firms to submit an RFQ and retain submissions already received , and if DCAM still prequalifies fewer than three trade contractors, DCAM may reject all responses and issue a new request for qualifications; or if DCAM prequalifies at least two trade contractors in the particular trade, then DCAM may invite bids from the two said trade contractors; or DCAM may use the selection process for other subcontractors under paragraph 22, below, provided the subcontractors selected must have a certificate of eligibility for that trade from DCAM, and provided that any trade contractors qualified by DCAM under this paragraph shall be among the group of subcontractors considered under paragraph 22, below. Subject to the foregoing, if the lowest bid exceeds the estimated cost of the work for that sub trade, then the CM may attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful the CM may terminate negotiations with the lowest prequalified bidder and begin negotiations with the second lowest prequalified bidder. DCAM may stipulate that a trade contractor prequalified for a particular project during a prequalification review will remain prequalified for that

particular project for not more than 120 days from the due date of the trade contractor's response to the RFQ.

23. There will also be a selection process for subcontractor classes of work not subject to the trade contractor selection process under paragraph 21, but that do meet the dollar threshold of Subsection (1) of Section 44F. The CM will, subject to the final approval of DCAM, select at least three subcontractors to perform such work by submitting a set of criteria and a list of firms able to meet those criteria. DCAM, and its consultants if any, shall review the qualifications and firms proposed by the CM, including the information submitted by the CM and any other information obtained by DCAM. DCAM may eliminate any proposed subcontractor from the list, and may propose additional subcontractors to be added to the list; any subcontractors added to the list will be subject to the approval of the CM. The CM will invite all subcontractors on the approved list to submit proposals for the work, based on information prepared by the CM firm. The CM will submit to DCAM for its approval the firms that will be performing the work. The CM's selection of subcontractors will be based on relevant factors including, but not limited to, price, quality of work, and MBE and/or WBE participation. Subcontracts with an estimated cost equal to or less than the dollar threshold in Section 44F and subcontracts for the supply of materials or equipment not including performance of labor in construction at the Project site, regardless of the estimated cost, may be awarded by the CM using any method selected by the CM with the approval of DCAM.