

**Kansas Board of Regents**  
**Procedures for Implementation of the State Educational Institution**  
**Project Delivery Construction Procurement Act**

February 12, 2010

The following Procedures set forth the process for implementing KSA 76-7,125 *et seq* requirements for procurements involving authorized construction projects funded with non-state moneys. For purposes of these guidelines, “Construction Project” or “Project” means the process of designing, constructing, reconstructing, altering or renovating a building or other structure. “Non-state moneys” means any funds received by an Institution from any source other than the state of Kansas or any agency thereof (i.e. State General Fund or Educational Building funds

**I. Architect/Engineer Services**

**A. Introduction**

The following architect/engineer selection process will be used for Projects of state educational institutions (“Institutions”) that are totally funded with Non-State Moneys. Projects will be subject to the statutory funding limits of \$500,000 for the engineering discipline and \$750,000 for the architectural discipline. Projects under the limits may utilize existing On-Call consultant contracts or in-house production. Projects that exceed these limits will utilize the “advertise/interview and selection” process as described below. The project scope for the architectural program will be approved by the Board of Regents per the current policies and procedures. The Institution proposing the project will also submit the project to the Joint Committee on State Building Construction in accordance with that Joint Committee’s policies and procedures.

**B. Architect/Engineer Selection Process**

1. The Institution proposing the Project will advertise the Project in the Kansas Register and, if available, the state university purchasing web site. The university will designate in the ad the address to which submittals should be delivered.
2. For the purpose of this section, the Procurement Committee will consist of the Director of Facilities for the Kansas State Board of Regents, who shall be chairperson of the committee, an architect, engineer or planner representing the Institution, and a representative of the Institution as appointed by the chief executive officer of the Institution or the chief executive’s designee.
3. Interested architectural/engineering firms will submit a statement of qualifications to the Institution representative as identified in the advertisement. The Institution

representative will distribute all the qualification submittals to the Procurement Committee for review prior to the formal committee meeting.

4. Qualification submittals shall include a one page letter of interest, FPDC (Facilities Planning, Design & Construction) Forms 050, 051, 052, 053 and 054, and any photographs or information relevant to the advertised services. The FPDC forms can be found at <http://www.da.ks.gov/fp/manual.htm>. Qualification submittals will be limited to a maximum of 40 pages. Interested firms shall be required to submit six (6) bound hard copy sets and one (1) PDF electronic set on CD.
5. The qualification submittals will be reviewed by the Procurement Committee and, if the Procurement Committee determines that the qualification submittals are responsive and identify a sufficient number of qualified firms, then a short list of three to five firms will be selected within two (2) weeks of the submittal date. The selection will be based upon the qualifications of the firm.
6. Qualification factors that may be considered by the Procurement Committee include, but are not limited to: prior performance on state work; prior project experience with similar type, size and cost of project advertised; design experience; production quality; ability to manage and meet schedules; experience and working relationships with clients, contractors, and consultants; capability of providing services at the location of the project; reliability of cost estimating and meeting budgets; construction administration; ability to meet special project requirements; demonstrated record of quality control and client satisfaction with work and responsiveness to resolving issues including design and construction defects; and compliance with submittal requirements.
7. Requests for Copies of the Qualification Submittals will be handled in accordance with the Kansas Open Records Act.
8. The Institution will provide a copy of the project's scope, budget and schedule to the consulting firms prior to interview.
9. Interviews of the short listed firms selected for interview will be done by a Negotiating Committee consisting of the same members of the Procurement Committee defined under section A (2). The Negotiating Committee will review the Qualification Submittals prior to interview.
10. The Negotiating Committee will evaluate the firms based on qualifications and the interview and select one (1) preferred firm with which the Negotiating Committee would like to continue negotiations. The committee will provide for the project file minutes of the rationale and evaluation of the firms interviewed and selected. The institution will prepare and keep the minutes of the meeting.

11. Following selection of the preferred firm, the Negotiating Committee will attempt to negotiate with the preferred firm a fair and reasonable fee consistent with published guidelines currently found at [http://www.da.ks.gov/fp/manual/05\\_Selection.pdf](http://www.da.ks.gov/fp/manual/05_Selection.pdf) .
12. In the event that the Negotiating Committee is unable to negotiate a final agreement with the preferred firm, then the Negotiating Committee may either pursue negotiations with one of the other firms interviewed or reopen the process and solicit new submittals.
13. Architect and Engineering Services.  
The form of contract for the Architect and Engineering Services shall be in a template approved by the Board of Regents and modified if necessary by the Institution to meet specific Project requirements. The selected firm shall be required to:
  - a. Ensure that plans and specifications meet all professional standards within the industry
  - b. Ensure that plans and specifications are reviewed and approved by the Board of Regents and the Secretary of Administration. Review and approval by the Board of Regents to ensure that such documents do not change the approved Project description and the Secretary of Administration to ensure code compliance, and such reviews shall in no way relieve the Architect/Engineer from responsibility for ensuring that the plans and specifications meet all professional standards and codes.
  - c. Obtain a Code footprint/DFM building permit as required by KSA 75-3783, KSA 31-150 and KAR 22-1-7.
  - d. Develop plans and specifications in accordance with the standardized General Conditions of the Contract.
  - e. Obtain and maintain insurance per the Board of Regents requirements. Insurance requirements will be noted in the standard form of contract.

## **II. Competitive Bid Process**

The procedure established in this section shall be used unless the use of the “Alternative Project Delivery Process” is determined appropriate as provided in Section III below. The competitive bid process will be used for the majority of the Projects funded with non State monies. The projects will be approved by the Board of Regents per the existing policies and procedures. The projects will be submitted to advise the Joint Committee on State Building Construction of the project.

1. Plans and specifications will be developed with standardized general conditions and contract bonds and insurance requirements developed specifically for Institutions. The specifications may include bidder qualifications requirements as a part of the submittal of bid.
2. Plans and specifications will be reviewed and approved by the Secretary of Administration or their designee prior to release for bidding.
3. The Institution will manage the printing and distribution of the plans and specifications or opt to distribute through the Secretary of Administration.
4. Advertising and Bid Process
  - a. The project will be advertised in the Kansas Register and if available on the state university's web site for a minimum of two (2) weeks.
  - b. Addendums to the bid documents will be issued a minimum of 7 working days prior to bid opening.
  - c. The bids will be publically opened at the Institution's purchasing office or other designated office.
  - d. Award will be made to the lowest responsive and responsible bidder.
5. The Institution will prepare the contract and issue to the successful bidder for the signature.
6. Once the contracts have been finalized, the Institution will issue a notice to proceed to the contractor.

### **III. Alternative Project Delivery Process**

- A. The following Alternative Project Delivery Process may be utilized for Institution Construction Projects, instead of the procedure outlined in section II above, if determined appropriate as provided below. This Alternative Project Delivery Process shall be for the sole and exclusive use of planning, acquiring, designing, building, equipping, altering, repairing, improving or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property.
- B. The Director of Facilities of the Board of Regents shall establish a Procurement Committee which shall be composed of five members, or their designees, as follows:
  1. The Director of Facilities for the Board of Regents, who will serve as chairperson of the committee;
  2. An architect, engineer, or planner representing the Institution;
  3. A representative of the Associated General Contractors of Kansas, appointed from a list of at least three nominees submitted by the Association to the Board of Regents;
  4. A representative of the American Institute of Architects appointed from a list of at least three nominees submitted by the Institute to the Board of Regents; and

5. A representative of the American Council of Engineering Companies, appointed from a list of at least three nominees submitted by the Council to the Board of Regents.
- C. The Procurement Committee shall review and approve or disapprove requests for utilization of the Alternative Project Delivery Process. If the Procurement Committee approves a request, the Procurement Committee shall provide a shortlist of construction managers/design builders for use on such Construction Project
- D. An individual who has a substantial interest in a firm, or whose immediate family member has a substantial interest in a firm, shall not be permitted to participate on the Procurement Committee, if such firm submits qualifications for consideration under Phase I of the selection process. For purposes of this section, "substantial interest" shall have the same meaning ascribed thereto by K.S.A. 46-229.
- E. The Procurement Committee shall approve those projects for which the use of the Alternative Project Delivery process is determined appropriate. In making such determination, the Procurement Committee shall consider the following factors:
  1. The likelihood that the alternative project delivery method of procurement selected will serve the public interest by providing substantial savings of time or money over the traditional design-bid-build delivery process.
  2. The ability to overlap design and construction phases is required to meet the needs of the end user.
  3. The use of an accelerated schedule is required to make repairs resulting from an emergency situation.
  4. The project presents significant phasing or technical complexities, or both, requiring the use of an integrated team of designers and constructors to solve project challenges during the design or preconstruction phase.
  5. The project delivery method will not encourage favoritism in awarding the public contract or substantially diminish competition for the public contract.
- F. When a request to use the Alternative Project Delivery Process is made by an Institution, the Institution on behalf of the Board of Regents shall publish a notice in the Kansas register and if available, on the state university's web site, stating that the Procurement Committee will be holding a public hearing with the opportunity for comment on such request. Notice shall be published at least 15 days prior to the hearing.
- G. If the Procurement Committee does not approve use of the Alternative Project Delivery Process for the project, then the construction services for such project shall be obtained pursuant to the process outlined in section II above, and all contracts for construction services shall be awarded to the lowest responsive and responsible bidder in accordance with procurement procedures determined and administered by the Board of Regents and executed by the Institution.
- H. If the Procurement Committee approves use of the Alternative Project Delivery Process for the project, the Institution shall publish a notice of the request for qualifications and proposals for the required project services at least 15 days prior to the commencement of such request for qualifications and proposals in the Kansas register in accordance

with K.S.A. 75-430a, and amendments thereto, and in such other appropriate manner as may be determined by the Institution.

- I. The Alternative Project Delivery Process shall include the following construction management at-risk project delivery procedures as follows:
  1. The Director of Facilities for Board of Regents shall determine the scope and level of detail required to permit qualified construction managers or qualified general contractors to submit construction management at-risk proposals.
  2. Prior to completion of the construction documents, but as early as during the schematic design phase, the construction manager or general contractor shall be selected. The project design professional may be employed or retained by the Institution to assist in the selection process.
  3. The Institution on behalf of the Board of Regents shall solicit proposals in a three-phase, qualifications-based, selection process. Phase I shall consist of the solicitation of qualifications and prequalification of a minimum of three but no more than five construction managers or general contractors to advance to phase II. Phase II shall consist of the solicitation of a request for proposal for the project. Phase III shall include an interview with each construction manager or general contractor that has submitted a proposal to present their qualifications and answer questions.
  4. Phase I shall require each construction manager or general contractor to submit a statement of qualifications which shall include, but not be limited to:
    - a. Similar project experience;
    - b. experience in this type of project delivery system;
    - c. references from design professionals and owners from previous projects;
    - d. description of the construction manager's or general contractor's project management approach;
    - e. financial statements; and
    - f. bonding capacityFirms submitting a statement of qualifications shall be capable of providing a public works bond in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bonding capacity to the Procurement Committee with their statement of qualifications. If a firm fails to present such evidence, such firm shall be deemed unqualified for selection.
  5. The Procurement Committee shall evaluate the qualifications of each construction manager or general contractor in accordance with the instructions of the request for qualifications. The Procurement Committee shall prepare a short list containing a minimum of three (3) and maximum of five (5) qualified firms, which have the best and most relevant qualifications to perform the services required for the project, to participate in phase II of the selection process. If three (3) qualified construction managers or general contractors cannot be identified, the selection process shall cease. The procurement committee shall have discretion to disqualify any construction manager or general contractor that, in the Procurement Committee's opinion, lacks the minimal qualifications required to perform the work.

6. Phase II of the process shall be conducted as follows:
  - a. Prequalified firms selected in phase I shall be given a request for proposal. The request for proposal shall require all firms submitting proposals to submit a more in depth response including, but not be limited to:
    - (1) Company overview;
    - (2) Experience or references, or both, relative to the project under question;
    - (3) Resumes of proposed project personnel;
    - (4) Overview of preconstruction services;
    - (5) Overview of construction planning;
    - (6) Proposed safety plan;
    - (7) Fees, including fees for preconstruction services, fees for general conditions, fees for overhead and profit and fees for self-performed work, if any.
7. Phase III shall be conducted as follows:
  - a. The Negotiating Committee shall interview all firms submitting proposals within the allowed time frame, allowing the competing firms to present their proposals, proposed team members, qualifications and project plan and to answer questions. Interview scores shall not account for more than 50% of the total possible score.
  - b. The negotiating committee described in section 7.a. above, shall be comprised of the Director of Facilities for the Board of Regents, who shall be chairperson, the architect, engineer or planner representing the Institution, and two other persons designated by the chief executive officer of the Institution or their designee.
  - c. The Negotiating Committee shall select the firm providing the best value based on the criteria in the request for proposal and weighting factors utilized to emphasize important elements of each project. All scoring criteria and weighting factors shall be identified by the Institution in the request for proposal instructions. The Negotiating Committee shall proceed to negotiate with and attempt to enter into a contract with the firm receiving the best total score to serve as the construction manager or general contractor for the project. If the Negotiating Committee is unable to negotiate a satisfactory contract with the firm scoring the best total score, negotiations with that firm shall be terminated, and the Negotiating Committee shall undertake negotiations with the firm with the next best total score, in accordance with this section.
  - d. If the Negotiating Committee determines that it is not in the best interest of the Institution to proceed with the project pursuant to the proposals offered, the Negotiating Committee shall reject all proposals. If all proposals are rejected, the state board may solicit new proposals using different design criteria, budget constraints or qualifications.
  - e. The contract to perform construction management at-risk services for a project shall be prepared by the Institution and entered into between the Institution and the firm performing such construction management at-risk services. A construction management at-risk contract utilizing a cost plus guaranteed

maximum price contract value shall return all savings under the guaranteed maximum price to the Institution.

- f. The Institution shall publish a construction services bid notice in the Kansas register and if available on the university web site and in such other appropriate manner for the construction manager or general contractor as may be determined by the Institution. Each construction services bid notice shall include the request for bids and other bidding information prepared by the construction manager or general contractor and the Institution. The Institution may allow the construction manager or general contractor to self-perform construction services provided the construction manager or general contractor submits a bid proposal under the same conditions as all other competing firms. If a construction manager or general contractor submitting a bid proposal fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection. At the time for opening the bids, the construction manager or general contractor shall evaluate the bids and shall determine the lowest responsible bidder except in the case of self-performed work for which the institution shall determine the lowest responsible bidder. The construction manager or general contractor shall enter into a contract with each firm performing the construction services for the project and make a public announcement of each firm selected in accordance with this sub-section.

#### **IV. Funding and project authorization**

- A. Each Institution may initiate and complete Construction Projects on state-owned property of the Institution from any non-state moneys granted, given to or otherwise received by the Institution if the Construction Projects have received prior approval by the Board of Regents and the plans and specifications for such Projects have received prior approval by the Secretary of Administration. Such Construction Projects shall be financed entirely from Non-State Monies and the buildings and facilities shall become the property of the State of Kansas upon completion and acceptance by the secretary of administration. A Construction Project for the construction of a building or facility shall be approved by the Board of Regents and advise and consult with the Joint Committee on State Building Construction.
- B. An Institution may initiate and complete Construction Projects for repairs, remodeling or renovation of buildings and facilities located on state-owned property of the Institution from any non-state moneys granted, given to or otherwise received by the Institution if the construction projects for such repairs, remodeling or renovations have received prior approval by the Board of Regents and the plans and specifications for such projects have received prior approval by the Secretary of Administration. Such construction projects shall be financed entirely from non-state moneys and the repairs, remodeling or renovations shall become the property of the state of Kansas upon completion and acceptance by the secretary of administration. Construction projects to repair, remodel or renovate a building or facility shall be approved by the Board of



Regents and advise and consult with the Joint Committee on State Building Construction.

- C. Construction projects financed totally from non-state moneys shall be exempt from the provisions of K.S.A. 75-1251, 75-1252, 75-1253, 75-1254, 75-1255, 75-1256, 75-1257, 75-1258, 75-1259, 75-1260, 75-1261, 75-1262, 75-1263, 75-1264, 75-1265, 75-1266, 75-1267, 75-1268, 75-3739, 75-3740, 75-3740a, 75-3741, 75-3741a, 75-3741b, 75-3742, 75-3743, 75-3744, 75-5802, 75-5803, 75-5804, 75-5805, 75-5806 and 75-5807 and K.S.A. 2008 Supp. 75-37,141 75-37,142, 75-37,143 and 75-37,144, and amendments thereto. Such construction projects shall be inspected by the secretary of administration. Project certificate of occupancy will be issued by the DFM Code Compliance Coordinator on behalf of the Secretary of Administration.