

DGS Policy for Construction Management at Risk (CM@R)

June 2017

In accordance with the provisions of §2.2-4378 through §2.2-4381 of the Code of Virginia, DGS has adopted the following Policy for the use of Construction Management at Risk (CM@R).

1. Criteria for the Use of CM@R:
 - a. The Agency shall provide a written determination that competitive sealed bidding is not practicable or fiscally advantageous. (COV Sections: §2.2-4380.B.1, §2.2-4381.C.1)
 - b. The written determination shall include the basis of the determination which shall include one or more of the following:
 - i. Construction Cost (COV Sections: §2.2-4381.B.1, §2.2-4380.C.3, §2.2-4381.D.3)
 - ii. Project Complexity (COV Sections: §2.2-4381.B.1, §2.2-4380.C.4, §2.2-4381.D.4)
 - iii. Building Use (COV Sections: §2.2-4381.B.1, §2.2-4380.C.3, §2.2-4381.D.3)
 - iv. Project Timeline (COV Sections: §2.2-4381.B.1, §2.2-4380.C.3, §2.2-4381.D.3)
 - v. Project Phasing (COV Sections: §2.2-4380.C.5, §2.2-4381.D.5)
 - vi. Necessity of Value Eng. and/or Constructability Analysis Concurrent with Design (COV Sections: §2.2-4380.C.5, §2.2-4381.D.5)
 - vii. Quality Control/Vendor Prequalification Needs (COV Sections: §2.2-4380.C.5, §2.2-4381.D.5)
 - viii. Cost/Design Control Needs (COV Sections: §2.2-4380.C.5, §2.2-4381.D.5)
 - c. A licensed architect or engineer shall be employed or under contract to advise in use of CM@R (COV Sections: §2.2-4380.B.2, §2.2-4381.C.2)
2. DGS Review of Procurement Method (COV Sections 2.2-4380.C through 2.2-4380.E, 2.2-4381.D through 2.2-4381.F):
 - a. For all projects where the Agency has selected CM@R as the proposed project procurement method, the Agency shall submit the following to DGS for review:
 - i. The Agency's written determination that competitive sealed bidding is not practicable or fiscally advantageous.
 - ii. A completed Construction Management at Risk Procurement Review Submittal Form identifying the project characteristics relevant to CM@R procurement.
 - b. Upon receipt of DGS Recommendation, the Agency shall:
 - i. Address DGS comments as necessary.
 - ii. Document Agency action in project file and submit to DGS.

3. CM@R Procurement Procedures:

- a. The Agency shall appoint an Evaluation Committee which shall consist of at least three members from the Agency, including a licensed design professional from the Agency, if possible. In addition to the Agency members, for State Public Bodies, the committee shall include:
 - i. A licensed professional engineer or architect from the Division of Engineering and Buildings (COV Sections: §2.2-4380.A, §2.2-4381.A).
 - ii. A representative from the Office of the Attorney General (OAG) as determined by the OAG Section representing the Division of Engineering and Buildings (COV Sections: §2.2-4380.A , §2.2-4381.A).
- b. The contract shall be entered into no later than the Schematic Design Phase unless prohibited by funding authorization restrictions. (COV Sections: §2.2-4380.B.4, §2.2-4381.C.4)
- c. A two-step Request for Qualifications/Request for Proposals (RFQ/RFP) process shall be utilized. (COV Sections: §2.2-4380.B.7, §2.2-4381.C.7)
- d. The Agency shall prepare a RFQ containing the Agency's Facility Requirements, building and site criteria, site and survey data (if available). All offerors shall have a licensed Class "A" contractor registered in the Commonwealth of Virginia as part of the Project team. The Agency's justification for the use of DB shall be included in the RFQ. (COV Sections: §2.2-4380.B.1, §2.2-4381.C.1)
- e. The criteria for evaluation shall be included in RFQ (COV Sections: §2.2-4380.B.1, §2.2-4381.C.1), including any unique capabilities and qualifications, and the RFQ shall be posted in accordance with the current requirements in the Code of Virginia for a minimum of 30 days. (COV Sections: §2.2-4380.B.3, §2.2-4381.C.3)
- f. The Evaluation Committee shall evaluate the firms' RFQ responses and any other relevant information and shall determine those deemed best qualified with respect to the criteria established for the project in the RFQ. Prior CM@R or BCOM Experience shall not be a Prerequisite for award. (COV Sections: §2.2-4380.B.5, §2.2-4381.C.5)
- g. The RFQ process shall result in a short list of 2-5 offerors to receive an RFP. (COV Sections: §2.2-4380.C.5, §2.2-4381.D.5) An offeror may be denied prequalification only as specified under the Code of Virginia §2.2-4317, but the short list shall be those deemed best qualified.
- h. The criteria for evaluation shall be included in RFP (COV Sections: §2.2-4380.B.1, §2.2-4381.C.1) and the RFP shall be posted in accordance with the current requirements in the Code of Virginia for a minimum of 30 days. (COV Sections: §2.2-4380.B.1, §2.2-4381.C.1)
- i. In addition, at least 30 days prior to the date for RFP response submission, those offerors who were not selected for the short list shall be provided written notification and the reasons for such decision. In the event that an offeror is denied prequalification, the written notification shall state the reasons for such denial of prequalification and the factual basis of such reasons. (COV Sections: §2.2-4380.A, §2.2-4381.A).

- j. The Evaluation Committee shall evaluate and rank the firms' Proposals. Prior CM@R or BCOM Experience shall not be a Prerequisite for award. (COV Sections: §2.2-4380.B.5, §2.2-4381.C.5)
 - k. After evaluation and ranking, the Committee shall conduct negotiations with two or more offerors submitting the highest ranked proposals. (COV Sections: §2.2-4380.A, §2.2-4381.A).
 - l. The contract shall be awarded to the offeror who is deemed fully qualified and has been determined to have provided the best value in response to the RFP. The Agency shall notify all offerors who submitted proposals, which offer was selected for the project. When so provided in the RFP, awards may be made to more than one offeror. (COV Sections: §2.2-4380.A, §2.2-4381.A).
 - m. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful offerors. (COV Sections: §2.2-4380.A, §2.2-4381.A).
4. Contracting Requirements for CM@R
- a. Preconstruction Services shall be contracted as a Non-Professional Service. (COV Section 2.2-4301)
 - b. The Guaranteed Maximum Price (GMP) shall be established at the completion of Working Drawings. (COV Sections: §2.2-4380.A, §2.2-4381.A). If the Agency and CM@R cannot agree on a GMP, the Agency may competitively bid the project with the other prequalified CM@R offerors or enter into competitive negotiations with the other prequalified CM@R offerors in accordance with the requirements of the Code of Virginia.
 - c. Interim GMP's for early release packages are permitted (COV Sections: §2.2-4380.C.5, §2.2-4381.D.5)
 - d. 90% of construction work must be subcontracted through publicly advertised competitive sealed bidding to the maximum extent practicable (COV Sections: §2.2-4380.B.6, §2.2-4381.C.6)
5. Guidance for the application of this policy can be found in Section 7.2 of the Construction and Professional Services Manual.