



## **Guidelines for Accelerated Project Delivery**

Nebraska Game and Parks Commission  
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## **General Introduction**

The Design/Build (D/B) and Construction Manager/General Contractor (CM/GC) project delivery methods are two new tools that the Nebraska Game and Parks Commission (NGPC) is authorized to use in meeting the needs of the State Park system. These methods may not be appropriate for all projects, but for the right projects D/B or CM/GC may offer significant benefits for NGPC and the public.

The information presented in these Guidelines provides a framework for using the D/B or CM/GC project delivery method. The procedures presented do not have to be followed too the letter, but illustrate approaches that have been proven successful and can be adapted as appropriate for each specific project. Commonly asked questions are presented and answered in the context of NGPC's traditional Design/Bid/Build (D/B/B) project delivery method versus D/B or CM/GC project delivery methods.

These Guidelines are written comprehensively to provide anyone interested in D/B or CM/GC contracting with NGPC an understanding of the general policies and recommended procedures for their use. However, the recommendations will need to be tailored to project decision-makers, who must identify, assess, fund, and develop projects, balancing the benefits and risks of D/B or CM/GC contracting. It may be useful to project team members who will be involved in the final processes.

The decision to use the D/B or CM/GC project delivery method is made through a series of key decisions weighing risks and benefits. These Guidelines provide insight to those risks and the decisions necessary to be successful in developing a project scope and contract documents using the D/B or CM/GC project delivery methods.

The Guidelines provide guidance for NGPC public contracting using D/B or CM/GC project delivery methods and the issues and considerations surrounding each method. The process described in these Guidelines substantially accomplishes the objectives of NGPC, but continuous improvements are expected.

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**Acronyms** - Unless otherwise specified, wherever the acronyms listed below are used in this Guideline, they shall have the meaning set forth below.

<b>APDM</b>	Accelerated Project Delivery Method
<b>ATC</b>	Alternative Technical Concept
<b>CM/GC</b>	Construction Manager / General Contractor
<b>CPM</b>	Critical Path Method Schedule
<b>D/B</b>	Design/Build
<b>D/B/B</b>	Design/Bid/Build
<b>ERC</b>	Evaluation and Recommendation Committee
<b>FA</b>	Financial Advisors
<b>FC</b>	Financial Committee
<b>GMP</b>	Guaranteed Maximum Price
<b>GP</b> s	General Provisions
<b>ITP</b>	Instructions to Proposers
<b>NGPC</b>	Nebraska Game and Parks Commission
<b>NEPA</b>	National Environmental Policy Act
<b>QA/QC</b>	Quality Assurance and Quality Control
<b>RFP</b>	Request for Proposal
<b>RFQ</b>	Request for Qualification
<b>RIDs</b>	Reference Information Documents
<b>SOQ</b>	Statement of Qualifications
<b>SP</b> s	Special Provisions
<b>TA</b>	Technical Advisors
<b>TC</b>	Technical Committee
<b>TP</b> s	Technical Provisions
<b>USACE</b>	U.S. Army Corps of Engineers

## Definitions

Unless otherwise specified, wherever the following capitalized terms listed are used in these Guidelines, they shall have the following meanings.

### Accelerated Project Delivery Method (APDM)

Alternative Project Delivery Methods available for use by NGPC consisting of D/B and CM/GC methods.

### Addendum or Addenda

Supplemental additions, deletions, and modifications to the provisions of the RFQ or RFP after the release date of the RFQ or RFP.

### Affiliate

Includes parent companies, subsidiary companies, and partners of the proposing entity and other potentially financially liable parties for that entity.

### Alternative Technical Concept (ATC)

Suggested changes, submitted by proposing teams, to the contracting agency's supplied basic configurations, project scope, design, or construction criteria. These proposed changes must provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to the contracting agency, the concept may be incorporated as part of the proposing team's technical and price submittal. ATCs provide flexibility to the proposers to enable them to enhance innovation and achieve greater efficiency.

### Base Configuration

Provides for a constraint on the Design/Builder's ability to deviate from a particular design and also establishes a design benchmark for payment to be made to the Design/Builder if the owner's assumed configuration that was the basis for its price estimate proves to be impossible to build. D/B proposers have the right to assume that the Base Configuration and the design contained in the contract drawings are feasible and represent a reasonable engineering approach to the project.

### Best Value

The selection method for award of a contract based on the combination of qualitative non-price elements and quantitative cost/price elements.

### Commission

The Nebraska Game and Parks Commission (NGPC).

#### Contract Documents

All documents that, when combined, form the basis of the contract, including all pre-tender, tender, and contractual documentation.

#### Contract Terms and Conditions (Agreement)

The rights and obligations of the contracting parties, once a contract is executed. These include general conditions that are common to a variety of NGPC contracts, as well as special conditions that are specific to an individual contract. (Examples of special conditions include contract change conditions, payment conditions, price variation clauses, and penalties.)

#### Descriptive Rating

A descriptive term with which specific qualitative characteristics are associated for use by NGPC during the evaluation of an SOQ or proposal. Prior to the evaluation process, NGPC will assign numerical scores or score ranges to correspond with each Descriptive Rating.

#### Design/Bid/Build (D/B/B)

The traditional method of project delivery in which the agency or owner contracts with separate entities for the design and the construction of a project.

#### Design/Build (D/B)

A project delivery method in which the design and construction services are contracted by a single entity known as the Design/Builder or D/B contractor.

#### Design/Builder

The entity with which the agency or owner has contracted to perform the D/B work effort for a project.

#### Estimated Contract Value

The estimated total price of a D/B contract that includes both design and construction as well as other items for which the D/B contractor may be responsible such as permitting and utility relocation.

#### Evaluation and Recommendation Committee (ERC)

The selected NGPC staff that will serve as the official scoring body to evaluate and rank SOQ and proposal submittals.

#### General Conditions

The conditions included in the contract that establish the minimum performance requirements for the proposer.

## Guidelines

The information contained in this NGPC manual that establishes the framework for either D/B or CM/GC procurement. Guidelines are recommended, except for those identified in this manual as required.

## Instructions to Proposers (ITP)

The documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the proposers in response to the RFP.

## Key Individuals or Key Personnel

Those personnel categories designated by NGPC, for which individuals identified by proposers in an SOQ or proposal may not be changed without NGPC approval. The credentials of these personnel will be evaluated and considered in the selection process.

## Liquidated Damages

An amount determined by the owner during the formation of a contract, to compensate the owner for a specific breach of the contract (for example, late performance). Liquidated Damages are based on estimates of potential actual damages and are not punitive.

## NGPC Director

The NGPC staff member that serves as the head of NGPC.

## Oral Presentations

An in-person formal meeting between the proposer and Owner, at which the proposer may provide clarifying information and/or respond to specific questions formulated by NGPC, to assist NGPC in its final scoring and ranking of SOQs or proposals.

## Owner

The Nebraska Game and Parks Commission

## Performance Based Requirement

Those portions or elements of the project that have detailed design specifications but allows consideration for alternate means of construction to achieve desired outcome.

## Potential Conflict of Interest Disclosure Statement

A form provided by NGPC to be used by proposers and prospective proposers to identify any known or perceived conflict of interest, and the course of action proposed to mitigate the conflict.

**Prescriptive Requirement**

Those portions or elements of the project that have detailed, (essential), design specifications and requirements for construction.

**Price Proposal**

The financial or cost proposal submitted by a proposer in response to the RFP as identified in the ITPs.

**Project Manager**

The Design/Builder's designated individual responsible for the overall design, construction, quality, and contract administration for the project. May also refer to NGPC's employee with responsibility for administering the D/B contract.

**Proposal**

The documents submitted by a proposer in response to the RFP.

**Proposer**

The entity submitting a proposal for the project in response to the RFP.

**Reference Information Documents (RIDs)**

The set of documents assembled by NGPC and included in the RFPs to provide definition and insight into the project. These documents may include: 1) environmental reports, 2) geotechnical information and data, 3) utility information, and 4) any other information NGPC considers to be relevant to project definition. These documents are provided to the proposer for reference purposes only and may not be relied upon. Selected procurement documents must notify proposers that using these documents for the preparation of a proposal is solely at their risk.

**Request for Proposals (RFP)**

The set of documents identifying the project and the work effort to be performed and materials to be furnished, in response to which a proposal may be submitted by a proposer. The RFP includes the ITP, Contract Documents, Technical Provisions, and RIDs. The RFP is issued only to proposers that have been shortlisted following SOQ review and evaluation process.

**Request for Qualifications (RFQ)**

The solicitation by NGPC as part of a procurement, of SOQs, which will be evaluated for the purpose of identifying a consultant or contractor in a qualification-based selection or a predetermined number of highest ranked firms or teams to be subsequently provided with a RFP. The identified highest ranked firms or teams are collectively referred to as being shortlisted or on the shortlist.



**Selection Committee (SC)**

The NGPC staff members that will oversee and facilitate the evaluation process for the procurement.

**Statement of Qualifications (SOQ)**

The submission made by a proposer in response to an RFQ, including all clarifications thereto submitted in response to requests by NGPC.

**Special Terms and Conditions or Special Provisions (SPs)**

The detailed standard rules that will apply to the proposer that enters into a contract with NGPC, forming an integral part of the final agreement or contract.

**Standard Specification**

The current NGPC standards for construction.

**State**

The State of Nebraska.

**Stipend**

A payment made to an unsuccessful proposer in exchange for ownership of the work product included in their proposal and all intellectual property rights associated therewith. These payments are only made to shortlisted proposers who submit responsive proposals.

**Technical Proposal**

The submittal prepared by a proposer that outlines their concepts, ideas, processes, and approaches to deliver a specific project.

**Technical Provisions (TPs)**

The technical requirements and criteria developed by NGPC for a specific project, which will serve as the bases for the final design and construction.

**Transmittal Letter**

The formal letter, prepared by the proposer, which transmits the SOQ or proposal to NGPC for consideration and evaluation.

**Work Product Agreement Form**

A written agreement between the proposer and NGPC that gives NGPC ownership of said proposer's proposal and any concepts or ideas contained in the proposal, in exchange for the Stipend

## Section 1. Conflict of Interest

### 1.1 Introduction

The Nebraska Game and Parks Commission (NGPC or the Commission) strives to maintain the highest ethical standards, and requires strict adherence to Conflict of Interest policy regarding organizational conflict of interest when employing Design/Build (D/B) and Construction Manager/General Contractor (CM/GC) project delivery methods. This applies to firms that may seek to enter into D/B or CM/GC contracts with the Commission (prospective proposers and proposers).

State laws and procedures governing improper business practices and personal conflicts of interest apply to NGPC selection team members. This policy does include a Potential Conflict of Interest Disclosure Statement for NGPC selection team members (Attachment 1-1), which must be completed by participating NGPC employees and NGPC's consultants and advisors with regard to a particular project, and which must be approved by NGPC's Administration before such NGPC employees, consultants, and/or advisors may participate in the procurement process for an NGPC D/B or CM/GC procurement.

Title 23 Code of Federal Regulations (CFR) Part 636.103 defines an organizational conflict of interest as follows:

*Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.*

As used in this excerpt, person means a natural person (i.e., a human being) or an artificial person (i.e., a legal entity treated as having the same legal rights as a human being, including the rights to own property, enter into contracts, and sue and be sued, including for example, corporations, partnerships, and associations.)

The goals of the Conflict of Interest Policy are:

- Protect the integrity and fairness of all aspects of a D/B or CM/GC project, including development, planning, procurement, design, and construction.
- Avoid circumstances where a consultant or proposer obtains, or appears to obtain, an unfair competitive advantage as a result of other work performed, and thereby prevent circumstances that might invite protests to NGPC's selection process; and,
- Provide guidance to consultants and proposers, and prospective consultants and proposers, so they may make informed business decisions concerning opportunities to provide support services to NGPC regarding a potential D/B and/or CM/GC project versus opportunities to propose in response to the subsequent D/B or CM/GC Request for Proposal (RFP) after the final NGPC decision is made regarding project delivery

method.

## 1.2 Statutory Authority

Requests for Qualifications (RFQs) and RFPs for services related to potential D/B and CM/GC projects must clearly communicate the requirement for proposers to comply with all applicable state laws related to procurement and ethics, including disclosure of any conflicts of interest.

Regarding projects undertaken by the Commission under the State Park System Construction Alternatives Act (Neb. Rev. Stat. sections 37-1701 to 37-1732), Nebraska Revised Statute 37-1719 states:

*The commission may hire an architect licensed pursuant to the Engineers and Architects Regulation Act or an engineer licensed pursuant to the act to assist the commission with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the commission to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.*

Nebraska Revised Statute 37-1722 (2) states:

*A person or organization hired by the commission under section 37-1719 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.*

Solicitations for consultants and/or advisors to support the Commission during a D/B or CM/GC procurement process should clearly and conspicuously indicate that firms selected to provide such support services will be precluded from: proposing to provide design or construction services for the resultant D/B or CM/CG project; participating as a subcontractor proposing in pursuit of that resultant project; providing technical, legal, or financial advice to prospective proposers or proposers; or directly discussing any aspect of the D/B or CM/GC RFQ or RFP with any prospective proposer or proposer.

## 1.3 Prohibited Proposers and Participants on Proposer Teams

Entities to which any of the following conditions A through G apply may not be permitted to participate as a proposer or as a member of a proposer team and may not assist nor advise, neither any proposer nor proposer team member in connection with the relevant project. Entities to which any of the following conditions are known by NGPC to apply for a particular project must be identified in the Statement of Qualifications (SOQ) and repeated or updated in

the RFP. It is not NGPC's intent to unduly restrict firms' ability to pursue competitive opportunities with the Commission, and while the applicability of any of the listed conditions to a firm with regard to a specific project will preclude that firm from pursuit of that specific project, it will not preclude their pursuit of other NGPC projects. Further, the Commission views these prohibitions as being only applicable to first tier consultants and advisors (typically prime contractors) that are privy to NGPC deliberations and discussions that affect the procurement process, and not necessarily applicable to second tier or lower tier consultants and advisors (typically subcontractors) that prepare and provide materials for NGPC use and consideration in the procurement process. Lastly, NGPC reserves the right, in its sole discretion, to make the final determination regarding whether a particular circumstance precludes a firm from pursuit of a particular D/B or CM/GC project.

- A. Serving as a consultant or advisor to NGPC with regard to the Commission's planning, development, or management of a procurement for a specific D/B or CM/GC project. (Note that subconsultants to such consultants or advisors, depending on work performed, would typically not be prohibited.)
- B. Assisting the sponsors in the management of a specific D/B or CM/GC project, including the preparation of RFQ language, RFP language, or RFQ or RFP evaluation criteria.
- C. Conducting preliminary design services for a specific project.
- D. Performing design work related to a specific project for other stakeholders.
- E. Performing environmental studies related to the National Environmental Policy Act (NEPA) and other federal permits.
- F. Performing work on a previous contract that specifically excludes them from participating as a proposer or a participant in a proposer team.
- G. Serving under contract with any other entity or stakeholder to perform oversight on a specific project.
- H. Obtaining information that is not publicly available related to a specific project or its procurement from or having a material discussion regarding a specific project or its procurement with any person or entity with an organizational conflict of interest including but not limited to the consultants and advisors who have provided technical support regarding the specific project for any such person or entity.

Prospective proposers and proposers must undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential, or perceived conflicts of interest arise. Due diligence should extend to investigation of past relationships with other entities and, if applicable, to officers or directors thereof. If a prospective proposer or proposer becomes aware of an actual, potential, or perceived conflict of interest at any time during its participation in a project, it must promptly disclose the matter to NGPC.

#### 1.4 Requirements for Respondents that Have Identified Potential Conflict of Interest

Entities who may have potential conflicts of interest in relation to a specific project and who wish to participate as a proposer or join a proposer team pursuing that specific project must:

- A. Conform to applicable federal and state conflict of interest rules and regulations.
- B. Disclose all relevant facts relating to past, present, or planned interest(s) of the proposer team (including the proposer and its subconsultants and/or subcontractors) which may result in, or could be viewed as, an organizational conflict of interest in connection with the specific project including present or planned contractual or employment relationships with any current employee of the Commission.
- C. Disclose all of the work performed in relation to the specific project, and if so directed by NGPC, provide all records of such work performed so that all information can be evaluated and, if necessary, made available to all potential proposers for the specific project.
- D. Ensure that the entity's contract with any related entity to perform services related to the specific project has expired or has been terminated.
- E. In cases where the potential member of a proposer team is affiliated with an entity with an organizational conflict of interest, describe how the entities in question would avoid conflicts of interest during the procurement process.

On review of the information provided as previously described, the Commission will determine, in its sole discretion, if an unfair competitive advantage exists that would preclude the entity from participating on a proposer team.

### 1.5 Other Potential Conflicts of Interest

Because other conflicts of interest may exist in addition to those identified herein, each prospective proposer or proposer must require its team members to identify potential conflicts of interest or any real or perceived competitive advantage relative to the specific project (for example, an employee changing companies, mergers or acquisitions of firms, property ownership, business arrangements, or financial interests). If an organizational conflict of interest is discovered, the prospective proposer or proposer must make an immediate and full written disclosure to the Commission that includes descriptions of the conflict or advantage, and the actions the prospective proposer or proposer has taken or intends to take to avoid or mitigate such conflict or advantage. Such disclosures must be received by the Commission on or before the deadlines identified in the relevant RFQ and/or RFP. In response to such disclosures, the Commission will render determinations regarding the eligibility of the potentially conflicted firm(s) to participate in the proposer's team.

If a conflict of interest applies to an individual, the conflict of interest and prohibition with respect to the individual will not apply to the individual's new place of employment, unless the new employer is an affiliate of the employee's previous employer. If the new employer is not an affiliate of the previous employer and is otherwise eligible to perform services for NGPC pursuant to these guidelines and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigation measures may be required of the new employer with respect to the employee.

## 1.6 Failure to Comply with Policy

If an entity fails to comply with NGPC's rules, including failure to comply with any mitigation measures imposed under the guidelines, or otherwise fails to disclose an actual, potential, or perceived conflict of interest, NGPC may, in its sole discretion:

- Preclude and/or disqualify the entity and its affiliates, including any member of the team which an NGPC project is being pursued, from participation in the planning, procurement, design, construction, and/or development of the particular project, including any competitive process associated therewith;
- Require the entity and its affiliates, including any other entity with which an NGPC project is being pursued, to implement mitigation measures;
- Terminate the entity and its affiliates from any contract with NGPC for the planning, procurement, design, construction, and/or development of a particular project; and/or,
- Pursue any and all other rights and remedies available at law, in equity or set forth in any relevant RFQs or RFPs, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the entity's failure to comply with this policy, including, but not limited to, costs resulting from third-party challenges to the procurement or NGPC's re-procurement of the affected project.

If, at any time during the procurement process, the Commission discovers a conflict of interest or potential advantage, other than those identified herein and not previously identified by the affected proposer, the Commission may, at its sole discretion, disqualify the affected proposer or cancel the procurement, or if said discovery occurs after the conclusion of the procurement process, terminate the contract.

The Commission recognizes that prospective proposers and proposers must maintain business relationships with other public and private sector entities to continue as viable businesses. The Commission will consider this while evaluating the appropriateness of proposed measures to mitigate potential conflicts. The Commission would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated.

## 1.7 Potential Conflict of Interest Disclosure Statement – Proposers

Proposers and members of the proposer team must complete the Disclosure of Potential Conflict of Interest Statement provided as Attachment 1-2 (Potential Conflict of Interest Disclosure Statement – Proposer) and submit it along with the proposal. If a proposer determines a potential conflict of interest exists, it must disclose the conflict to the Commission; however, such a disclosure will not necessarily preclude a proposer for further consideration with regard to the relevant project. To be considered further, proposers that have determined a potential conflict of interest exists must propose measures to avoid, neutralize, or mitigate all potential conflicts. To avoid any unfair taint of the selection process,

the Potential Conflict of Interest Disclosure Statement must be submitted in a separate envelope or from the proposal, and it will not be provided to the Selection Committee (SC) members. The Commission will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer is eligible to participate in the procurement notwithstanding the potential conflict. Resolution of the conflict of interest is ultimately at the sole discretion of the Commission. The Commission reserves the right to void a proposer's having been shortlisted or cancel the procurement if said proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is false or misleading.

#### 1.8 Continuing Obligations Regarding Conflict of Interest

Prospective proposers and proposers pursuing a particular D/B or CM/GC project shall arrange their affairs so as to prevent conflicts of interest from arising. Conflict of interest guidelines and policies shall continue to be monitored and enforced throughout the procurement process and during the term of the resultant contract. If an organizational conflict of interest is discovered at any time during the procurement process, the proposer will make an immediate and full written disclosure to the Commission that includes a description of the action that the proposer has taken or intends to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and the proposer was aware of an organizational conflict of interest prior to submitting a Potential Conflict of Interest Disclosure Statement and did not disclose the conflict, the Commission may remove the proposer from further participation in the procurement. Continuing obligations regarding organizational conflicts of interest should be identified to prospective proposers and proposers in RFQs and RFPs.

**Attachment 1-1**  
**Potential Conflict Of Interest Disclosure Statement –Selection Team Participant**

I, \_\_\_\_\_ as a participant in the preparation of the Request for Qualifications (RFQ) and/or Request for Proposal (RFP), and/or development of associated evaluation criteria, and/or in agreeing to participate in the selection process by reviewing and evaluating Statements of Qualifications and/or proposals (the Procurement Process), for the design and construction or design support and potential subsequent construction of the

\_\_\_\_\_(the Project),  
make the following representations:

- A. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family has a direct or indirect financial interest in any entity participating in any proposal with regard to the Project;
- B. Except as set forth in this Disclosure Statement, no business or organization with which I am associated has a direct or indirect financial interest in any entity participating in any proposal with regard to the Project;
- C. Except as set forth in this Disclosure Statement, no member of my immediate family or other person, business, or organization with which I am associated is negotiating or has an arrangement concerning prospective employment relating to any entity participating in any proposal with regard to the Project;
- D. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family is involved in discussions with any business participating in any proposal with regard to the Project;
- E. I will not solicit or accept, directly or indirectly, any gratuities, unwarranted privileges or exemptions, favors or anything of value from any firm under consideration for the contract associated with the Project, and I recognize that doing so may be contrary to statutes, ordinances, and rules governing or applicable to NGPC or may otherwise be a violation of law; and,
- F. In the event that the circumstances under which I made this Disclosure Statement change such that a revised response pertaining to items A through E must be provided, I will promptly contact the NGPC Project Leader and prepare a revised Disclosure Statement.

Further, I hereby affirm that I have disclosed any potential conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, I do not have a conflict of interest, either real or apparent, as a result of a direct or indirect financial interest on my part or that of any member of my



immediate family, nor of my employer, partner(s), or joint venture members, in any firm under consideration for the contract associated with the Project.

Further, I acknowledge that NGPC may require revisions to the management plan described in Section II below of this disclosure statement prior to approving it and that NGPC has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in Section I below of this disclosure statement.

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

\_\_\_\_ No Conflict of Interest to Disclose

\_\_\_\_ Conflict of Interest and Mitigation Identified (Attach additional pages as necessary)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed or Typed Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_ (if not NGPC employee)

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Section I – Description of Potential Conflicts of Interest (attach additional pages if necessary):

Section II – Plan for Mitigating or Managing Potential Conflicts of Interest (attach additional pages if necessary):

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Reviewed and Approved by the Nebraska Game and Parks Commission:

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Title: \_\_\_\_\_

**Attachment 1-2**  
**Potential Conflict of Interest Disclosure Statement – Proposer**

I, \_\_\_\_\_, as an authorized representative of the proposer or prospective proposer, or as a member of the proposer's or prospective proposer's team, identified below, pursuing the

\_\_\_\_\_  
Design/Build (D/B) contract (the Project), hereby affirm that I have disclosed any potential organizational conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, that the proposer or prospective proposer identified below does not have a conflict of interest, either real or apparent, as a result of any contractual relationships, work performed previously or currently being performed, or any personal relationships.

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

\_\_\_\_\_ No Conflict of Interest to Disclose

\_\_\_\_\_ Conflict of Interest and Mitigation Identified (Attach additional pages as necessary)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed or Typed Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Proposer Team Name: \_\_\_\_\_

Section I – Description of Potential Conflicts of Interest (attach additional pages if necessary):

Section II – Plan for Mitigating or Managing Potential Conflicts of Interest (attach additional pages if necessary):

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Reviewed and Approved by the Nebraska Game and Parks Commission:

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Title: \_\_\_\_\_

## **Section 2. Design/Build and Construction Manager/General Contractor Project Selection Guidelines**

### **2.1 Introduction**

The decision to use an Accelerated Project Delivery Method (APDM) such as D/B or CM/GC, depends on the simultaneous consideration of multiple, project-specific characteristics. There are no absolute tests that drive the decision one way or another and different project characteristics can affect the decision-making process in greater or lesser measures depending on circumstances of the project. These Project Selection Guidelines (Guidelines) are to be used to help NGPC staff in their decision-making processes; the Guidelines are not strict rules.

These Guidelines are organized by project characteristics. Attachment 2-1 (Project Selection Guidelines) that corresponds to the Guidelines is provided at the end of this Section. In the matrix, the applicability of Design/Bid/Build (D/B/B), CM/GC, and D/B is evaluated for individual project characteristics; reinforcing the need for holistically considering the applicability of different project delivery methods rather than looking to a few characteristics as tests to absolutely drive the decision.

### **2.2 Primary Project Delivery Objective**

After the scope is defined and a preliminary risk assessment is performed, the fundamental project characteristics need to be examined. These include NGPC control of detailed design, completion schedule, early cost and schedule certainty, overall cost, reduced NGPC staff involvement, and technical innovation. Each of these is described in the following paragraphs. (See Section 7 for details regarding Risk Assessment.)

NGPC Control of Detailed Design – To the extent that, for a particular project, NGPC considers it necessary, or would prefer to maintain a high degree of control during final design, D/B/B or CM/GC will be considered; D/B is not a suitable method under such circumstances. An example might be rehabilitation or upgrade of an NGPC campground. In that case, NGPC might want control over specific elements to be replaced and/or upgraded.

Completion Schedule – The overall project delivery schedule is typically the primary reason for using D/B or CM/GC project delivery. D/B and CM/GC methods may accelerate project delivery relative to D/B/B, due to the partial overlap of design and construction with D/B and to the avoidance of the procurement process for a construction contractor with CM/GC. The degree to which a particular project would be feasible to implement with more concurrent activities may affect the potential magnitude of schedule acceleration with D/B or CM/GC. Note that while overall project duration may decrease, construction duration may remain essentially unchanged.

In addition to schedule compression because of concurrent activities, construction duration may be shortened by efficiencies that result from the designer and construction contractor working together in the D/B and CM/GC methods.

If acceleration of project completion is the reason to select D/B project delivery, there are outside constraints that could affect project delivery (such as environmental permits, long-lead items, extensive right-of-way (ROW) acquisition, and complex third party agreements). It is possible that delays in the D/B addressing these constraints could eliminate any potential schedule advantage from the D/B method. In such cases, consider one or more separate contracts to address these issues outside of the D/B contract and preserve the schedule compression potential of the D/B method; if this is not possible, the project is most likely not an appropriate candidate for D/B project delivery.

Questions to ask related to whether D/B project delivery can save time relative to D/B/B include:

- Must the work begin or end by a specific date?
- Is the available time unusually short?
- Are work windows a significant issue?
- Are certain seasons or dates critical?
- Are traffic detour and/or closure periods limited?

If the answer to these questions is yes, the project is most likely an appropriate candidate for D/B.

Early Cost and Schedule Certainty – If it is necessary and/or desirable to have cost or schedule certainty early in the project, D/B project delivery would be the most advantageous method. Conversely, both D/B/B and CM/GC do not provide cost or schedule certainty until after completion of final design or later.

Overall Cost – There is no universally accepted cost advantage associated with project delivery using D/B/B versus CM/GC or D/B. Lowest cost might be attained with any one of these methods, depending on specifics of the project and the quality of project management.

Reduced NGPC Staff Involvement – For reasons such as a large volume of project activity placing extraordinary workload demands on existing staff, inability to bring aboard additional staff due to a hiring freeze, or limited available staff resources with a particular skill set, NGPC may prefer to reduce the level of staff involvement in a particular project. Regardless of the reason, D/B project delivery allows NGPC to reduce the level of staff involvement, relative to both D/B/B and CM/GC.

For D/B project delivery, be aware that scope definition and proposer selection require a greater Owner effort up front and have a greater effect on project success than in D/B/B or CM/GC project delivery. To offset any NGPC staff concerns, a consultant can be used to

supplement NGPC staff throughout the delivery of the project. It is important to note that the decision to use D/B project delivery will not rest solely on availability of NGPC staff.

Technical Innovation – Technical innovation is typically constrained by the prescriptive nature of D/B/B project delivery and stimulated by the flexible nature of D/B project delivery. CM/GC project delivery may foster technical innovation depending on the engagement level and cooperation level between the design team and the construction team, and the prime/sub relationship in the CM/GC team of the construction contractor and the technology provider.

### 2.3 Status of Funding

Another fundamental consideration in selecting the most advantageous project delivery method is the status of project funding.

Project is Programmed and Funding is Committed – Having all project funding in place does not favor any of the three project delivery methods available to NGPC. However, it is essential for using D/B because the NGPC funding obligation is part of the D/B contract.

Project is Programmed but Funding is Not Fully Committed – Partial funding, while unsuitable for D/B project delivery, is sufficient for initiating D/B/B or possibly CM/GC project delivery.

Project is Not Programmed – In the absence of construction funding, there may still be funding available to complete design, and if NGPC has a high level of confidence in the project ultimately proceeding, it may be desirable to pursue a design contract, following a D/B/B project delivery strategy.

### 2.4 Project Size

The size or estimated cost of a project will be considered when determining the most advantageous project delivery method. The following size-related factors should be gauged to determine the best project delivery method.

- Projects with large estimated costs usually offer the greatest overall potential benefits from D/B and CM/GC due to the potential of innovative design or construction alternatives. However, larger projects may present a greater risk. At the same time, larger projects may limit the number of potential proposers because of the resources required to deliver such projects.
- D/B may be the only project delivery method available on large projects due to availability of NGPC staff.
- Smaller projects may present opportunities for specific benefits from D/B. The use of D/B or CM/GC contracting on smaller projects with lower risks may still achieve the

benefits of compressed project schedule and lower contracting costs. Additionally, smaller firms can compete and gain experience with the D/B and CM/GC project delivery methods.

## 2.5 Project Complexity

Projects that are complicated present more coordination challenges and potential for design and/or construction innovation, and therefore more potential benefits from a D/B or CM/GC approach. A Best Value solution is often a direct function of the compatibility between the contractor's capabilities and the features of the design. Projects for which the answer to the following questions is yes may be best addressed through D/B or CM/GC contracting, where unique solutions, based on the specific characteristics, can be proposed.

- Will construction phasing be a major issue? (D/B and CM/GC)
- Does the site present unique or unusual conditions? (D/B/B and CM/GC)
- Are specialty skills needed for design or construction? (D/B)
- Does the project include emerging technology? (D/B)
- Will extensive temporary facilities be required? (D/B and CM/GC)

## 2.6 Project Permitting Status

Securing of permits and approvals is a critical step in preparing to employ D/B project delivery, but it can be performed after initiating design when using D/B/B or CM/GC methods. Due to the time required to obtain environmental permits or U.S. Army Corps of Engineers (USACE) approval, neither D/B nor CM/GC should be considered if the environmental or USACE permit processes have not been started. If these processes are nearing completion, D/B and CM/GC are most likely viable project delivery methods for the given project.

## 2.7 Public Endorsement

A project that is well received by the public may be delivered using any of the three project delivery methods available to NGPC. The greater the controversy surrounding a project, the less suitable APDM would be for that project.

## 2.8 Project Types and Other Characteristics

When evaluating potential projects for D/B or CM/GC contracting, NGPC will consider the following example project characteristics to help identify likely candidates.

- Projects for which changes are anticipated during construction such as urban projects with high potential for unforeseen utility issues (these projects may be better suited for CM/GC).

- Projects that require minimum ROW acquisition and utility relocation; to avoid potential associated delays (these projects may be better suited for D/B).
- Projects that would have a well-defined scope for all parties (design and construction); this applies only to D/B and is required by the nature of the D/B project delivery process.
- Projects that have room for innovation in the design and/or construction effort are able to take advantage of the flexibility offered by D/B project delivery.
- Projects with low risk of unforeseen conditions that might offset or eliminate potential D/B or CM/GC schedule acceleration.
- Projects that present limited construction windows due to seasonality or public use patterns.
- Projects with low possibility for significant change during all phases of the work; CM/GC, and to a lesser extent D/B/B, are better able to deal with changes than D/B (these projects may be better suited for CM/GC than D/B). The level of possibility can be evaluated during the risk assessment which is done during the procurement phase.

## 2.9 Summary: Why Consider Design/Build?

The objective of D/B contracting is to deliver projects better, faster, and with fewer Commission resources than required by the conventional D/B/B method. This objective is likely to be achieved however, only if certain characteristics are considered in the project selection process.

The primary questions to ask are:

- Can significant time savings be realized through concurrent design and construction activities?
- Will higher quality products be realized from designs tailored to contractor capability?
- Do constraints of availability of NGPC staff affect the candidate project's schedule?
- Will there be less affect on the public with the use of expedited construction processes?

If the answer to these questions is yes, the project is most likely a good D/B candidate.

## 2.10 Summary: Why Consider Construction Manager/General Contractor?

The objective of CM/GC is to deliver projects better and faster than the conventional D/B/B method. Achievement of these objectives depends on careful consideration of the project scope in the project delivery selection process. Helpful questions to ask include:

- Does the scope suggest that construction phasing issues might be reduced by integrating constructability considerations provided by the CM into the design process?



- Is the scope complex or does it include new technology; the construction and implementation of which would benefit from the early participation of the CM in the design process?

If the answer to these questions is yes, the project is most likely a good CM/GC candidate.

Weigh the project goals, potential benefits, and probable risks carefully, and use all of the information provided in these Guidelines to determine if D/B or CM/GC APDMs offer the best approach to successfully delivering a particular project. In this process, examine candidate projects for unusual or unique requirements that could be better addressed by using D/B or CM/GC project delivery; examples include projects with complexity, narrow construction windows, and time sensitive staging.

Attachment 2-1

**Project Selection Guidelines**

<b>DESIGN-BID-BUILD</b>	
<b>Opportunities</b>	<b>Risks</b>
<ul style="list-style-type: none"> <li>• NGPC controls design and construction under separate contracts</li> <li>• NGPC, consultants and contractors have high level of experience.</li> <li>• Design is complete prior to construction</li> <li>• Construction cost is fixed at contract award</li> <li>• Low-bid cost, maximum competition</li> <li>• Projects can more easily be shelved or delayed if costs exceed budget</li> <li>• Design completed in advance of any long-lead permitting requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Requires higher level of agency staff time and oversight</li> <li>• No contractor input on design, value engineering, or unique construction challenges</li> <li>• Design and construction are sequential, typically leading to longer schedules</li> <li>• Construction cost unknown until contract award</li> <li>• Errors in design, unknown conditions and change orders lead to additional costs and schedule delay</li> <li>• Delays in procurement of long-lead items may delay construction schedule</li> <li>• May require redesign if bid amount is greater than budget, changes are costly</li> </ul>

<b>DESIGN-BUILD</b>	
<b>Opportunities</b>	<b>Risks</b>
<ul style="list-style-type: none"> <li>• Single point of responsibility with contracted entity for design and construction</li> <li>• Shift of some risk from NGPC to the DB entity</li> <li>• NGPC has limited control of design/ construction changes</li> <li>• Full project cost (Design + Construction) is fixed at contract award</li> <li>• Qualification and pricing based selection</li> <li>• Potential to accelerate schedule w/ construction beginning before entire design is complete</li> <li>• Contractor has direct input for constructability</li> </ul>	<ul style="list-style-type: none"> <li>• NGPC relinquishes control of design and construction</li> <li>• Unknown conditions found after procurement can impact schedule and cost</li> <li>• Time investment by NGPC to develop clear and comprehensive requirements and expectations</li> <li>• Risk allocation and uncertainty in design and construction costs may result in increased bids</li> <li>• Potential conflicting interests as both designer and contractor</li> <li>• NGPC resources required at critical points in process to maintain schedule and progress</li> <li>• QA/QC requirements must be clearly defined</li> </ul>

<b>CONSTRUCTION MANAGER/GENERAL CONTRACTOR</b>	
<b>Opportunities</b>	<b>Risks</b>
<ul style="list-style-type: none"> <li>• NGPC selects and has control over the project team (designer and construction manager)</li> <li>• Shared risk is transparent and better communicated</li> <li>• Team integration of NGPC, designer and contractor increases opportunity for innovation</li> <li>• Contractor has full understanding of the project and unknowns when finalizing construction price</li> <li>• Constructability reviews and value engineering inherent in collaborative design process</li> <li>• NGPC time and cost-saving input for scheduling, pricing, phasing and constructability</li> <li>• Qualification and pricing-based selection</li> <li>• Contractor knowledge of materials constraints and availability, and procurement of long-lead items</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced NGPC control of construction</li> <li>• Design changes after construction begins are still the responsibility of the NGPC</li> <li>• NGPC management to control schedule and resolve any designer-contractor conflicts</li> <li>• Experience, or lack thereof, negotiating GMP projects</li> <li>• NGPC requests for customization may add cost and/or time</li> <li>• NGPC schedule-driven goals may drive up costs</li> <li>• If GMP negotiations break down with the original contractor, DBB is a fallback plan</li> </ul>

## Section 3. Design/Build Procedures

### 3.1 Procurement Methodology

Employing D/B project delivery is significantly different from traditional D/B/B project delivery in several ways; the two most important differences are the method of proposer selection and the degree of owner involvement after proposer selection. Unlike the separate, sequential contracts for design and construction found in D/B/B, a Design/Builder is selected based on a combination of qualifications and price, commonly referred to as Best Value, to perform both the design and construction roles. Also, unlike D/B/B in which the owner actively participates in the design process and reviews and approves a series of increasingly detailed levels of design, the owner does not actively participate in the design process in D/B project delivery. **These differences underscore the criticality of the owner having a clear understanding from the outset of its project goals and preparing procurement documents that will serve those goals, such as schedule acceleration, technology innovation, minimizing park impacts during construction, or minimizing impacts on environmentally sensitive sites.**

Nebraska Revised Statutes 37-1701 to 37-1732 govern NGPC with regard to application of D/B to NGPC projects.

The following general policies are the basis of the NGPC D/B procedures:

- NGPC will establish project specific goals early in the project development process. D/B procurement will not proceed without consensus and formal acceptance of shared project goals among key NGPC staff responsible for project success.
- NGPC will follow a two-step procurement process that combines an RFQ and an RFP.
- Prospective D/B proposers will be qualified through the RFQ process.
- NGPC will shortlist at least two, but typically no more than three, firms or teams that are the most qualified based on their response to the RFQ. Pursuant to Nebraska Revised Statutes 37-1722(4), if only one SOQ is received, NGPC may continue or cancel the procurement.
- Only shortlisted firms or teams will be provided with an RFP and invited to propose.
- NGPC will not review or consider alternative proposals or proposals with options, except as provided in the RFP Alternative Technical Concept (ATC) processes.
- NGPC will select the Design/Builder through a competitive, sealed, two-envelope proposal method using Best Value selection criteria. One envelope shall contain the Design/Builder's Price Proposal and the other their Technical Proposal.
- Barring extenuating circumstances, NGPC would award the D/B contract to the responsive and responsible proposer offering a proposal that meets the criteria established by NGPC and that is determined by NGPC to provide the Best Value through evaluation based upon the criteria set forth in the RFP.

### 3.2 Formulation of Request for Qualifications

The objective of the RFQ process is to determine the qualifications of the proposer teams so that only the best qualified proposers are shortlisted to receive an RFP and to submit detailed proposals. NGPC will rely solely on the RFQ process to identify the most qualified proposers. The RFQ will focus primarily on the capabilities, experience, and past performance of the proposer team and Key Personnel regarding specific issues pertinent to the particular D/B project, as well as team organization and financial capacity. The RFQ will include, at a minimum, the following sections:

- **Introduction/ Invitation to Propose:** Introduction for proposers and procurement schedule.
- **Instructions to Propose:** Description of the project, requirements for proposal submission, consideration of proposals, project permitting overview, and any other information that NPGC deems important for the specific project.
- **Evaluation and Selection:** Evaluation scoring elements and points (or weights) which will be the basis of evaluation and selection.

The information requested in the RFQ considers the proposer's SOQ preparation costs and is limited to the information necessary to shortlist the proposers. The RFQ will not generally request a proposer's project approach and understanding; this information is included in the RFP after shortlisting.

The RFQ will not request more experience on the part of Key Personnel than is necessary. Doing so is unlikely to result in a better SOQ and may meaningfully reduce the number of individuals available for the project. Note that Key Individuals identified in an SOQ may not be changed after selection without written approval by NGPC. Therefore, required proposal team experience requested in the RFQ should be tied to the Key Personnel rather than corporate history. The RFQ will identify the ideal type of experience needed to obtain a maximum score in the evaluation.

In response to the RFQ, all proposers may submit an SOQ; providing required information identified in the RFQ to NGPC for evaluation and scoring as outlined in Section 4 (Design/Build Statement of Qualifications Evaluation Guidelines).

### 2.3 Formulation of Request for Proposals

Formulation of the RFP Package is a significant effort for a D/B procurement. The RFP Package defines the desired project outcome and ensures that the required information is incorporated. This section describes special staff needs, necessary document reviews, and NGPC's anticipated approach for developing the major components.

On completion of the shortlisting process by NGPC, an RFP will be provided to only the shortlisted proposers. The RFP will generally be divided into sections. The sections included will depend on the individual project, the following provides a general example of the sections and those sections may include, but are not limited to the following; the sections included will depend on the individual project:

- **Introduction**
- **General Requirements/ Instructions to Proposers:** Instructions for proposers for submitting technical and cost proposals, meetings with proposers, project timetable, and site information.
- **Owners Criteria:** including but not limited to planning, development, facility, construction, quality control.
- **Performance Requirements:** Owners performance requirements.
- **Cost Requirements:** Budget parameters for the project
- **Liquidated Damages** (if applicable)
- **Information and Materials Provided by NGPC**
- **Technical Proposal Evaluation Criteria**
- **Negotiation**
- **Notification of Execution of Design-Build Amendment**
- **Reservation of Rights**
- **Public Information**

### 3.3.1 Instructions to Proposers (ITP)

The ITP provides a significant amount of detail on the project and NGPC's expected outcomes. The ITP includes a project statement that contains information about the scope and nature of the project, as well as the NGPC budget for the project. The primary purpose of the ITP is to outline the expected outcomes and specific requirements for the project, as well as specific requirements for the proposers' final proposals regarding their technical approach to executing the project and their proposed cost to do so. The ITP will request information regarding specific design and construction actions, intended final products, construction staging, and project management. In addition, NGPC may request descriptions or design development of specific project elements to a specified level, to demonstrate the intent of the proposers. The ITP may call for other items, such as safety plans and QA/QC plans, plans, to be outlined in the proposal and submitted after contract award.

#### 3.3.1.1 Questions and Responses Regarding the Request for Proposal

The ITP will contain specific guidelines and directions to proposers that address the following:

- Proposers shall be responsible for reviewing the RFP and any Addenda issued by

- NGPC prior to the proposal due date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that proposer does not understand.
- Comments or questions regarding the RFP, including requests for clarification and requests to correct errors, shall be submitted by hard copy, facsimile, or other electronic transmission; no telephone or oral requests will be considered.
- Responses to comments or questions will be in writing and will be delivered to all proposers, with the exception of those questions identified by a proposer, and agreed by NGPC, as containing confidential or proprietary information relating to proposer's proposal and/or ATCs.
- NGPC may convene pre-proposal meetings with proposers.
- NGPC reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or procurement process at any time before the proposal due date through the issuance of Addendums. If necessary, the amendment may extend the due date.
- NGPC D/B related procedures will be available to proposers, in hard copy and/or electronically, in one or more publicly accessible locations.

### 3.3.1.2 Stipend

Due to the substantial amount of design work that is required, the development of a D/B proposal is substantially more costly than the development of separate design proposals and construction bids under the D/B/B project delivery method. To encourage the development of well-prepared D/B proposals, NGPC may partially compensate D/B proposers for their proposal materials, by paying proposers for their proposal work product (these payments are referred to as Stipends). Firms or teams that are issued an RFP and that submit a responsive proposal (as defined in the ITP) but are ultimately not selected would be eligible to be partially compensated by means of the Stipend. The Best Value selected proposer, known at that point as the Design/Builder, would not receive any Stipend.

Stipend payments for work product contained in the proposal secure ownership of the intellectual property rights associated with the design materials in the proposal. This allows NGPC to use these design materials as it sees fit, including sharing them with the selected Design/Builder for potential incorporation into their plans. A proposer may elect to decline to accept the payment for work product, and thereby retain ownership of the intellectual property rights associated with their proposal materials; such action is typically intended to protect information that the unsuccessful proposer considers proprietary.

The RFP must state the amount of the Stipend. The amount of the Stipend will be commensurate with the value of the work and the number of shortlisted firms or teams. The amount of the Stipend will generally be proportional to the estimated price of the D/B contract for the project. The amount of the Stipend may be increased for very complex projects that may require more upfront design work to prepare a competitively priced proposal.

Payment of the Stipend will be made within 30 days of NGPC's receipt an invoice following the award of the contract or a decision not to award. Proposers will have an option to not request payment for their work product. In this case, the information contained in the proposal or discussed with NGPC remains proprietary.

Should NGPC cancel the procurement after issuance of the RFP but prior to receipt of proposals, NGPC may pay a reduced Stipend to all proposers. The amount of the reduced Stipend to be paid will be determined by NGPC.

Should NGPC cancel the procurement after proposals are received but prior to selection, all responsive proposers may receive the payment for work product as defined in the RFP.

Under no circumstances will the State of Nebraska, NGPC, or any official or employee of the State or NGPC be liable for or reimburse any costs incurred by a proposer, successful or unsuccessful, in developing a proposal unless otherwise noted in the RFP. In the event the D/B procurement process is terminated for any reason prior to issuance of the RFP, neither the State of Nebraska, NGPC, nor any official or employee of the State or NGPC shall be responsible for any stipend, partial or in full, or for any costs incurred by proposers in developing their proposals.

#### 3.3.1.3 Alternative Technical Concepts

In the D/B process, proposer's innovation is a key element for consideration by NGPC. The use of ATCs is encouraged under the State Park System Construction Alternatives Act and NGPC will typically use the ATC provision in all D/B project procurements. ATCs are proposer's ideas or concepts by which an element of the scope of work identified in the RFP might be accomplished to reduce cost, accelerate delivery, and/or improve quality of the competed project. ATCs provide flexibility to the proposers to enhance innovation and achieve efficiency. ATCs are confidential elements of the proposal process.

ATCs may consist of suggested changes to NGPC's supplied basic configurations, project scope, design, or construction criteria. These proposed changes provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to NGPC and NGPC has communicated its approval in writing, the concept may be incorporated as part of the proposing team's technical and price submittal. However, if NGPC accepts an alternative concept that requires alteration of the RFP, NGPC shall issue an addendum to the RFP to do so in order to be fair to all proposers.

#### 3.3.2 Contract Terms and Conditions

The RFP must include a copy of the proposed D/B Agreement, including any contract terms and conditions that are subject to further negotiation. The proposed Agreement must include

general provisions, special provisions, and insurance and bonding requirements associated with the project.

### 3.3.2.1 General Provisions and Special Provisions

General Provisions (GPs), sometimes referred to as General Conditions, are the contract terms and conditions that are used in multiple contracts, either as generic terms and conditions that apply to all contracts of a given type for a given owner, or to all contracts of a large, multi-contract project or program. Special Provisions (SPs), sometimes referred to as Special Terms and Conditions, are those contract provisions that are not universally applicable and that refer solely to the individual project.

For purposes of NGPC D/B contracts, GPs and SPs will be adopted based on NGPC's current D/B/B contract GPs. Many of these provisions will come directly from NGPC's standard specifications. The proposed D/B Agreement which will be provided in the RFP will identify the GPs and any SPs

### 3.3.2.2 Design/Builder Progress Payments

NGPC projects delivered using D/B will employ a progress-based payment methodology, similar to that employed on D/B/B projects. Following execution of the contract or agreement and prior to work being performed on the project, the Design/Builder will submit a cost-loaded Critical Path Method (CPM) schedule to NGPC for review and approval. If NGPC included a Cash Flow Schedule in the RFP, the Design/Builder shall ensure that their cost-loaded CPM schedule conforms to the cash flow schedule.

Once the CPM schedule is approved, it will serve as the basis for making scheduled progress payments. A schedule of pay items will be developed from the cost-loaded CPM schedule that will serve as support for the scheduled invoicing. Each scheduled project period the Design/Builder will estimate the percent complete for each CPM schedule activity and multiply that percentage by the amount for that activity in the cost-loaded CPM schedule to determine the extended costs. The Design/Builder will assign those extended costs to the pay items in the schedule of pay items and produce an invoice for NGPC to process. The invoice will be submitted to NGPC's Engineering Division. In the event the cash loaded CPM schedule changes in excess of 2 weeks, the Design/Builder will submit a revised cost-loaded CPM schedule with the invoice. The invoice will be reviewed and must be approved by NGPC staff prior to payment. Invoices will be paid via established state of Nebraska processes with a goal of within 45 days, up to the maximum amount allowed under the NGPC's Cash Flow Schedule if applicable.

Invoices for a D/B project must be provided by the Design/Builder and signatory of the contract for the project; any invoices that are sent separately to NGPC by team members, subs, suppliers, etc. will be returned to the sender.



NGPC generally will pay the Design/Builder one hundred percent (100%) of the design and construction assurance and quality control, and ninety percent (90%) of the estimated value of all other Work performed with sufficiently established detail in the invoice or form for payment until substantial completion. At Substantial Completion, construction is sufficiently complete, in accordance with the construction Contract Documents, so that the Owner may use or occupy the project or designated portion thereof for the intended purpose and determined by the Owner.

### 3.3.3 Technical Provisions

For the Technical Provisions (TPs), it is NGPC's goal that a performance approach be used whenever practicable. Use of prescriptive requirements, although allowed, will be minimized as the prescriptive nature of the terms may reduce the proposers' potential for innovation in their proposals.

#### 3.3.3.1 Performance versus Prescriptive Requirements

In addition to schedule acceleration and technological innovation, an additional benefit of D/B project delivery is the flexibility afforded to the Design/Builder. This flexibility must be considered reasonable and responsible by the owner. Such flexibility is maximized by using performance-driven requirements wherever possible and limiting the use of prescriptive requirements to those project elements for which a prescriptive requirement is demonstrably essential.

#### 3.3.3.2 Base Configuration

The Base Configuration consists of the mandatory design requirements or technical requirements for the project, consistent with the information presented in the environmental documentation. Where appropriate, standards may be referenced rather than calling out individual dimensional requirements.

#### 3.3.4 Reference Information Documents

RIDs may include environmental documents and decisions, old contract plans or as-built plans, reports, condition surveys, utilities plans, agreements, other contracts, photographs, correspondence, and meeting minutes. RIDs will be used to provide information that may be useful or of interest to the proposers in preparing their proposals and in implementing the contract. The RFP and contract will clearly state that RIDs are provided to the proposers for use at their own risk and come without NGPC warranties, except as specifically provided for in the contract documents. **The proposers will need to verify the accuracy of any information contained in the RID. RIDs are not to be confused with RFP technical requirements.**

### 3.3.5 Request for Proposal Evaluation Process

In response to the RFP, all shortlisted proposers will be invited to submit a Technical Proposal and a Price Proposal, providing required information identified in the RFP to NGPC for evaluation and scoring as outlined in Section 5 (Design/Build Proposal Evaluation Guidelines). The RFP must include the criteria for evaluation of proposals and the relative weight of each criterion. The criteria must include, but are not limited to, price, construction experience, design experience, and financial, personnel, and equipment resources available to implement the project. The relative weight applied to any criterion will be based on the characteristics of each individual project, except that price must receive a relative weight of at least 50 percent.

## **Section 4 Design/Build Statement of Qualifications Evaluation Guidelines**

### **4.1 Pre-Statement of Qualifications Submittal Meeting**

A public pre-SOQ submittal meeting may be held to discuss issues related to the procurement process, to discuss the goals of the D/B contract, and to provide details of the project. These meetings typically are not mandatory. If a pre-SOQ submittal meeting is held, the notice must clearly state whether or not attendance is mandatory. During the pre-SOQ submittal meeting, NGPC will discuss the overall procurement and selection process, provide a general explanation of the proposed contract terms and expected outcomes, and describe project specific elements, both administrative and technical. This will provide potential proposers with a better understanding of the project and NGPC's expectations.

The pre-SOQ submittal meeting would typically be held no sooner than 10 days after advertisement of the D/B project RFQ and no later than 10 days prior to the SOQ submittal date. NGPC should keep in mind the complexity of project when setting the actual pre-SOQ submittal meeting date, providing proposers with adequate time to prepare for the pre-SOQ submittal meeting or sufficient time after the pre-SOQ submittal meeting to prepare their SOQ submittals.

### **4.2 Statement of Qualifications Evaluation Introduction**

The D/B SOQ evaluation process described in these Guidelines is intended to ensure consistency and fairness in NGPC's evaluation of the SOQs and shortlisting of the proposers eligible to receive an RFP.

The D/B SOQ evaluation process is intended to ensure SOQs are evaluated according to the responsiveness requirements, any pass/fail criteria, and qualitative evaluation factors set forth in the RFQ (collectively, the Evaluation Criteria), and to facilitate NGPC's selection of shortlisted proposers so that the procurement of the project proceeds on schedule.

### **4.3 Evaluation Organization**

Security will be of utmost importance in protecting the confidentiality of the SOQs and the evaluation process. The following information applies to a typical D/B selection process.

NGPC will utilize an Evaluation and Recommendation Committee (ERC) to rank SOQs and make a recommendation for short-listing to the Nebraska Game and Parks Commission Director.

The ERC is made up of NGPC staff members, which may be the same personnel who will subsequently participate in the Technical Committee and Financial Committee for evaluation of Proposals. The ERC members will evaluate and perform the official scoring of the SOQs

against the pre-set evaluation criteria and furnish to the SC their recommendations with respect to the SOQs. The ERC may include other agency stakeholders or partner agencies at the discretion of NGPC.

NGPC may develop advisory groups, made up of non-scoring NGPC staff members (not assigned to the ERC) and outside consultants, as NGPC determines appropriate, with technical and legal expertise. These individuals will perform advisory and support roles only, performing research and answering technical and legal questions for the ERC, and will not make recommendations with respect to the SOQs' performance against the evaluation criteria, Descriptive Ratings, or shortlisting determinations.

Outside of the three groups previously described, there could be a number of other participants in the SOQ evaluation process who would support the overall process (for example, NGPC Engineering, Fisheries, Wildlife and Parks Division staff), but will not review, score or make recommendations.

#### 4.3.1 Role of the Evaluation and Recommendation Committee (ERC)

The ERC's responsibilities include the following:

- Ensure timely progress of and compliance with the SOQ evaluation process.
- In consultation with the legal staff, provide direction if participants in the SOQ evaluation process have questions or encounter issues relating to the evaluation of SOQs or the SOQ evaluation process in general.
- Coordinate with the NGPC Engineering Division to transmit clarification letters and other NGPC correspondence to proposers.
- Establish the maximum points the SOQs may achieve for each qualitative evaluation factor and the relative weighting for the qualitative evaluation sub-factors.
- Refer matters regarding actual, potential, or perceived conflicts of interest to the individual or unit in NGPC responsible for resolution of conflicts of interest.
- Make final determinations with respect to each SOQ's responsiveness to the RFQ requirements and performance against any pass/fail criteria.
- Individually review each proposer's SOQ against the qualitative evaluation factors provided in the RFP, and meet as a committee to draft clarification questions for each proposer if needed.
- Participate in any oral presentations, if held.
- Independently score each proposers SOQ using a qualitative evaluation based on the ERC's qualitative evaluation score sheet.
- Participate in the ERC consensus meeting where independent scores will be shared and combined to calculate the final score for each proposer, resulting in identification of the proposers ERC recommends for shortlisting based on the final scores.
- Prepare documentation regarding the ERC's shortlisting recommendation.

- Review the shortlisting recommendation with the Nebraska Game and Parks Commission Director for final approval.
- Ensure written documentation of the SOQ evaluation process is properly maintained, and destroy documents that are not required to be maintained.
- If the ERC determines it appropriate, the ERC may elect to deviate from any procedure prescribed in these Guidelines, provided the deviation does not otherwise constitute a violation of applicable law. The ERC shall consult with the legal staff as to whether any proposed deviation constitutes such violation. Any change or modification should be documented in the documentation regarding the final shortlisting determination.

If deemed necessary to complete its responsibilities set forth in the Guidelines, at the discretion of the ERC chair, the ERC may be sequestered at a location that promotes confidentiality while maintaining collaboration within the ERC. The ERC chair, as applicable, will select the location.

#### 4.3.2 Evaluation and Recommendation Committee - Evaluation and Scoring Materials

To create a consistent evaluation and documentation of the ERC activities, several documents may need to be developed. These materials will serve as a permanent record of the evaluation process and outcome of the evaluation and shortlisting process. The following materials, if used, will need to be formulated prior to the proposer's submittal of the SOQ to NGPC for consideration. After development of these documents for NGPC's first D/B procurement, they may be used as standard templates for subsequent procurements, and modified if necessary for specific, individual procurements.

- The SOQ Evaluation documents which may include, but are not limited to:
  - The SOQ organization including ERC members by name (and affiliation if not NGPC employees);
  - The specific roles and duties of the ERC members;
  - An evaluation schedule including location and time of ERC consensus meeting;
- Responsiveness and Pass/Fail Worksheet: This worksheet should include both legal and technical criteria, as defined in the ITP, which must be included in the proposer's SOQ. Failure of a proposer to include the required information may be grounds to consider their SOQ non-responsive.
- Project and Key Personnel Reference Interview Questionnaires: Prior to evaluating the SOQs, NGPC may develop a script to be used when conducting phone interviews to check and verify the information contained in the SOQ by the proposers on the project and Key Personnel. Having a pre-set script will ensure that during each reference check, the questions are consistent and contain the same type of information.
- Qualitative Rating Form/ Proposal Rating Sheet: To record individual assessments of the proposer's SOQ, each member of the ERC should use a qualitative rating form to independently record their scores of the proposer's SOQ. These forms will then be used by the ERC member during consensus meeting.

#### 4.4 Statement of Qualifications Evaluation Criteria

The objective of the RFQ and SOQ step of the procurement is to shortlist proposers with the best legal, technical, financial, and management capability, capacity, and experience necessary to successfully undertake and complete the project. SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. The pass/fail criteria and scored criteria set by NGPC will be identified in the ITP of the RFQ.

#### 4.5 Determination of Responsiveness

At a minimum, the following items may be required to be completed and included in an SOQ for it to be considered responsive:

- Transmittal Letter signed by a duly authorized official or representative of the proposer;
- Proposer information including the proposing entity, lead designer, lead construction contractor, and other major subcontractors; and,
- Certification of the accuracy of the information submitted in the SOQ signed by a duly authorized official or representative of the proposer.

##### 4.5.1 Pass/Fail Evaluation Criteria

The pass/fail evaluation criteria will be tailored for the specific project, but should generally fall within the following categories. For an SOQ to achieve a passing rating, information provided in each of the following categories will need to meet or exceed the minimum requirements, as determined by NGPC for the project and as listed in the ITP of the RFQ. The categories that are included in the RFQ, if any, will be determined based on NGPC's determination of requirement for each project.

- Legal: The objective will be to select proposers whose organization, legal structure, team members, and history demonstrates the proposer's ability to remain stable and viable for the duration of the project and be contractually bound to NGPC. Certifications regarding debarment, suspension, and other legal requirements must be provided.
- Financial: The objective will be to select proposers whose team members possess the financial capacity to enter into a contract with NGPC and the resources to successfully complete the project. The proposer must provide its current balance sheet and recent annual operating statements and evidence of the lead construction contractor's ability to obtain bonding as specified in the ITP of the RFQ.
- Safety: The objective will be to identify those proposers that can demonstrate an acceptable safety record and safety program. The lead construction contractor must provide safety record information.

#### 4.5.2 Scored Evaluation Criteria

Once the pass/fail criteria have been evaluated, NGPC will enter into the evaluation process where proposers' SOQs will be scored using the ratings previously described. The scored evaluation criteria will be tailored for the specific project, but fall within the following guidelines.

The evaluation and selection criteria for each project will be included in the RFQ. At a minimum, NGPC will include the following criteria, these criteria may be separated or combined.

- **Proposer's experience:** The objective will be to identify design and construction firms and key personnel that demonstrate successful project experiences that are directly relevant to the project being procured, in terms of their scope, size, and complexity. Project experience that is more recent would be considered more favorably than comparable experience that is less recent.

NGPC will identify relevant characteristics of the specific project being procured. These may include but are not limited to experience with: 1) relevant experience using the D/B process including government and private sector projects; 2) relevant experience in design, engineering, permitting, constructing and managing projects; 3) experience of the proposed team including prior relationships on D/B projects; 4) resumes of key personnel in each of the disciplines for which services are being offered for the D/B project;

- **Proposers References:** provide at minimum of 3 references for similar projects performed within the last 5 years. It is the proposer's responsibility to ensure the Reference Questionnaire's (or similar forms) are completed and returned with the SOQ. The ERC may contact any or all references for validation of information submitted.
- **Capacity and Capability:** The objective is to determine the capacity and capabilities of the construction firms and key personnel to take on and complete the proposed project.

NGPC will identify relevant capacity and capability information to be requested, including but not limited to: 1) capacity to handle the project relative to other work, including availability of key staff; 2) capacity for design and site construction to meet the needs of the project; 3) construction capabilities and methods to meet an accelerated schedule; 4) construction management capabilities for similar sized projects; 5) permitting capabilities of staff and a level of experience; 5) capabilities

and/or experience working with third parties relative to IT/Communications; 6) capabilities to secure subcontractors and/or team capacity to meet all project needs; 7) capacity to be bonded in Nebraska

- **Past Record of Performance:** The objective is to understand the experience of the D/B team members in completing projects similar in scope, experience of the team working together, and ability to meet construction schedules.

NGPC will identify relevant performance information to be requested, including but not limited to: 1) relevant projects of similar scope and service; 2) Team experience performing D/B projects and construction oversight; 3) History and experience of the specific team working together; 4) Ability to meet construction timelines.

- **Experience with Nebraska State Government:** The objective is to understand the experience of the D/B team members in working within the limitations and requirements of Nebraska State Government.

NGPC will identify relevant information to be requested, including but not limited to: 1) a list and description of projects completed for NGPC; and 2) a list and description of projects completed for the State of Nebraska.

- **Experience with Nebraska projects:** The objective is to understand the experience of the D/B team members regarding work in Nebraska.

NGPC will identify relevant information to be requested, including but not limited to: 1) the team is licensed or has the ability to be licensed for Construction, Engineering, Architecture, and Construction Management in the State of Nebraska; 2) Experience with D/B projects in Nebraska, and 3) a list and description of relevant projects successfully completed in Nebraska.

NGPC may decide, based on the needs of the project to expand the criteria for other purposes including demonstration of the proposers understanding the the D/B process and the ability to provide financing. The following are examples of additional criteria that may be included:

- **General management approach to D/B:** The objective will be to identify those proposers that are able to demonstrate: 1) an understanding of and approach to how the D/B process works and how the proposer's organization will contribute to the success of the project and meet NGPC's project goals; and 2) an understanding of the risk sharing and the partnering relationship between the Design/Builder and NGPC.
- **General approach to D/B quality:** The objective will be to identify those proposers that are able to demonstrate an understanding of how to implement a quality



management program for a D/B project. The general description of the proposer's quality approach should include: 1) QA/QC during design; 2) QA/QC during construction; 3) coordination between NGPC and the Design/Builder organization; and 4) coordination with other agencies.

- **Ability to Provide Financing:** The objective will be able to identify those proposers that may have the capability to provide financing options for the D/B project including: 1) the proposers capability to provide finance options; and 2) experience and description of finance options for past projects.

#### 4.6 Optional Oral Presentations

NGPC may schedule interviews (Oral Presentations) with proposers, at the ERC's sole discretion, to clarify information provided in the SOQs. If scheduled, the Oral Presentations will be part of the final evaluation process and occur prior to the ERC scoring of proposals. The applicable guidelines for conducting Oral Presentations are:

- The ERC will determine which participants in the SOQ evaluation process will participate in Oral Presentations, and the NGPC Project Manager or their assign will notify those individuals accordingly.
- Proposer attendees should be limited: 1) on large and complex projects, no more than eight representatives per proposer team and 2) on small to medium projects, no more than five representatives per proposer team. These suggested limitations are presented as a general guideline; final determination of limitation should be determined by NGPC based on individual project scope, complexity, and size.
- Oral Presentations will be scheduled to last 30 to 60 minutes depending on the needs of the project.
- Formal presentations may or may not be required. At a minimum, Oral Presentations would consist of proposer responses to NGPC-developed questions seeking to clarify issues in the SOQs. Except for their SOQs, proposers will bring no exhibits, displays, or other documentation to the Oral Presentation except as specifically allowed by NGPC.
- If Oral Presentations are held, the ERC may develop and transmit to the proposers prior to the Oral Presentations additional procedures and time limits for such Oral Presentations.
- Oral Presentations may be recorded by videotape or other means at NGPC's discretion.

#### 4.7 Release of Information Regarding the Statement of Qualifications

Information regarding the contents of SOQs or the SOQ evaluation process may be released to parties outside of the SOQ evaluation process only if authorized by the ERC Chair.

All written materials generated by the participants in and as part of the SOQ evaluation process

will be delivered to the NGPC Project Manager before or immediately after the SC's shortlisting decision. On receiving the written materials, the NGPC Project Manager will determine, for each document, whether it may be destroyed or must be retained for the final record of the SOQ evaluation process, in accordance with state law governing public records.

#### 4.8 Notification and Debriefing

The NGPC Engineering Division will notify proposers of the final shortlisting determination. Proposers that are not shortlisted will be notified in writing concurrently with or promptly after shortlisted proposers are notified.

After the shortlist is publicly announced, and at NGPC's discretion, the ERC may coordinate with the NGPC Project Manager to contact non-shortlisted proposers and offer them an opportunity to request a debriefing; the debriefing would be conducted by the ERC. The ERC and Project Manager will establish the dates, times, durations, and locations for debriefings.

Debriefings will:

- Be limited to discussion of the unsuccessful proposer's SOQ and may not include discussion of any competing SOQ;
- Be factual and consistent with the evaluation of the unsuccessful proposer's SOQ; and
- Provide information on areas in which the unsuccessful proposer's SOQ had weaknesses or deficiencies, so as to benefit the unsuccessful proposer's future NGPC procurement efforts.

## **Section 5 Design/Build Proposal Evaluation Guidelines**

### **5.1 Overview of the Proposal Evaluation Process**

At the conclusion of the SOQ evaluation and shortlisting process, up to three proposers will have been provided with RFPs and invited to submit proposals. Between the times the RFPs are released and proposals are due, a series of meetings will be held with all proposers to confirm all participants' understanding of the proposal process. These meetings will include a group meeting with all proposers to confirm proposers' understanding of the RFP and proposal process, and individual sessions between NGPC and each of the proposers to discuss ATCs and specific issues in the RFP. Both types of meetings are discussed further in Section 3 (Design/Build Procedures). SOQ evaluation results are not carried forward into the D/B proposal evaluation process and each shortlisted proposer starts the proposal process on equal footing.

Each proposal consists of two parts: a Technical Proposal and a Price Proposal. These two proposals are submitted to NGPC in separate, sealed envelopes. The Price Proposal envelope contains any updated financial information since the SOQ plus another sealed envelope that contains the proposer's Price Proposal or "bid", which will remain sealed until the evaluations of all of the Technical Proposals have been completed.

The proposal evaluation process essentially consists of four steps:

1. Proposals are first screened for responsiveness and acceptability relative to pass/fail criteria. If a proposal is deemed non-responsive or does not meet pass/fail criteria, the reviewers may request – through formal communication protocols – additional information and/or clarification necessary to address and potentially correct the determination of non-responsiveness and/or evaluation relative to pass/fail criteria.
2. Technical Proposals that are deemed responsive and that meet the pass/fail criteria are then evaluated relative to scored criteria identified in the ITP; this is essential to process transparency. Scoring makes use of qualitative numerical scores determined beforehand by NGPC; note that proposals are evaluated relative to the criteria and are not compared to each other. As with the responsiveness and pass/fail screenings, reviewers may request additional information and/or clarification necessary to fairly evaluate the proposals. At the conclusion of the evaluation of the scored criteria, each proposal will have been assigned a Technical Score.
3. After the Technical Scores have been established, the Price Proposal envelopes are opened and the Price Proposals are evaluated. (Note that the Price Proposal includes a sealed envelope containing the Price Proposal.) Financial Scores are then calculated.

4. Once the Technical Scores and Financial Scores are established for all proposals, the Price Proposal envelopes are opened, and the combined Proposal Scores are calculated for all proposals and the Apparent Best Value proposer determined.

## 5.2 Proposal Evaluation Participants

The following information represents a potential framework for the organization of the Technical Committee (TC), Financial Committee (FC), Advisors, and other NGPC staff; the extent to which some or all of these groups are used is a function of the size and complexity of the individual project.

- Participants assigned to the proposal evaluation process will be responsible to completely review the submitted proposals.
- The TA will support and assist the members of the TC in connection with their review and evaluation of the proposals and will provide comments on the strengths and weaknesses of the proposals with respect to the Evaluation Criteria.
- If a TC member or Technical Advisor has questions regarding the Evaluation Criteria, a clarification must be requested through the NGPC TC Chairperson.
- During the evaluation process the Committee or Advisors are allowed to ask proposers for additional information and clarifications to enable them to gain a better understanding of the proposals; including obtaining information necessary to determine whether the proposal is responsive and meets the pass/fail evaluation criteria, and/or information needed to clarify ambiguities or inconsistencies in the proposals.
- Requests for information or clarifications must be made in writing, which will then be forwarded to the appropriate proposer by the NGPC TC Chairperson.
- Each request for additional information or clarification, whether related to responsiveness, pass/fail criteria or otherwise, must specify a page limit and time period for delivery of such information, as determined by the requesting Committee.

### 5.2.1 NGPC Director

The NGPC Director's responsibility relative to D/B procurements consists of:

- Approve the TC membership for each Design/Build procurement. The NGPC Director may add members or replace members for an individual procurement.
- Approve the Chairpersons to lead the TC and FC.
- Review and approve the recommendation of the TC and FC for the apparent best value proposer or request that the TC and FC reconsider the recommendation.

### 5.2.2 Technical Committee Chairperson

Responsibilities of the Chairperson of the TC are outlined below:

- Direct the NGPC Engineering Division to distribute each proposer's Technical Proposal and Price Proposal to the Technical Committee and Financial Committee, respectively.
- Ensure that Confidentiality and Disclosure Agreements and, if necessary, Disclosure Statement Forms, are signed by and collected from each participant.
- Upon receipt from the TC of the initial responsiveness and pass/fail assessments for all proposals, the Project Manager will issue requests for clarification and/or additional information, if necessary and as requested by the TC Chairperson.
- Upon receipt from the TC of the initial responsiveness and pass/fail assessments for all proposals, and if any proposal is found to be nonresponsive or to have earned a failed pass/fail score, the Project Manager will prepare a formal recommendation to the NGPC Administration to disqualify such proposals.
- Upon receipt of the scoring worksheets for all proposals from the TC, present these findings with a recommendation to the Director for review and approval.
- After The Technical Scores have been completed, direct the FC to open the Price Proposals and calculate Price Scores.
- Serve as a point of contact in the event a Committee Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to NGPC Administration if appropriate.
- Coordinate with any Technical Advisors and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.
- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if a Technical Committee Member or Advisor is unable to complete their responsibilities to the extent the TC Chairperson deems necessary or if additional Technical Committee Members or Advisors are necessary to properly evaluate the proposals.
- Verify that each TC Member individually reviews and assesses each Technical Proposal using the Evaluation Criteria established for the project.
- Approve the ratings and point recommendations of the TC, or request the TC reconsider its evaluations.
- In coordination with the FC Chairperson, select the Apparent Best Value proposer based on the evaluation and scoring of the TC and FC, through application of the formula set forth in the ITP, and provide a recommendation for approval by the NGPC Director. Following approval, direct staff to proceed with final contract negotiations.
- Notify those proposers that have not been selected as the Apparent Best Value proposer and coordinate with the Chairpersons of the TC and FC to schedule debriefing meetings, if desired by NGPC or requested by the proposer.

### 5.2.3 Technical Committee Members

Technical Committee Members' responsibilities are outlined below:

- Review and adhere to the Evaluation Criteria and evaluation procedures set forth in the RFP and these Guidelines prior to evaluating the proposals.
- The TC will generally be made up of 5 or fewer NGPC staff members. If the NGPC project team and TC Chairperson determine that, due to Project size and complexity, 5 members are excessive, the number of members can be reduced.
- If a Technical Committee Member has any questions regarding the Evaluation Criteria, they may request clarification from their TC Chairperson.
- Each TC member will evaluate and score the Technical Evaluation Criteria for each proposal.
- In a sequestered and confidential environment, the TC will evaluate the Technical Proposals based on 1) the responsiveness requirements and any pass/fail criteria, and 2) combine individual scores of Evaluation Criteria to determine final TC scores for each proposer.

#### 5.2.4 Financial Committee Chairperson

Responsibilities of the Chairperson of the FC are outlined below:

- Serve as a point of contact in the event a Committee Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to the Project Manager, as appropriate.
- Coordinate with any Financial Advisors and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.
- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if a Financial Committee Member or Advisor is unable to complete their responsibilities to the extent the FC Chairperson deems necessary or if additional Financial Committee Members or Advisors are necessary to properly evaluate the proposals.
- The FC Chairperson, with the assistance of selected FC Members and Advisors (as needed), will ensure the calculation of scores for Price Proposals follows these guidelines and specifications of the RFP.
- In coordination with the TC Chairperson, select the Apparent Best Value proposer based on the evaluation and scoring of the TC and FC, through application of the formula set forth in the ITP, and provide a recommendation for approval by the NGPC Director.

#### 5.2.5 Financial Committee Members

Financial Committee Members' responsibilities are outlined below:

- Prior to evaluating the proposals, review the Evaluation Criteria and evaluation procedures set forth in the RFP and these Guidelines, and adhere to them during the evaluation process.
- The Committee, including the Chairperson, will normally be made up of either 2 or 3 NGPC staff members.
- If a Committee Member has questions regarding the Evaluation Criteria, they may request clarification from the FC Chairperson.
- After the Technical Scores have been completed by the TC, the FC will be convened by the Chairperson to open the Price Proposal envelopes, and apply the previously identified methodology to calculate the Price Score for each proposal.

#### 5.2.6 Advisors

Depending upon the size and complexity of an individual project, or if otherwise deemed necessary by the TC or FC, Advisors (eg. Technical, Financial and/or Legal Advisors) may be made available to assist the TC, FC and other NGPC staff during the evaluation process. When more than one advisor in a given discipline is participating in a given evaluation process, the Advisors may elect a chairperson to serve as their point of contact. The responsibilities of the Advisors while supporting the evaluation process are outlined below.

##### 5.2.6.1 Technical Advisors

Technical Advisors may be available to assist the TC during the evaluation process. The TA may include consultant and/or agency personnel with expertise in specific fields relevant to the proposal, and will be available to TC on an as needed basis to support the evaluation of Technical Proposals. The responsibilities of the TA are described below.

If used, the TA will assess the responsiveness of each Technical Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the TC. If the TA collectively concludes that a proposal is nonresponsive to any of proposal requirements or does not meet the Pass/Fail Evaluation Criteria, the TA, through their Chairperson if applicable, shall promptly report that information to the Chairperson of the Technical Committee. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the proposals to the Chairperson of TA who will coordinate with the NGPC Agreements Lead to send the request(s) for clarification or additional information to the affected proposer(s).

##### 5.2.6.2 Financial Advisors

FAs may be available to assist the FCs during the evaluation process. The FA may include consultant and/or agency personnel with expertise in specific fields relevant to the proposal, and will be available to FC on an as-needed basis to support the evaluation of Price Proposals. The responsibilities of the FA while supporting the FC are described below.

If used the FA will assess the responsiveness of each Price Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the FC. If the FA concludes that a proposal is nonresponsive to any of proposal requirements or does not meet the Pass/Fail Evaluation Criteria, the FA or its Chairperson, if applicable, shall promptly report that information to the Chairperson of the Financial Committee. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the proposals to the Chairperson of FA, if applicable, or to the Chairperson of the FC who will coordinate with the NGPC Agreements Lead to send the requests for clarification or additional information to proposers.

#### 5.2.6.3 Legal Advisors

Legal Advisors may be assembled to support NGPC in-house counsel and the TC, FC, TA, FA, and other NGPC staff as appropriate and necessary to address issues or questions concerning the procedures set forth in the RFP or the evaluation process. Such Legal Advisors would be selected and made available at the discretion of NGPC Administration.

### 5.3 Responsiveness and Pass/Fail Evaluation

If used for the procurement, Advisors will perform a responsiveness review of each Technical Proposal and Price Proposal by comparing each proposal to the requirements identified in the RFP. If Advisors are not used for the procurement, the Agreements Engineer may direct that the TC or FC perform the responsiveness review.

Responsiveness requirements include all administrative and format requirements identified in the RFP, such as timely delivery to NGPC, inclusion of all required forms and certifications, and application of wet signatures where required. NGPC, at its sole discretion and at the direction of the NGPC Director, may waive minor nonresponsive aspects of a proposal, such as the omission of a required signature.

Pass/Fail requirements include minimum experience, capabilities or capacity, such as years of experience of one or more proposed Key Personnel or bonding capacity commensurate with the size of the project. Failed Pass/Fail scores for some proposal elements may be reconsidered by allowing a proposer to revise their proposal to receive a passing score; the decision to allow a proposer to revise their submittal to receive a passing score is at NGPC's sole discretion and at the direction of the TC Chairperson.



Once a Technical Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Technical Proposal receives a “Pass” score, the TA will pass their review findings to the TC for consideration. If the TC members agree with the review findings of the TA, the Technical Proposals will then be eligible for TC to perform evaluation scoring.

Once a Price Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Price Proposal receives a “Pass” score the FA will pass their review findings to the FC for consideration. If the FC members agree with the review findings of the FA, the FC will then open the Price Proposal containing the proposer’s bid, which is submitted in a separate sealed envelope within the Price Proposal. Opening of the proposer’s Price Proposal will not occur until all Technical and Price Proposals have been evaluated and scored by the TC and FC, respectively.

#### 5.4 Technical Proposal Evaluation

The Technical Proposal Evaluation Process is as follows:

- TC Members will perform individual reviews of the Technical Proposals to identify strengths and weaknesses, and then meet as a group to develop a consensus qualitative technical score and recommendation.
- During the review of the Technical Proposals the TC members and TAs may capture their individual thoughts and evaluations of strengths and weaknesses of individual proposals using unofficial copies of the Evaluation Form.
- The official Evaluation Form must be completed by the TC Chairperson during one or more meetings of the TC to establish consensus regarding scoring of all proposals.
- The basis of the assessment of the TC, including the significant advantages, disadvantages and risks supporting the assigned qualitative ratings, must be documented. Reasoning for determinations of uncertain results or comments should also be documented. Evaluation statements should be as specific as practicable and not contain generalizations.
- To assist the TC in their evaluation of the Technical Proposals, qualitative score examples or “anchors” may have been developed by the TC Chairperson for each evaluation criteria. A Qualitative Evaluation Form should be completed for each individual evaluation criterion for each proposer. At the request of the TC and for their consideration, the TA may present their opinions of each proposal’s strengths and weaknesses. The TC may consider the TA’s opinions during the consensus meeting when assigning qualitative rankings.
- When the TC evaluation and consensus scoring of the Technical Proposals is complete, the TC qualitative scoring and recommendations will be presented to the SC through the Project Manager. The SC may accept the recommendation or request the TC to reconsider the recommendation.

- While the Technical Proposals are being evaluated, no Member or Advisor serving on or in support of the TC, TA or Legal Advisors will have access to the Price Proposals.

#### 5.4.1 Technical Score

The Technical Score will be calculated by the TC based on the TC evaluation of the Technical Proposal using the points and scoring system developed in the RFP.

Final determination of the major evaluation categories will be driven by specific project needs as well as NGPC goals and objectives of the project. The major evaluation categories for the Technical Proposal should include the following at a minimum:

- A. Technical Approach;
- B. Project Delivery Approach; and
- C. Quality Management Approach.

Within each major evaluation category subfactors may need to be determined and identified in the ITP. Normal practice and accepted industry standard is to not indicate any points or weights for the evaluation subfactor, but only indicate that each subfactor contained in the major category will be scored. When totaled under a major category, all subfactors shall not exceed the total points allowed for that individual major category.

#### 5.4.2 Price Score

Individual Price Scores are determined at time the sealed Price Proposal is opened, after completion of the Technical Proposal evaluation and scoring process, and the Price Proposal evaluation and scoring process have been completed. Price scores are calculated by determining the ratio of the lowest price to each other price, and applying that ratio to the previously determined points available for price in the RFP to the lowest price. The points available for price must be at least 50% of the total points available.

#### 5.5 Apparent Best Value Determination Process

The TC and FC Chairpersons will determine the Total Proposal Score for each Proposal by combining each Proposal's Technical Score and Price Score in accordance with the predetermined relative weights established for the project.

The Proposal with the highest Total Proposal Score is considered the Apparent Best Value Proposal.

Once the TC and FC Chairpersons have determined each Total Proposal Score and assigned rankings to the Proposals based on such Total Proposal Scores, they will present the Apparent Best Value recommendation to the NGPC Director. The NGPC Director may:

- 1) Accept the Project Manager's recommendation,
- 2) Request the TC present an explanation of the evaluation process and potentially revisit portions of the evaluation, or
- 3) Reject the recommendations and cancel the procurement.

Upon acceptance of the evaluation results, the TC Chair will authorize the NGPC Engineering Division to issue a Notice of Intent to Award to the Apparent Best Value proposer and commence finalization of the Contract Documents.

## 5.6 Negotiation

NGPC reserves the right to conduct discussions and negotiations with any or all respondents to this RFP concerning any element of or response to this RFP for the purpose of clarification and modification. NGPC may attempt to negotiate a design-build contract with the highest ranked Design-Builder and may enter into a contract after negotiations. If NGPC is unable to negotiate a satisfactory contract with the highest ranked Design-Builder, NGPC may terminate negotiations with that Design-Builder and may then undertake negotiations with the second highest ranked Design-Builder and may enter into a contract after negotiations. If NGPC is unable to negotiate a satisfactory contract with the second highest ranked Design-Builder, NGPC may terminate negotiations with that Design-Builder and may then undertake negotiations with the third highest ranked Design-Builder and enter into a contract after negotiations. If NGPC is unable to negotiate a satisfactory contract with any of the ranked Design-Builders, NGPC may either revise the request for proposals and solicit new proposals or cancel the design-build process.

## 5.7 Information Release

Information regarding the contents of proposals, the input of Advisors, the reviews/ deliberations of the Technical Committee and Financial Committee, or other information relating to the evaluation process will be 1) released only to authorized persons and 2) made available only with the authorization of the NGPC Administration or a designated representative.

## 5.8 Notification and Debriefing

All proposers submitting proposals will be notified in writing of the results of the evaluation process.

Those proposers that are not selected as the Best Value proposer may be contacted by the Project Manager, or their designee, and given the opportunity to request a debriefing, which may be conducted by an NGPC designee or designees at the discretion of NGPC. The Project Manager or their designee will coordinate with the Chairpersons of the TC and/or FC to schedule such debriefings. Debriefing participants may include the Technical Committee Chairperson, legal counsel and/or any other person designated by NGPC Administration. Only information pertaining to the proposal submitted by the proposer attending a debriefing will be shared with that proposer. Proposals submitted by other proposers will not be discussed.

## **Section 6. Evaluation of Construction for a Design/Build Contract**

### **6.1 Goals of the Quality Assurance and Quality Control Plan**

The Design/Builder shall develop and implement a QA/QC Plan that:

- Establishes comprehensive quality management procedures;
- Integrates the quality goals of both the design and construction elements of the project;
- Defines the minimum standards and procedures for quality management; and
- Assigns the responsibilities for specific quality management functions.

The description of the quality management program in this Section 6 is not intended to be all encompassing, but to give the Design/Builder and NGPC flexibility and a general framework, within which to design a program that best fits the needs of the project and both parties.

### **6.2 Quality Assurance and Quality Control Responsibilities**

**Design/Builder Responsibility.** The Design/Builder shall be responsible for the design and construction quality of the project and for fully complying with the project's quality management program as defined in the QA/QC program. Maximizing project quality will require attention and efforts through design and construction of the project, from Notice to Proceed to Final Acceptance.

**NGPC Responsibility.** NGPC will perform oversight and review activities in support of the Design/Builder's quality management program, performing quality management oversight and any Owner Verification Testing activities.

### **6.3 Quality Assurance and Quality Control Program**

NGPC will identify the requirements in the RFP and/or Contract to which the Design/Builder must adhere in developing its QA/QC Program. These requirements include defining the quality control procedures for both design and construction of the project. The Design/Builder would then use these requirements to develop QA/QC Program for the project. The QA/QC Program should describe both the QA/QC during design and QA/QC during construction.

NGPC may approve or partially approve the QA/QC Plan and may request modifications to the QA/QC Plan as it deems necessary.

#### **6.3.1 Quality Assurance and Quality Control Documentation**

The Design/Builder will need to maintain a record of internal QA and QC activities for the project. The QA/QC Plan will address, at a minimum, the following:

- How the Design/Builder would provide QA and QC for both the design and construction elements of the Project, including but not limited to, design standards and checking procedures, sampling, testing, inspection, management control, change management, document control, communication requirements, and non-compliant work corrective action plans to ensure that the work conforms to the contract requirements;
- How the Design/Builder's QA/QC program—for both the design and construction elements—would be performed by a subcontractor, supplier, agent, or other entity with contractual obligations to complete design or construction elements of the Project;

#### 6.3.2 Design/Builder's Design Quality Control and Quality Assurance

The Design/Builder's Design Quality Control outlined in the QA/QC Plan should include:

- The preparation of all design elements under the direct supervision of a Nebraska Registered Architect and/or Professional Engineer;
- Performance checks of calculations and review of drawings prepared by the D/B designer.

The Design/Builder's Design Quality Assurance outlined in the Design QA/QC Plan should include:

- Periodic checks of the Design QC process. The Design QA check should include a general review of all plans, reports, calculations, specifications, and supporting materials incorporated into the Design Documents;
- Review of documentation to ensure that QC checks were performed independently of the design; and

Design QA Certification. The Design Builders designated Design lead shall certify, prior to any design submittal to NGPC that the design has been through the Design QC and Design QA process and meets the Design QA/QC Plan standards.

#### 6.3.3 NGPC Design Review Process

As part of the Design QA/QC Plan, NGPC will reserve the right to review as many design packages on the project as it deems necessary with any required reviews identified in the RFP. After NGPC has performed a design package review, the Design/Builder shall address comments and concerns raised by NGPC by revising the design and/or plans to demonstrate to NGPC's satisfaction that the revised design and/or plans complies with the D/B Contract requirements.

The D/B Design lead shall oversee the performance of all the design and hold oversight review meetings. NGPC may participate in these oversight reviews. Under this procedure, the D/B

Design Manager will provide NGPC with draft design plans for review and comment to confirm that the design work complies with the requirements of the D/B Contract.

Any review comments made by NGPC should be provided, in writing, to the Design/Builder. NGPC should provide timely reviews per the D/B Contract and (if and to the extent required) approvals of interim design submissions, drawings, specifications, and other design submittals consistent with the turnaround times set forth in Design/Builder's schedule, provided that NGPC has a set number of days after receipt of such submissions to act upon them.

#### 6.3.3.1 Design reviews

Design reviews may include:

- Informal or "over-the-shoulder" reviews – this may include review of design drawings, electronic files, calculations, reports, specifications, geotechnical data, progress prints, computer images, draft documents, draft specifications and reports, other design documents, and any other relevant design information as requested by NGPC. The intent of these reviews will be to check for concept, level of detail, design criteria, and fatal flaws. These reviews will not routinely include detailed calculation or drawing reviews. If mutually agreed upon between the parties, for specific review items, the over-the-shoulder review may consist of an exchange of electronic files between the Design/Builder's designer and NGPC.
- Formal Design Reviews – the Design/Builder or NGPC may request formal design reviews to discuss and verify design progress and to assist the Design/Builder and/or its designer(s) in identifying and/or resolving design questions and issues.
- Final (100%) Design Submittal - The Design/Builder shall submit the Final (100%) Design submittal to NGPC for review and comment. Construction packages for individual work elements can be organized such that the final document package can be assembled into a construction document that could be used to construct the entire work and/or could be used with minor revisions for as-built plans.

When the Design/Builder has completed the Final Design of an item or element and wishes to obtain NGPC's approval to proceed with construction thereof, the D/B Design lead shall certify that:

- 1) the design meets all applicable requirements of the Contract Documents, applicable law, and the governmental approvals;
- 2) the design has been reviewed and checked in accordance with the Design/Builder's Design QA/QC Plan; and
- 3) the item or element is ready for construction.

After certifying the above items, the Design/Builder may elect to go directly to the construction phase of any item or element at its own risk pending NGPC's review. The D/B Design lead will conduct a formal review with NGPC of the Final (100%) Design submittal for said item or element. The Final (100%) Design submittal shall consist of complete Design Documents, fully addressing any previous design submittal review comments. All relevant documentation must be available for NGPC to review upon request. In the event the Design/ Builder has opted to move forward with construction, and the NGPC review reveals that design changes are needed, the Design/Builder shall accomplish such changes without further consideration for time or compensation.

NGPC's concurrence with the D/B Design lead's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the Design/Builder of its responsibility to meet the requirements hereof. Irrespective of whether NGPC provides the Design/Builder with the authority to begin construction on elements of the project prior to completion of the entire design, the Design/Builder shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

If NGPC determines that the Final Design Package does not meet the requirements of the Contract Documents, applicable law, and applicable governmental approvals, NGPC will notify the Design/Builder in writing of any specific deficiencies in the Final Design Package. Upon receipt of NGPC's comments, the Design/Builder shall correct such deficiencies and modify the Final Design Package and (if necessary) the construction.

#### 6.3.3.2 Release-for-Construction Plans

Release-for-Construction plans shall aid and facilitate design review by NGPC, and provide adequate information for safe, efficient, and high-quality construction. Release-for-construction plans are intended to allow construction to begin on segments or elements of the project as the design progresses and before final design is complete. Release-for-Construction plans and submittals shall be submitted for NGPC review prior to starting construction of depicted segments or elements.

The Design/Builder may proceed with construction of certain elements or portions of the project in accordance with Release-for-Construction plan before the design of the entire project has been completed. NGPC will notify the Design/Builder in writing of its acceptance or rejection of the Release-for-Construction plan.

The Design/Builder will need to acknowledge and agree that it may not issue any Release-for-Construction plan until their Design lead has obtained approval from NGPC and applicable governmental entities. Construction of any item, element, or phase covered by the Design lead's statement approving construction shall progress only to the extent covered by the Design Documents included in that approval, except as noted above in Section 3.3.1. Before



progressing further with construction, the Design/Builder shall complete the next phase of design or complete the final design, and obtain NGPC's concurrence. Any subsequent phases of design to be released for construction shall be checked and approved by the Design lead in the same manner as indicated above for Formal Design submittal reviews.

NGPC's concurrence with the Design lead's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the Design/Builder of its responsibility to meet the requirements hereof. Irrespective of whether NGPC provides the Design/Builder with the authority to begin construction on elements of the project prior to completion of the entire design, the Design/Builder shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

If NGPC determines that the Release-for-Construction plan does not meet the requirements of the Contract Documents, applicable law, and the governmental approvals, NGPC will notify the Design/Builder in writing of any specific deficiencies in the Release-for-Construction plan. Upon receipt of NGPC's comments, the Design/Builder shall correct such deficiencies and modify the Release-for-Construction plan and (if necessary) the construction.

#### 6.3.4 Design/Builder's Construction Quality Assurance and Quality Control Plan

The objective of the Construction QA/QC Plan is to place the responsibility for conducting Construction QC inspection and testing and performance of Construction QA duties solely with the Design/Builder.

##### 6.3.4.1 Construction Quality Assurance and Quality Control Plan Contents

The Design/Builder's Construction QA/QC Plan should describe and include the following:

1. Authority. Clear definition of the authority and responsibility for administering the Design/Builder's Construction QA/QC program.
2. Work Force Participation. Methods and procedures to obtain active participation of the Design/Builder's work force in Construction QC activities to achieve a quality project.
3. Staffing Qualifications. Resumes of the key staff members, and the experience, knowledge, and skill levels of the Construction QC staff.
4. Procedures. Procedures for inspecting, checking, and documenting the work completed and for the inspection, examinations, and measurements.
5. Controlled Conditions. Procedures to ensure that all activities affecting the quality of the project are accomplished under controlled conditions, using appropriate equipment for the task being performed.
6. Conformance and Performance. Specific procedures to ensure that all work conforms to the requirements of the Contract Documents, governmental approvals, applicable law,

and the design documents, and that all materials, equipment, and elements of the project will perform satisfactorily for the purpose(s) intended.

7. Requests for Information (RFI) Procedures. Procedures for processing RFIs to resolve discrepancies and/or questions in the Released-for-Construction plans so that all changes are documented and approved by Design/Builder's design engineers.
8. Coordination. A program for coordination of all inspections and testing with the inspections and tests of governmental entities and utility owners.
9. Adverse Conditions. Procedures to ensure that conditions adverse to quality (such as failures, malfunctions, deficiencies, defective material and equipment, deviations, and other Nonconforming Work) are promptly identified and corrected; to ensure that the cause of the condition is determined and prompt corrective action taken; and to document and report the identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken to appropriate levels of Design/Builder's management and to NGPC.
10. Certificates of Compliance. The form and distribution of certificates of compliance.

#### 6.3.5 Oversight Visits

Throughout the D/B process, NGPC may make oversight visits to discuss and verify project progress and ascertain the overall progress of the project with respect to the Design/Builders QA/QC Plan. If, in the opinion of NGPC, the Design/Builder is not meeting the goals and objectives of the QA/QC Plan, the Design/Builder will be notified and corrective action taken to ensure work elements are brought back into compliance. If the corrective action requires suspension of project work, the Design/Builder shall suspend that project work until work elements are brought back into compliance.

## **Section 7 Risk Management Guidelines for DB and CM/GC**

### **7.1 Introduction to Project Risk Management**

This document provides information to project managers, project teams, and staff involved directly or indirectly with project risk management. It provides:

- Uniformity in project risk management activities.
- Techniques and tools for project risk management.
- Data requirements for risk analysis input and output.
- The project risk management role in overall project management.
- Guidance on how to proactively respond to risks.

Understanding project risks enables project teams to more effectively fulfill public service expectations. Assessing project risk and uncertainty informs decision-making in our project development and delivery mission. These decisions contribute to public safety and clarify project expectations. Informed project risk management adds value on many levels to every project we deliver.

Estimating the cost of various agency projects is a fundamental responsibility of NGPC and is directly affected by the risk management process. In recognition of the fundamental and strategic importance of cost estimating, these guidelines provide consistent practices across the agency to enhance methods for meeting this responsibility. Estimators must be shielded from pressures to prepare estimates that match any preconceived notions of what a project should cost. Estimators need to prepare estimates based on the scope of the project, the schedule of the project, and the bidding conditions that are anticipated.

Although risk management is an important part of all NGPC projects including those delivered using APDM, and all project risk management begins with internal NGPC meetings or workshops regardless of the project delivery method, the risk management process differs significantly between D/B and CM/GC. These different processes are described in Sections 2 and 3 of these procedures, respectively.

### **7.2 Design/Build Project Risk Management Process**

Risk management, as an integral part of project management, occurs on a daily basis. With proactive risk management, we look at projects in a comprehensive manner, and assess and document risks and uncertainty. The essential steps for D/B risk management are provided

below.

#### 7.2.1 Risk Management Planning

Risk management planning is the systematic process of deciding how to approach, plan and execute risk management activities throughout the life of a project. It is intended to maximize the beneficial outcome of opportunities and minimize or eliminate the consequences of adverse risk events.

Prior to preparing the procurement documents for a project, the NGPC project team may conduct an internal project risk analysis meeting to develop the initial Risk Assessment and Allocation Matrix to be used in making the initial or conceptual level risk recommendation. This meeting may take the form of an all-day workshop but may be accomplished more informally by NGPC staff depending upon the size and complexity of the given project scope. After shortlisting of D/B teams, and during review of the draft RFP by the shortlisted teams, the initial risk allocation matrix may be updated based on feedback obtained from proposers through group and/or one-on-one meetings, or through a risk workshop. For each element of risk, the proposers would indicate whether they can accept the risk, require the allocation to be modified (typically by providing suggested contract language), or cannot accept the risk.

#### 7.2.2 Assignment of Project Risk

Risk identification involves determining which risks might affect the project and documenting their characteristics in terms of magnitude of impacts and probability of occurring. Risk assignment involves identifying which party of parties will be responsible for each risk. Both types of information are included in the Risk Assessment and Allocation Matrix.

The following recommended practices are not intended to be rigid requirements; these are flexible guidelines to be modified to meet the specific needs associated with each project.

##### *Environmental Clearances:*

NGPC is typically responsible for complying with State and Federal requirements and will be the signatory on many documents, such as records of decision and permit applications. Although a Design/Builder may provide information to support a permit application, they cannot control the actions or timing of third-party regulatory agencies. For most projects, NGPC will provide allowances for the required application time as the associated delay risks could be significant and could result in higher proposal prices.

Other permits required for construction trades or for temporary construction impacts of convenience are assigned to the Design/Builder.

##### *Public Information:*

As the project owner, NGPC is typically responsible for the risk of project public endorsement. This assignment of risk is based on NGPC having more directly relevant experience and greater expertise than a contractor in this area. Once the public has accepted a project, the Design/Builder should be tasked with the responsibility of developing and implementing a public participation program that provides ongoing information sharing and open communications.

*Preliminary Plan:*

NGPC will develop a D/B project to only the minimum level necessary. Environmental requirements and risk definition may require NGPC to progress some portions of the design further than others. If the project is developed in too much detail, the opportunity to innovate and/or save time and possibly money may be reduced significantly or lost entirely.

*Geotechnical:*

NGPC is ultimately responsible for risks associated with Changed and Differing Site Conditions. Accordingly, NGPC must establish a baseline for Design/Builders to use to develop their technical and price proposals. Preliminary geotechnical investigations will be conducted by NGPC and data provided to proposers. The requirements for geotechnical investigation to be performed by the Design/Builder may be defined by NGPC and included in the RFP technical requirements. If deemed appropriate by NGPC for a particular project, proposers may have an opportunity to request supplemental information during preparation of their proposals. If no supplemental geotechnical information is offered by NGPC, each proposer will need to obtain any additional data required.

*Inter-Agency Agreements:*

Agreements between and among NGPC and other government agencies, which are necessary for the completion of a project, will typically be obtained by NGPC prior to award of the D/B contract to ensure that all commitments and requirements of these agencies are known when the proposers prepare their proposals. It is important to be aware that there may be projects for which it is advantageous to make such agreements part of the Design/Builder's scope of work.

Other Issues: For design-build contracting, NGPC will review and consider the risk associated with the following items early in the project development process:

- Permit requirements
- Site conditions/Differing site conditions
- Utility relocations/Service interruptions
- Contract changes
- Funding
- Liquidated damages
- QA/QC responsibilities
- Performance schedule
- Labor disputes
- Contract terms
- Weather conditions
- Payment methodology
- Inflation
- Incentives/disincentives
- Hazardous materials
- Bonding requirements

- Third party involvement
- Errors and Omissions Insurance
- Third party claims
- Force majeure
- Schedule and interruption of public access or use
- Liability for design
- Incremental acceptance of work
- Performance guarantees/warranties

Allocation of the risks inherent in projects will also define ownership and responsibility for each task of the project delivery process. On a standard D/B/B project, NGPC acts as both the owner and engineer. This owner/engineer role requires that NGPC own most of the risk for the success of the design. In D/B, the guiding principle should be one of assigning risk to the party (owner or Design/Builder) that can best manage the risk. One key question to be asked in risk allocation is, “How much is NGPC willing to pay a Design/Builder to assume risk that NGPC typically owns?” This question should be asked for each individual task to tailor the design-build contracting approach to each specific project. Project risk must be considered in all decisions related to developing the contract provisions.

### 7.2.3 Project Risk Allocation Matrix

On each D/B project, the NGPC project team must determine how far to advance the preliminary design. Based on the experiences of multiple public agencies with D/B projects and published viewpoints from the design-build industry, contractors and design consultants, there appears to be a national consensus that development of a risk allocation matrix is the key to making this determination.

Early in the project, the design team must begin to identify potential risks associated with the project and assign responsibility for each of these risks either to NGPC or to the Design/Builder. The project team must periodically revisit the risk assignments as more information becomes available about the project, and make modifications accordingly. NGPC staff must utilize the risk allocation matrix throughout development and implementation of the project. This matrix will not only document which party has been assigned responsibility for a given risk, but it will also help the project team determine how far to advance each technical element within the preliminary design during development of the RFP.

A matrix will need to be tailored to each individual project. The project team will have to carefully review all elements that could impact the specific project and tailor the matrix to fit the project. The matrix should be available for review throughout the entire RFP development process.

Note that risk allocation in CM/GC is very much like that in D/B/B, whereby the owner carries most of the risks. One notable exception is regarding price risk after the maximum construction

price has been negotiated and agreed, at which time such risk is assumed almost entirely by the CM/GC as opposed to being shared by the contractor and owner as in D/B/B project delivery.

### 7.3 Construction Manager/General Contractor Project Risk Management Process

CM/GC is an APDM in which the owner enters into simultaneous contracts for both the design consultant and the contractor. Due to nature of CM/GC contracting, the risk management under CM/GC is substantially different from that with D/B. Under D/B, the risk assessment and allocation is done during the RFP phase, allowing proposers to reflect the assignment of specific risk responsibilities in their proposals. Under a CM/GC procurement, the final risk allocation and transfer will be performed jointly during the design process, with the contractor working with the designer to:

- Reduce risk;
- Continuously update cost; and,
- Achieve a guaranteed maximum price at the end of design.

Because the CM/GC process reduces risk, the Guarantee Maximum Price (GMP) for construction is expected to be less than for conventional D/B/B projects.

#### 7.3.1 Construction Manager/General Contractor Risk Analysis Workshops

During the design phase of the project, NGPC, the designer and the CM/GC will hold one or more Risk Workshops to discuss various elements of risk. The outcome of each risk analysis workshop will be the allocations of risks that will apply during the remaining design effort and during the construction services phase of the CM/GC Contract. The NGPC project team should plan for a limited number of meetings to be held, during which risk philosophy, issues and allocation will be discussed by NGPC, the designer, the CM/GC and possibly other relevant stakeholders.

The risk workshops conducted during the CM/GC and D/B processes are similar, with both addressing as nearly a comprehensive a list of risk elements as possible, consistent with the specific project scope, project delivery method, and the extent to which design has been advanced at the time.

Input from the designer will be similar to that discussed with regard to the D/B process. However, with the CM/GC workshops, having the input from the contractor will provide an additional viewpoint regarding the impact of individual risks on the project.

## **Section 8 Construction Manager/General Contractor Procedures**

### **8.1 Introduction**

The CM/GC project delivery method is an integrated team approach to the planning, design, and construction of a project. The CM/GC method has been developed as a result of public owner demands to enhance quality of the design product, decrease cost, compress the delivery period and better plan for and manage risks. Primary characteristics of this delivery method include:

- Early participation of a contractor to provide input to the design team regarding construction phase considerations, such as constructability, cost implications of design decisions, construction phasing and materials issues.
- Compressed overall project delivery schedule due to elimination of the construction contract procurement cycle and enhanced contractor understanding of the design.
- A GMP or Target Maximum Price (TMP) for construction is negotiated between the CM/GC and NGPC at the conclusion of the design phase, providing NGPC with a high level of price certainty.

The CM/GC project delivery method consists of two phases, a design phase and a construction phase. During the design phase, the contractor acts as a consultant working with the Designer to offer constructability and pricing feedback on design options and can identify risks based on the contractor's established means and methods. This process also allows the owner to be an active participant during the design process and make informed decisions on design options based on the contractor's expertise.

When the design is nearing 90% complete, the construction manager then has an opportunity to negotiate on the project based on the design and schedule. If NGPC, based on feedback from Designer and Independent Cost Estimator (ICE), agree that the contractor has submitted a fair price, NGPC issues a construction contract, and the CM/GC then becomes the general contractor.

### **8.2 Construction Manager/General Contractor Process**

NGPC procurements using CM/GC project delivery, will include:



- Selecting a CM/GC through a 2-step process. The initial stage will be to issue an RFQ, evaluate SOQs submitted in response, and shortlist the most qualified firms based on team experience. The most qualified teams will be shortlisted and advance to the second step of the procurement process, the proposal. The proposal step may also include an interview. This procurement process is a competitive and qualifications-based procurement, complies with Nebraska statutes, and is intended to provide NGPC with the best qualified CM/GC contractor to provide construction expertise and contract management input during the design phase, and to be contractually responsible for price, schedule and quality during construction phase.
- Concurrent with the procurement of the CM/GC, NGPC will select a Design Consultant (the Designer) through a separate, competitive, qualifications-based procurement to prepare the final design/construction documents.
- NGPC may also procure an ICE through a separate, competitive, qualifications-based procurement to perform an independent, bottom-up, construction cost estimate to validate the price eventually negotiated with the CM/GC.

The CM/GC provides preconstruction advice to NGPC and the Designer throughout the design process concerning constructability, pricing, scheduling, staging, methods, efficiency, material procurement strategies, risk identification/management, and other areas related to the construction of the project.

The CM/GC is not allowed to proceed into construction unless and until NGPC agrees that the price provided, as part of a guarantee to complete the project, or a portion of the project, (and independently evaluated) is fair, reasonable and defensible. The CM/GC will engage in detailed discussions over key constructability issues, including phasing of the work, prevention of scope creep, access to the infrastructure, and traffic management, before the design is finalized, thereby reducing the risk of claims during construction.

The CM/GC construction contract will be similar to traditional D/B/B construction contracts. NGPC will establish either:

- A GMP that establishes the contract not-to-exceed amount, or
- A TMP that establishes a unit price contract.

The final GMP or TMP usually are based on design documents that are not less than ninety percent developed. Agreement on the final GMP or TMP initiates the second phase of the CM/GC contract. The work to start physical construction will be initiated once a final price is agreed by NGPC and the CM/GC.

### 8.3 Role of NGPC

NGPC remains primarily responsible for the success of a CM/GC project by selecting a project for CM/GC delivery, preparing the RFQs for the Designer and the ICE, preparing the RFQ and RFP for the CM/GC, defining the scope of the Preconstruction Services Contract to be executed by the CM/GC, and performing other project development work.

NGPC's role in the Preconstruction Phase is very similar to the NGPC's role in the traditional departmental development process, with the exception of contractor involvement. NGPC will be engaged in the negotiation of the GMP or TMP with the selected CM/GC as well as the contract allowances and assumptions.

NGPC will provide guidance to the team during both the Pre-Construction Phase and the Construction Phase. This can entail documenting background information on how the GMP or TMP was developed, the types of allowances, allowable mark-ups on supplemental agreements and pay item documentation.

NGPC's responsibilities will include:

- Provide leadership;
- Hold the Designer and CM/GC accountable;
- Review all potential Supplemental Agreements or Contract Modification Request forms; and
- Facilitate knowledge transfer of the process.

#### 8.4 Role of the Construction Manager/General Contractor

The CM/GC's main objective is to interface with NGPC and the Designer during the Preconstruction Phase of the project. The CM/GC will be part of the team that reviews the plans for constructability and provides input on the sequence of construction. The CM/GC's technical experience, resources and approach (means and methods) will identify potential risks that can affect cost and schedule.

The CM/GC's candid discussions early in the design process allows the development of a clear, concise scope and validates NGPC's budget through compilation of a Cost Model that is frequently updated throughout the Preconstruction Phase until a GMP or TMP agreement is reached. The CM/GC will participate in value engineering type studies to abbreviate project schedule and reduce costs, without adversely affecting quality. The CM/GC's responsibility is to reconcile project quantities and develop a GMP or TMP for construction.

Other responsibilities may include, but are not limited to:

- Conducting a site investigation;
- Preparing construction estimates at various levels of design completion;
- Preparing a Construction Management Plan;

- Preparing a CPM project schedule for design and construction;
- Procuring long-lead time items (subject to NGPC approval);
- Permitting, subcontract preparation and packaging;
- Verifying design quantities; and
- Participating in risk analysis and risk mitigation sessions.

## 8.5 Role of the Designer

The project Designer or Design Consultant, hired and under contract to NGPC, works collaboratively with the CM/GC. For the Designer, there are many similarities between CM/GC and Design/Bid/Build project delivery methods. The same deliverables are required, with the exception that the Contractor is now engaged and is part of the process.

When NGPC accepts the GMP or TMP and a Notice of Award is issued for the construction phase, there is no change to the Design Consultant's contract. The Designer must complete and submit all deliverables in the final design scope of work. The Designer has the potential to be working on both design and post design tasks (i.e., construction phase support) for different elements of the project. Issues dealing with schedule slip during design are primarily the responsibility of the Designer, who must develop a plan to get the design process back on track.

The Designer also prepares a CPM schedule for design that the CM/GC incorporates into the Preconstruction Services schedule. The Designer, in consultation with the CM/GC, will provide a bottom-up style construction estimate, including risk assessment, to NGPC at various levels of design completion. The following provides a minimum list of design completion targets that should be used in determining when construction estimates should be provided to NGPC:

- 30% design completion;
- 60% design completion;
- 75% design completion; and
- 90% design completion.

Per NGPC's Conflict of Interest Policy, the CM/GC shall not subcontract any portion of the contract to an entity that is, or has been, employed by the Designer in the design of the project.

## 8.6 Role of the Independent Cost Estimator

If utilized for the project, an ICE, hired and under contract to NGPC, would work independently of the Designer and CM/GC, to develop bottom-up construction estimates for the project. The ICE estimates would be used by NGPC to compare and verify the construction estimates prepared by the Designer and CM/GC at various times during the design phase of the project.

## 8.7 Construction Manager/General Contractor Request for Qualifications

NGPC will use a standard procurement process to select the CM/GC; the process will include the issuance of an RFQ. Each prospective proposer will submit an SOQ that will be evaluated against a predetermined set of evaluation criteria.

#### 8.7.1 Request for Qualifications Technical Elements

CM/GC proposers will be required to provide detailed information to address specific project elements. The following outline provides a typical format for the RFQ, but NGPC is not limited to only these submittal requirements, and may tailor the RFQ based on the specific project requirements.

- Team Experience
- Project Experience
- Key Personnel
- Education and Experience
- Licensing and Certifications
- Safety Record
- Bonding Capacity

#### 8.7.2 Construction Manager/General Contractor Request for Proposals

After the SOQs have been evaluated and the shortlisted contractors identified, NGPC will provide them with an RFP. Proposals received in response to the RFP will be evaluated against a predetermined set of evaluation criteria. A draft example of a CM/GC RFP is provided in Appendix D (Example of CM/GC RFP).

##### 8.7.2.1 Request for Proposal Technical Elements

CM/GC proposers will be required to provide detailed information to address specific project elements. The following outline provides a representative format for the RFP, but NGPC is not limited to only these submittal requirements, and may tailor the RFP based on the specific project requirements.

- General Management
- Management Approach
- Quality Control
- Project Controls
- Equal Employment Opportunity
- Subcontracting Plan
- Responsibilities of Subcontractors - Selection Plan
- DBE Utilization Plan
- Pre-Construction Phase
- Preconstruction Approach

- Approach for working with the Designer
- Risk Management
- Construction Phase
- Project Understanding
- Overall Construction Approach including Phasing, to accommodate operational needs of the owner.
- Uninterrupted transportation and utility services
- Innovative Approach
- Worksite access and Safety Plan

## 8.8 Construction Manager/General Contractor Selection Process

The CM/GC is selected based on qualifications, as defined in Section 2 above. This involves the submission of SOQs from contractors (joint ventures are permitted). The SOQs from the contractors are evaluated, scored and ranked thereby creating a shortlisting of qualified contractors. Only the shortlisted contractors will be provided with an RFP and invited to submit proposals and possibly participate in oral interviews.

After completion of the SOQ evaluations, shortlisting, proposal evaluations, and interviews, NGPC will evaluate and rank the contractors, NGPC will negotiate with the highest ranked contractor from the SOQ submittals. If NGPC is unable to successfully negotiate a contract with the highest ranked contractor, then NGPC will negotiate with the next highest ranked contractor.

The CM/GC is selected based on demonstrated competency and qualifications. Section 9 of these guidelines describes each of the key steps in the selection process.

## **Section 9 Construction Manager/General Contractor Selection Process Guidelines**

### **9.1 Introduction**

In accordance with Nebraska Statutes, selection of a CM/GC contractor is a two-step process, by which SOQs will be accepted in response to an RFQ, and the most qualified construction manager – general contractors (contractors) will be shortlisted and invited to submit proposals in response to an RFP. Proposals will focus on the contractors' project understanding, approach to the Construction Manager role for the specific project, and approach to the construction of the specific project. Proposals may also include pricing information, such as labor rates and overhead rates applicable to the design phase, or unit costs for selected project materials during the construction phase. Proposal scores will be combined with SOQ and Evaluation Interview scores, to establish the final ranking for selection.

### **9.2 Confidentiality and Conflict of Interest**

SOQs and proposals will be confidentially evaluated by an evaluation panel comprised of NGPC staff members. The evaluation panel members, and any other NGPC personnel present for any panel meetings and/or deliberations, must sign a Confidentiality Statement. Evaluation panel members must commit to maintain strict confidentiality and security regarding the contents of proposals and proceedings of the evaluation panel meetings before, during and after the evaluation process.

It is essential that the integrity and transparency of the evaluation and selection process be maintained to:

- Ensure that NGPC is selecting the most qualified CM/GC proposer;
- Avoid Contractor or public perception of favoritism or partiality in contract awards; and,
- Ensure that all submittals are given fair and equal consideration.

It is also essential that evaluation panel members must not participate in any evaluation process if they have an actual, potential or perceived conflict of interest, as described in Section 1 (Conflict of Interest Policy for Design/Build and CM/GC). Evaluation panel members who believe there is any actual, potential or perceived conflict of interest when serving on a panel shall notify the NGPC Agreements Lead immediately and they will be excused from the panel.

### 9.3 Construction Manager/General Contractor Selection Process

The CM/GC selection process will follow the process identified below.

#### 9.3.1 Request for Qualifications

The public aspect of a CM/GC procurement begins with the advertisement of an RFQ at least 30 days prior to the due date for SOQs. The RFQ must provide sufficient information about the project to enable construction managers to respond, and must identify the maximum number of construction managers the Department will shortlist as qualified and therefore eligible to receive an RFP. Information sought through the CM/GC RFQ focuses primarily on past experience of the construction manager and their Key Personnel, their safety record, their bonding capacity, and other relevant historical and current information. See Appendix C for a typical example of a RFQ for a CM/GC.

#### 9.3.2 Statement of Qualifications Evaluation and Scoring

The evaluation panel will have a process kickoff meeting with the NGPC Agreements Lead. At this meeting, NGPC would review the evaluation and selection procedures and schedule with the evaluation panel, and provide the panel members with instructions, documents for comments and scoring SOQ submittals, and a set of all solicitation documents. The NGPC Project Manager and/or key project members may meet with the evaluation panel at this time and provide a project overview.

Each evaluation panel member shall conduct an independent assessment of each contractor's SOQ and shall not discuss that evaluation with other selection panel members or persons outside the panel. While evaluation panel members will have different individual areas of expertise, each member is expected to independently score each SOQ in terms of how it addresses the requirements outlined in the RFQ.

After each member has reviewed and scored all of the SOQs, the scores and comments are submitted to the NGPC Agreements Lead. The NGPC Agreements Lead then compiles the scores for review at a meeting of the evaluation panel. At that meeting, the evaluation panel will discuss each SOQ. Any evaluation panel member may elect to amend any of their scores based on the discussion.

Scores are then recompiled and the standard deviation is calculated. If an evaluation panel member's SOQ score is more than 1.65 standard deviations from the mean score for a CM/GC SOQ, it is considered an outlier and the evaluation panel member's score for that contractor is excluded. The standard deviation will not be calculated and applied until discussion of all contractors has concluded and all panel members' SOQ scores are final.

### 9.3.3 Shortlisting

Based on the final SOQ scores, the SC will identify a shortlist of the most qualified contractors to receive RFPs and be invited to submit proposals. The number of contractors to be shortlisted will have been identified in the RFQ. At least two contractors will be shortlisted, except that if only one contractor has responded to the RFQ, the SC may proceed or cancel the procurement.

### 9.3.4 Request for Proposals

Shortlisted construction managers will be provided with copies of the RFP. The RFP must include:

- A copy of the NGPC APDM Guidelines, or a publicly accessible location at which they may be obtained, either in hard copy or electronic form;
- A copy of the proposed CM/GC Contract;
- Identification of bonding required by law or by the Department;
- A description of the scope of the project, the project site, the schedule and the estimated budget;
- The criteria that will be used for evaluation of proposals, and the relative weight of each criterion;
- A statement that the construction manager shall not be allowed to subcontract, assign, or otherwise dispose of any portion of the contract without the consent of the Department, and that in no case shall the construction manager be allowed to subcontract more than seventy percent of the work, excluding specialty items; and,
- Other information or requirements deemed appropriate by NGPC.

See Appendix D for a typical example of a RFP for a CM/GC.

### 9.3.5 Proposal Evaluation and Scoring

The evaluation panel will have a process kickoff meeting with the NGPC Agreements Lead. At this meeting, the NGPC Agreements Lead will review the evaluation and selection procedures and schedule with the evaluation panel, and provide the panel members with instructions, documents for comments and scoring proposals, and a set of all solicitation documents.

Each evaluation panel member shall conduct an independent assessment of each contractor's proposal and shall not discuss their evaluation with other selection panel members or persons outside the panel. While evaluation panel members will have different individual areas of expertise, each member is expected to independently score each proposal in terms of how it addresses the requirements outlined in the RFP.

After each member has reviewed and scored all of the proposals, the scores and comments are



submitted to the NGPC Agreements Lead. The NGPC Agreements Lead then compiles the scores for a meeting of the evaluation panel. At this meeting, the evaluation panel will meet to discuss each proposal. Any evaluation panel member may elect to amend any of their scores based on the discussion.

Scores are then recompiled and the standard deviation is calculated. If an evaluation panel member's proposal score is more than 1.65 standard deviations from the mean score for a CM/GC proposal, it is considered an outlier and the evaluation panel member's score for that contractor is excluded. The standard deviation will not be calculated and applied until discussion of all contractors has concluded and all panel members' proposal scores are final.

### 9.3.6 Evaluation Interview

Oral Interviews may be conducted as part of the proposal evaluation process, at the discretion of the SC and if identified in the RFP. The duration and location of the interviews, number of contractors to be interviewed, and format of the interviews will have been detailed in the RFP.

If Evaluation Interviews are to be conducted, all shortlisted contractors that have submitted responsive proposals must be notified by letter of the date, time, location and format of the interview. Interviews should be conducted by the same evaluation panel members who conducted the proposal evaluations. Interviews will be conducted in random order at a NGPC office or facility. Each participating contractor will be given the opportunity to inspect the interview room ahead of time.

The evaluation panel will develop a list of questions about the project for the interview. The participating contractors will be asked a series of questions – some that apply to the specific project and that will be asked of all firms and some that apply only to a particular contractor's proposal. The NGPC Agreements Lead will compile the questions developed for the interview. Time may be reserved at the end for the panel members to ask follow-up questions, if needed.

After oral interviews, the evaluation panel members will submit interview scores and comments to the NGPC Project Manager. The NGPC Project Manager and the evaluation panel members will then meet to discuss each interview and their interview scores. Any panel member may amend their initial interview score based on the discussion. After concluding the discussion, the panel member scores are provided to the NGPC Agreements Lead for input into the scoring matrix. If an evaluation panel member's interview score is more than 1.65 standard deviations from the mean score for a contractor, it is considered an outlier and the member's interview score for that contractor is excluded.

After the SOQ, proposal, and Evaluation Interview scores have been finalized, the Agreements Lead will compile the SOQ, proposal, and Evaluation Interview scores to establish a final combined score for each contractor. The final combined scores will establish the ranking of the contractors, which will be certified by the SC. After certification, the Agreements Lead may

attempt to negotiate a contract for preconstruction services, in accordance with Nebraska Revised Statutes 37-1728(5) and (6).

#### 9.4 Execution of the Preconstruction Services Contract

Following selection, the selected CM/GC will prepare a budget for preconstruction services with hours, direct labor rates and burdens, overhead, profit and expenses anticipated. The NGPC Project Manager will verify the CM/GC's Preconstruction Phase scope of work and the Procurement Manager will review the budget and negotiate any changes required with the CM/GC. If NGPC and the CM/GC are unable to reach agreement on scope and budget, NGPC may terminate negotiations with the highest ranked firm and begin negotiations with the firm with the second highest ranked qualifications. Once agreement is reached on a budget for services to be provided during the Preconstruction Phase, the NGPC Agreements Lead will assemble the final contract. The CM/GC contract will be reviewed by the NGPC Project Manager for accuracy and completeness. The NGPC Agreements Lead will transmit the final contract to the CM/GC for execution. Once the contract is executed by the CM/GC and NGPC, the contract becomes effective. A copy of the executed contract, along with a Notice to Proceed letter, will be mailed and/or electronically transmitted to the CM/GC and distributed to appropriate NGPC personnel.

#### 9.5 Construction Manager/General Contractor Debriefings

NGPC may provide unsuccessful prospective CM/GC contractors the opportunity for a debriefing to discuss the strengths and weaknesses of their SOQ submittal, proposal and Evaluation Interview session. Debriefings will not be scheduled to occur until after the CM/GC contract is finalized and executed.

#### 9.6 Construction Manager/General Contractor Protest

Any interested party may protest the final CM/GC selection. The protest must be in writing and personally delivered or sent by certified mail, return receipt requested, to the NGPC Agreements Lead. The protest is barred if it is received by the NGPC Agreements Lead more than seven calendar days after the NGPC announcement of the final CM/GC selection.