

APPENDIX G-1-16

Construction Management at Risk Procedures

Nebraska Statutes, §§ 13-2901 to 13-2914, were amended by the Nebraska Legislature on July 18, 2008, to allow community colleges to plan, design, and build capital improvements using the Construction Management at Risk methodology. The Statute is entitled "Political Subdivision Construction Alternatives Act".

Under the Construction Management at Risk delivery method (CMR), WNCC will contract with an architect to provide a project design and then select a construction manager to work with the architect and WNCC in the design/development phase of a building project. This collaboration allows the architect, construction manager, and the owner to achieve maximum efficiency and greatly reduce the incident of costly change orders and delays in completion. During the initial phase of the project, the construction manager and owner negotiate an agreement for the construction manager to deliver a completed project by a certain date at a guaranteed maximum price (GMP) to the owner. Any cost above the agreed upon GMP are absorbed by the construction manager.

The benefit to WNCC of the CMR delivery method is that the contractor collaborates with the architect during the initial development phase and is able to have input concerning costs and scheduling of the design to enable avoidance of many traditional delays and change orders that are often encountered when an architect and contractor work independently. The CMR method allows the architect and construction manager and project owner to establish and adhere to an accurate budget and firm timeline for project completion; all to the benefit of WNCC.

Nebraska Statute, § 13-2905, requires WNCC to adopt policies for entering into CMR contracts and sets forth basic requirements for the contents of the policies to be used by the Board of Governors in implementing a CMR construction project.

The purposes of this Policy is to effectively increase collaboration between the parties involved in the construction process, shorten project schedules, control construction costs, and avoid or reduce costly claims and delays on construction projects the Board of Governors deems suitable for use of the CMR construction methodology.

Construction Management at Risk Contracting Methodology; Policy

(A) Definitions

For purposes of this Policy the following definitions, patterned on those found in the Political Subdivisions Construction Alternatives Act (Neb. Rev. Stat. §§ 13-2901 et seq.) ("the Act"), are applicable:

- (1) Construction management at risk (CMR) contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project to the College within a contracted price, (b) acts as a construction consultant to

the College during the design development phase of the project when the College's architect or engineer designs the project, and (c) is the builder during the construction phase of the project. In this Policy, the terms "construction management at risk" and "construction manager at risk" and "CMR" are used interchangeably;

- (2) Construction manager (CM) means the legal entity which proposes to enter into a construction management at risk contract with the College pursuant to the Act;
- (3) Letter of interest means a statement indicating interest to enter into a construction management at risk contract with the College for a project pursuant to the Act;
- (4) Request for letters of interest means the documentation or publication by which the College solicits letters of interest;
- (5) Request for proposals (RFP) means the documentation by which the College solicits proposals; and
- (6) Proposal means an offer by a construction manager, in response to a request for proposals by the College, to enter into a construction management at risk contract for a project pursuant to the Act.

(B) Board Resolution

The Board of Governors shall adopt a resolution selecting the CMR contract delivery system for a proposed project prior to using the CMR contract delivery system for the project, and no contract shall be awarded using the CMR contract delivery system for a project unless such resolution has been approved by the affirmative vote of at least two-thirds of the members of the full Board.

(C) Letters of Interest; Prequalification of Construction Managers

- (1) Prior to issuance of a RFP, the Board of Governors shall publish a request for letters of interest soliciting potential construction managers to submit letters of interest to indicate their interest in serving as the College's CM for a proposed project. The request for letters of interest shall include a brief overview of the scope and delivery requirements regarding the proposed project. The request shall be published in the *Star-Herald* as well as such other newspapers and other media, both within the College's service area and outside of the area, as the Board of Governors and/or the President may designate for the publication concerning the specific proposed project to assure broad distribution of the request. The request for letters of interest shall be published at least thirty (30) days prior to the deadline for submission of the letters.

- (2) A submitted letter of interest shall serve to indicate to the College the potential construction manager's interest in responding to a subsequent RFP concerning the proposed project and shall describe the potential construction manager's:
 - (a) qualifications to serve as CM
 - (b) prior experience under CMR delivery systems,
 - (c) experience in managing projects of size and scope similar to those of the proposed College project.

- (3) The President or his or her designee shall prepare a list of qualified construction managers based on the submitted letters of interest. The Board will accept proposals only from potential construction managers appearing on the list. Inclusion of a potential construction manager on the list shall indicate that the potential CM is qualified to submit a proposal pursuant to a subsequent request for proposals that may be prepared and issued by the College, but shall not necessarily indicate that the potential CM is qualified or best qualified to act as the CM for the specific proposed project.

(D) Requests for Proposals (RFP)

- (1) After the Board has adopted a resolution to use the CMR methodology for a specific proposed project and after the College has prepared the list of prequalified construction managers, if the President determines in his or her judgment that it appears to be in the best interest of the College to proceed with the proposed project using the CMR contract delivery system, the College shall prepare a request for proposals by potential construction managers appearing on the list of prequalified construction managers. If the President determines at such time, however, that in his or her judgment, it appears not to be in the best interest of the College to proceed with the proposed project using the CMR contract delivery system, the President shall so report to the Board and the Board shall make the determination of whether and how to proceed with the project.

- (2) Any RFP under this Policy shall be prepared by a team appointed by the President and shall include the Vice-President of Administrative Services, as well as external consultants such as the College's architect and/or engineer, and any other individuals the President deems to be appropriate. The RFP must contain, at a minimum, the following elements:
 - (a) A statement that the project will be built for Western Community College Area (College) and that the College will execute any contract awarded;
 - (b) Policies adopted by the College for entering into a CMR project;
 - (c) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the CM selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
 - (d) Any bonds and insurance required by law or as may be additionally required by the

College;

- (e) General information about the project which will assist the College in its selection of the CM, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and estimated budget;
 - (f) The criteria for evaluation of proposals and the relative weight of each criterion; and,
 - (g) A description of any other information which the College chooses to require.
- (3) Notice of any RFP under this Policy shall be published, at least thirty (30) days prior to the deadline for receipt and opening of proposals, in the *Star-Herald* as well as such other newspaper(s) and other media, both within the College's service area and outside of the area, as the Board of Governors and/or the President may designate for the publication concerning the specific proposed project to assure broad distribution of the request. A copy of the notice shall also be mailed by first-class mail to each of the potential construction managers listed on the list of prequalified construction managers for the project.

(E) Construction Manager Selection Committee and Proposal Evaluation

- (1) In evaluating potential construction managers to serve as CMR for a proposed project, the College shall refer the proposals to a selection committee for a recommendation to the Board of Governors. The selection committee shall consist of at least five (5) persons designated or approved by the Board and shall include at a minimum:
- (a) One or more members of the Board;
 - (b) One or more members of the administration or staff of the College;
 - (c) The College's architect or engineer for the proposed project;
 - (d) One or more persons having special expertise relevant to selection of a CM under the Political Subdivisions Construction Alternatives Act; and,
 - (e) One or more residents of the College's service area other than an individual included in subsections (a) through (d) of this subsection.

No member of the selection committee shall be employed by or have a financial interest in a CM who has a proposal being evaluated. No member of the selection committee designated under subsection (d) or (e) of this subsection shall be employed by the College.

- (2) The selection committee and the College shall evaluate proposals taking into consideration the criteria enumerated in subsections (a) through (g) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:
- (a) The financial resources of the CM to complete the proposed project (not to exceed 10%);
 - (b) The ability of the proposed personnel of the CM to perform (not to exceed 30%);
 - (c) The character, integrity, reputation, judgment, experience and efficiency of the CM (not to exceed 30%);
 - (d) The quality of performance on previous projects (not to exceed 30%);
 - (e) The ability of the CM to perform within the time specified (not to exceed 30%);

- (f) The previous and existing compliance of the CM with laws relating to the contract (not to exceed 10%); and,
 - (g) Such other information as may be secured having a bearing on the selection (not to exceed 20%).
- (3) At any time during the evaluation process, College representatives and members of the selection committee may communicate with any potential construction manager to obtain clarification or elaboration of any proposal submitted by the potential construction manager.
 - (4) The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of Neb. Rev. Stat. § 84-712.01.

(F) Selection and Negotiation

- (1) The Board shall evaluate and rank each proposal received on the basis of the criteria set forth in the RFP in order to determine the potential CM's best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee.
- (2) The President shall attempt to negotiate a CMR contract with the highest ranked CM and the Board may enter into a CMR contract after and as a result of those negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor. If the President is unable to negotiate a satisfactory contract with the highest ranked CM, the President may terminate negotiations with that CM. The President may then undertake negotiations with the second highest ranked CM and the Board may enter into a CMR contract after and as a result of those negotiations. If the President is unable to negotiate a satisfactory contract with the second highest ranked CM, the President may undertake negotiations with the third highest ranked CM, if any, and the Board may enter into a CMR contract after and as a result of those negotiations.
- (3) Any CMR contract entered into by the College shall include all provisions that may be required by Neb. Rev. Stat. §13-2905.
- (4) If the President and Board are unable to negotiate a satisfactory contract with any of the ranked construction managers, the Board may either approve a revised RFP and solicit new proposals or cancel the CMR process under the Political Subdivisions Construction Alternatives Act.

(G) Other Applicable Provisions

- (1) A CMR contract may be conditioned upon later refinements in project scope and price and may permit the College, in agreement with the CM, to make changes in the project without invalidating the contract. Later refinements under this subsection shall not exceed the scope of the project statement contained in the request for proposals.
- (2) Nothing in the Political Subdivisions Construction Alternatives Act, or this Policy, shall limit or reduce statutory, regulatory or College requirements regarding bonding or insurance.
- (3) The College shall not use a CMR contract for a project, in whole or in part, for road,

street, highway, water, wastewater, utility, or sewer construction, except to the extent allowable by law and to the extent such construction may be an ancillary, incidental and minor part of the construction of a building or similar facility and be necessary to the use of such building or similar facility for purposes integral to the College's educational operations.

- (4) This Board Policy shall control over any provision of any other Board Policy or College Procedures Memorandum that is inconsistent with any specific provision of this Policy.
- (5) The President is authorized, in consultation with College Legal Counsel, to promulgate or specify additional procedures for the implementation of this Policy that are not inconsistent with the Political Subdivisions Construction Alternatives Act or with this Policy.
- (6) This Policy is solely for the use and guidance of the Board and of the College Administration. It shall not be interpreted or applied so as to confer any right or entitlement on any construction manager, potential construction manager, contractor, consultant, vendor, or any other individual or entity. However, any individual or entity that wishes to file a formal protest relating to the solicitation or execution of any CMR contract by the College may file a written protest with the President of the College within five (5) business days after the protester knew or should have known of the facts upon which the protest is based. The written protest must set forth a full recitation of the facts giving rise to the protest, state the grounds or basis for the protest, and include copies of any documents supporting the protest. Unless the protest is sooner resolved by mutual agreement between the protester and the President, the Board of Governors will consider and act upon such a timely-filed protest by not later than the Board's next regular monthly meeting held not less than five (5) calendar days after the written protest is received by the President.

APPENDIX H-1-17 - SOLICITATION FROM STUDENTS AND STAFF PROCEDURES

Western Nebraska Community College has the duty and responsibility to maintain a safe and healthy environment conducive to its principal mission of education.

College procedures relative to time, manner and place for the acts of soliciting, distributing and advertising on College property are established to ensure that the educational functions of the institution are not significantly interfered with by individuals or groups while providing reasonable opportunities for persons to exercise their rights of freedom of speech and expressions. Decisions regarding the acts of soliciting, advertising and distributing literature on College property will be made on a content and subject neutral basis.

TIME, PLACE, AND MANNER

The College may, consistent with the Constitution, establish reasonable regulations regarding the time, place, and manner in which persons exercise their free speech rights to the extent necessary to assure the safety of the campus community and the orderly operations of the institution.

This procedure provides the applicable rules and procedures for any form of solicitation at WNCC.

1. DEFINITIONS

“Charitable Contribution” means a pledge or grant of anything of value to a charitable organization, where the value of the pledge or grant exceeds the value of anything received in return.

“Charitable Organization” means an organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward and is exempt from taxation under either Nebraska law or Section 501(c)(3) of the Internal Revenue Code.

“Commercial Solicitation” means any proposal to sell, seeking or asking of an offer to buy, dissemination of information for the purpose of facilitating the sale of goods or services, any activity which attempts to raise funds, whether through sale of goods and services or donations, for any entity that is not a charitable organization, or the dissemination or collection of surveys for a commercial purpose.

“Distribution” means individuals handing materials to other individuals who may refrain from receiving them. Leaving materials unattended on a surface or vehicle to be picked up is considered littering, not distribution.

“Non-Commercial Solicitation” means any hand distribution of leaflets, brochures or other written materials designed for informational and not commercial purposes. This definition does not include the dissemination of information for purposes of the administrative, academic, research, or extension activities of the College.

“Non-College Groups” means a group of individuals, other than Student or College Groups that are legally separate entities from the College, even though some of the members or participants may be College personnel, alumni, or students.

“Student” means any person from the time he or she accepts admission to Western Nebraska Community College up through the date of graduation. This includes new students at orientation and any other person currently enrolled in a credit earning course offered by Western Nebraska Community College.

“Student Group” means a group of students who have satisfied the College’s procedures and requirements for registration or recognition.

“College Group” means an administrative or academic unit, department or center within the College.

2. GENERAL PROVISIONS

The College prohibits all door-to-door solicitation on College premises or at College controlled property/events. The College prohibits the placement of any kind of flier or other kind of paper, sticker, pamphlet, or other solicitous information, whether for-profit or not, on any vehicles or anywhere else on College property at any time.

When reservations of space for solicitation are required, reservations will be confirmed if the space is available and not otherwise reserved or scheduled. In addition, the use of the space for solicitation may be subject to the reasonable time, place, or manner limits listed in this section. The College does not impose restrictions on any forms of solicitation because of the content or viewpoint of the expression or the possible reaction to that expression unless such solicitation is in violation of the law. In addition, the college does not assume any obligation or responsibility for the content of materials distributed by Students, Student Groups, or Non-College Groups or individuals.

Groups and individuals can reserve space in advance by contacting the Dean of Students. The number of groups and individuals that may be scheduled for use of the space shall be controlled by space availability as determined at the discretion of the Dean of Students or the Vice President of Administrative Services or their designees, giving due consideration to the requirements set forth below.

The following apply to all forms of solicitation activities:

- 1) Groups and individuals may not block or otherwise interfere with the free flow of vehicular, bicycle or pedestrian traffic. The rights of way on streets and sidewalks must be maintained.
- 2) Groups and individuals may not block or otherwise interfere with ingress and egress into and out of College buildings.
- 3) Groups and individuals shall not obstruct, disrupt, interrupt or attempt to force the cancellation of any College-sponsored event or activity, by users authorized to use College facilities.
- 4) Groups and individuals shall not engage in harassing, physically abusive, threatening or intimidating conduct toward any person.
- 5) Classes, meetings, ceremonies, scheduled activities, educational activities, and other essential College operations / processes shall not be disrupted.
- 6) No one may approach anyone inside campus buildings to solicit signatures other than these two exceptions: (1) signatures may be collected at information tables by individuals or organizations with the Student Services Office or designee; and (2) the solicitation of student signatures on nominating petitions for candidates for Student Government or related student services positions is permitted in the common areas of campus buildings during designated pre-election periods.
- 7) The use of public address systems or amplified sound will not be allowed without prior approval from College President or designee.
- 8) The safety of members of the campus community, collectively and individually, must be protected at all times.
- 9) Solicitation activities shall not damage College property or its grounds.
- 10) Groups and individuals must comply with all applicable College policies, regulations, and rules, and with applicable laws, including those concerning safety, libel, slander, defamation, and obscenity.

- 11) Groups and individuals shall comply with the directions of College officials when enforcing these provisions.
- 12) Groups and individuals are expected to refrain from littering and may be held responsible for costs incurred as a result of littering. In addition, the group or individual must collect and remove any loose, dropped, or littered materials or trash in the vicinity of the distribution area. Failure to do so may result in a charge to the group or individual for the cleanup of these materials.

Groups and individuals participating in solicitation activities, whether sponsored or not, are accountable for compliance with the provisions of this regulation. Violations of this regulation may be grounds for disciplinary action. College Groups, Student Groups, and Students who sponsor non-college participants may be held accountable for such participant's compliance with this regulation. In addition, since non-College individuals or groups are not subject to the College's disciplinary procedures, their failure to comply with these provisions may result in their removal from campus and/or appropriate action under local, state or federal law.

3. PRIORITY FOR USE

The use of space for solicitation shall be reserved according to the following priorities:

- a. Consistent with the College's mission, academic classes and advising, research, and extension activities shall have the highest priority for the use of space.
- b. College Group uses for activities other than academic classes and advising, research, and extension activities, will have the next highest priority in the use of space.
- c. Student Groups, students and sponsored non-College Groups and individuals will have the next highest priority.
- d. Unsponsored Non-College Groups and individuals will have the lowest priority.
- e. A reserve use shall have priority over any unscheduled use, even when reserving a space is not required by this procedure.

4. PROCEDURES FOR COMMERCIAL SOLICITATION

Commercial Solicitation on campus is prohibited unless prior written authorization has been obtained from the President or Designee. Persons or organizations wishing to engage in commercial solicitation on campus grounds may be granted permission (maximum of five (5) business days per academic term) if the proposed activity aids achievement of the educational objectives of the campus and is conducted in accordance with the General Provisions and the time, place, and manner regulations set forth herein, unless such solicitation would be in violation of law.

Fundraising activities of on-campus student teams / clubs / organizations are excluded from the time-limitation set forth above.

Groups and individuals must reserve space to conduct commercial solicitation. Groups and individuals can reserve space by contacting the Dean of Students or designee. Groups and individuals must request the use of such space at least 48 hours in advance of the activity.

Procedures Specific to College Housing:

Non-College Groups or individuals may not conduct commercial solicitation in College Housing.

College Groups, Student Groups, and Students may engage in commercial solicitation to generate funds for their programming activities consistent with the stated purpose of the group, subject to the following conditions:

Groups wishing to conduct solicitation must reserve space by contacting a Residence Life Director/Student Services Coordinator (Sidney) at least 48 hours in advance of the activity.

Solicitation may occur only within the lobby, waiting parlor or other common area(s) as designated by the Residence Life Director/Student Services Coordinator (Sidney), but never in individual residents' living quarters. No door-to-door solicitation is permitted. Solicitation will not be allowed to disrupt the College Housing environment.

Residents of College Housing facilities are not permitted to use their rooms for commercial solicitation, to have product demonstrations or parties, to advertise their room number for sales purposes, or to regularly conduct a business from their rooms. However, residents may sell their used personal possessions, and may advertise their room or phone number for this purpose. Residents are allowed to use their rooms to perform services that are within the scope of their College employment.

Bulletin boards in College Housing facilities may be used for commercial solicitation only in accordance with any content and viewpoint-neutral rules issued by College Housing.

5. PROCEDURES FOR NON-COMMERICAL SOLICITATION

a. College Groups, Student Groups, Students and Sponsored Participants

College Groups, Student Groups, Students, and their sponsored Non-College Groups and individuals may conduct non-commercial solicitation without reserving space in designated areas on campus as designated by the President or his/her designee, if the use of which is not otherwise restricted, reserved, or scheduled. However, a member of the College or Student Group or the student sponsoring the Non-College groups or individuals must be present at all times with these participants while conducting such activity.

Although not required, to further the effectiveness of the use, these groups and individuals are encouraged to reserve space for the solicitation. Advance reservation enables the College to help ensure that the solicitation does not conflict with a reserved or scheduled use, takes place in a constructive and effective manner, and to assist the groups and individuals in seeing that the activity does not disrupt the College's educational activities and essential processes.

b. Un-sponsored Non-College Groups and Individuals

Non-College groups or individuals desiring to conduct non-commercial solicitation must reserve space at least 48 hours in advance of the activity. Designated space can be reserved by contacting the Dean of Students or designee. Reservations will be approved on a space-available basis.

c. Procedures Specific to College Housing

Non-College groups or individuals may not engage in solicitation activities in College Housing facilities.

College Groups, Student Groups, and Students may engage in noncommercial solicitation in College Housing facilities only upon the following conditions:

All groups and non-residents desiring to conduct non-commercial solicitation must reserve space in the desired College Housing facility by contacting the Residence Life Director/Student Services Coordinator (Sidney) at least 48 hours in advance of the activity. Residents do not have to reserve space for non-commercial solicitation for the College Housing facility in which they reside if the use of which is not otherwise restricted, reserved, or scheduled.

The solicitation may occur only within the lobby, waiting parlor or other common area(s) as designated by the Residence Life Director/Student Services Coordinator (Sidney), but never in individual residents' living quarters. Solicitation will not be allowed to disrupt the College Housing environment.

Bulletin boards in College Housing areas may be used for noncommercial solicitation only in accordance with any content and viewpoint-neutral rules issued by College Housing.

6. PROCEDURES FOR SOLICIATION OF CHARITABLE CONTRIBUTION

College Groups, Student Groups, Students, and their sponsored Non-College Groups and individuals may conduct solicitations of charitable contributions as long as the solicitation complies with Nebraska law concerning charitable and/or non-profit entities. However, a member of the College or Student Group or the student sponsoring the Non-College Group or individuals must be present at all times with these participants while conducting such activity. Un-sponsored Non-College Groups and individuals are prohibited from conducting independent solicitations of charitable contributions.

Groups and individuals must reserve space to conduct solicitation of charitable contributions. Groups and individuals can reserve space by contacting the Vice President of Administrative Services or designee. Groups and individuals must request the use of such space at least 48 hours in advance of the activity.

Procedures Specific to College Housing:

Solicitation for charitable contributions may be carried out in College Housing, subject to the following restrictions:

Groups or individuals desiring to conduct the solicitation must reserve space by contacting College at least 48 hours in advance of the activity.

The solicitation may occur only within the lobby, waiting parlor or other common area(s) as designated by the Residence Life Director/Student Services Coordinator (Sidney), but never in individual residents' living quarters. No door-to-door solicitation is permitted. Solicitation will not be allowed to disrupt the College Housing environment.

7. EXCLUSIONS

Nothing in this Procedure shall be deemed to affect the activities of College Groups whose official activities include taking surveys or otherwise undertaking College sanctioned activities.

Nothing in this regulation shall prohibit the College from barring solicitation on College property that are non-public forums.