

SUBCHAPTER 30J - CONSTRUCTION MANAGER-AT-RISK SELECTION PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 30J .0101 AUTHORITY

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11;
Temporary Adoption Eff. February 1, 2003;
Temporary Adoption Expired December 18, 2003.

01 NCAC 30J .0102 POLICY

The State Building Commission shall select construction manager-at-risk for State capital improvement projects as defined in G.S. 143-128.1, based on criteria contained in this Subchapter and make available to every firm, licensed as a general contractor in the State of North Carolina, the opportunity to be considered for providing construction management-at-risk services for those departments and agencies under its jurisdiction. The State Building Commission shall select a construction manager-at-risk for State capital improvement project who is in compliance with the minority business participation requirements as prescribed in G.S. 143-128.2. The construction manager-at-risk shall use a standard form of contract authorized by the SBC for the public owner, construction manager-at-risk, and first-tier subcontractor.

History Note: Authority: G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

01 NCAC 30J .0103 DEFINITIONS

For purposes of this subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual or designee authorized by each funded agency to coordinate all capital improvement projects and related matters for the agency with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of this Subchapter may have other titles within his agency but shall carry out the duties assigned by the rules in this Subchapter to the capital projects coordinator.
- (2) "Construction Manager-at-Risk" means a person, corporation, or entity that provides construction management-at-risk services.
- (3) "Construction Management-at-Risk Services" means services provided by a person, corporation, or entity that:
 - (a) provides construction management services for a project throughout the preconstruction and construction phases,
 - (b) who is licensed as a general contractor, and
 - (c) who guarantees the cost of the project.
- (4) "First-Tier Subcontractor" means a subcontractor who contracts directly with the Construction Manager-at-Risk.
- (5) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his/her designee.
- (6) "Funded agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and construction project.
- (7) "Using agency" means the subdivision of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus or similar body, as determined by the administrative head of the funded agency.
- (8) "Minority Business" means a business:
 - (a) in which at least 51% is owned by one or more minority persons, or in the case of corporation, in which at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and

- (b) of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (9) "Socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

History Note: Authority: G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

01 NCAC 30J .0201 PROJECT DESCRIPTION

Each Capital Projects Coordinator shall provide the State Construction Office with a written description of the construction management-at-risk services desired, the program or scope of work, schedule requirements, amount of authorized funds, owner agency responsible for the project, name and contact information of the owner's project representative, link to owner agency's website where RFP and project detail may be obtained, date RFP to be published, closing date, time and location contractor letters of interest are to be submitted and any special licenses, skills, or experience of the contractor not already listed for each project requiring construction management-at-risk services. This information shall be provided to the State Construction Office for publication on State Construction Office website. The Capital Projects Coordinator shall initiate the Construction Manager-at-Risk selection process and shall make his/her best effort to enable the completion of the selection process within 60 days of the date of the above notification.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

01 NCAC 30J .0202 PUBLIC ANNOUNCEMENT

(a) Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for construction management-at-risk services, a designated contact person in the using agency and the closing date on the State Construction Office website. This public announcement shall be published prior to Construction Manager-at-Risk selection.

(b) The closing date for being considered for construction management-at-risk services shall be at least 21 days from date of publication on the State Construction Office website. Responses to Request For Proposal (RFP) for each project must be received by the Capital Project Coordinator prior to a firm's being considered for construction management-at-risk services.

History Note: Authority G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

SECTION .0300 - SELECTION OF CONSTRUCTION MANAGERS-AT-RISK

01 NCAC 30J .0301 CONSTRUCTION MANAGER-AT-RISK QUALIFICATIONS

All firms desiring to provide construction management-at-risk services shall submit all information required in the RFP for the public owner's review and evaluation. Firms shall submit evidence of compliance with the requirements of the RFP. Each firm shall meet the requirements of the RFP prior to being considered by the pre-selection committee as one of the firms most qualified to perform construction manager-at-risk services. Failure of any firm to furnish all required information in the RFP shall disqualify the firm from consideration.

History Note: Authority G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

01 NCAC 30J .0302 PRE-SELECTION COMMITTEE

A pre-selection committee shall be established for all projects requiring construction management-at-risk services. The pre-selection committee shall consist of at least the capital projects coordinator, a representative of the using agency and one representative from the State Construction Office. At least one member of all pre-selection committees shall be a registered architect, licensed engineer or licensed contractor. The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The capital projects coordinator shall state in his project description that the rules for public announcement and selection have been followed or shall state full particulars if exceptions have been taken.

*History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

01 NCAC 30J .0303 SELECTING CRITERIA

In selecting the three firms to be presented to the SBC, the pre-selection committee shall take into consideration in the evaluation of the Proposals such factors as:

- (1) Workload that is able to accommodate the addition of this project.
- (2) Record of successfully completed projects of similar scope without legal or technical problems.
- (3) Previous experience with the public owner, a good working relationship with owner representatives, projects completed in a timely manner and an acceptable quality of work.
- (4) Key personnel that have appropriate for contract experience and qualifications.
- (5) Relevant and easily understood graphic or tabular presentations.
- (6) Completion of - Construction Manager-At-Risk projects in which there were few differences between the guaranteed maximum price and final cost.
- (7) Projects that were completed on or ahead of schedule.
- (8) Recent experience with project costs and schedules.
- (9) Construction administration capabilities.
- (10) Proximity to and familiarity with the area where the project is located.
- (11) Quality of compliance plan for minority business participation as required by G.S. 143-128.2.

*History Note: Authority G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

01 NCAC 30J .0304 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR UNC SYSTEM PROJECTS

In selecting Construction Manager-at-Risk for its projects, the UNC system shall comply with the rules in this Subchapter except that:

- (1) the pre-selection committee need not include a representative of the State Construction Office; and
- (2) the final selection of Construction Manager-at-Risk shall be made by the Board of Trustees of the funded institution.

*History Note: Authority G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

01 NCAC 30J .0305 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS

(a) Upon receipt of a letter from the capital projects coordinator listing three firms in priority order along with recommendations and selection information, the secretary of the SBC, upon determination that all information has been submitted, shall place the request for consideration on the agenda for the next SBC meeting.

(b) The capital projects coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the rules in this Subchapter have been followed, the SBC shall:

- (1) Affirm the selection of the firms in the priority order recommended by the agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

History Note: Authority G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

01 NCAC 30J .0306 CONTRACT NEGOTIATION

After the three firms have been notified of the selection action by the SBC or the University of North Carolina, a representative from the State Construction Office, the capital projects coordinator, and a representative from the using agency shall discuss with the first ranked construction manager-at-risk services and information about the project. The State Construction Office shall request in writing a detailed fee proposal from the first ranked Construction Manager-at-Risk. The State Construction Office in coordination with the capital projects coordinator and the using agency shall attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked Construction Manager-at-Risk, the process shall be repeated with the third-ranked Construction Manager-at-Risk. If a fee still cannot be agreed upon, the SBC shall review the history of negotiations and make determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the original selection order, or a call shall be made for the capital projects coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process shall continue until a fee has been determined that is agreed to by the State Construction Office, the using agency and the Construction Manager-at-Risk. Following execution of the contract, the State Construction Office shall publish on the State Construction Office website, the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

History Note: Authority G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.