

**RESOLUTION APPROVING CONSTRUCTION MANAGEMENT AT RISK
PROCEDURES AND AN AMENDMEN TO CITY CODE SECTION**

BE IT RESOLVED, that the Council of the City of Charlottesville, Virginia (“City Council”), pursuant to legal authority in Virginia Code § 2.2-4382, hereby adopts the following “City of Charlottesville, Virginia, Construction Management at Risk Procedures:”

**CITY OF CHARLOTTESVILLE, VIRGINIA, CONSTRUCTION MANAGEMENT AT
RISK PROCEDURES**

In accordance with the Virginia Code, the following procedures for the procurement of Construction Management at Risk (“CMAR”) contracts, under the purview of Virginia Code § 2.2-4379, as amended, are hereby adopted for use by the City of Charlottesville, Virginia (“City”), by the Council of the City of Charlottesville, Virginia (“City Council”), on _____. These Procedures shall be effective _____.

A. LEGISLATIVE AUTHORITY

Under authority in Virginia Code § 2.2-4382, as amended, City may enter into a CMAR contract, provided that City:

- (1) Receives approval from City Council;
- (2) Complies with the requirements of Virginia Code § 2.2-4382, as amended; and
- (3) Has by Ordinance or Resolution implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing CMAR contracts.

B. OVERVIEW

- (1) CMAR is an alternative construction delivery method to Competitive Sealed Bids that is typically used for Design, Bid, Build (“DBB”) delivery. In CMAR delivery, City holds two (2) contracts: (1) a contract for professional Architectural and Engineering (“A/E”) design services; and (2) a two (2)-part contract with the CMAR Contractor. The CMAR Contractor initially provides pre-construction services and then transitions to construction related services where the Contractor provides a Guaranteed Maximum Price (“GMP”) and is “At Risk” for constructing the entire project for the agree-upon GMP.
- (2) In drafting these Procedures, Virginia Department of General Services (“DGS”) guidance provided an excellent roadmap for CMAR execution. City officials should refer to the current edition of DGS’s Construction and Professional Services Manual (“CPSM”), and the accompanying DGS forms library when implementing these CMAR procedures.

C. CRITERIA FOR USE OF CMAR

CMAR contracts may be approved for use on City projects where:

- (1) Prior to making a determination to use CMAR, City has in its employ, or under contract, a licensed architect or engineer with professional competence appropriate to the project who shall: (i) advise City regarding the use of a CMAR contract for the project; and (ii) assist City with the preparation of the Request for Proposal (“RFP”) and the evaluation of such proposals;
- (2) City stakeholders balance and document whether the project meets the criteria of a “Complex Project,” as defined in Virginia Code § 2.2-4379, as amended; and
- (3) City Department stakeholders make a written determination that the DBB project delivery method is not practicable or fiscally advantageous when compared to CMAR delivery.

D. PROCEDURE FOR APPROVAL TO USE CMAR

- (1) Request for Approval
 - (a) After analyzing Section “C,” Criteria for Use of CMAR, prior to taking any further action, a City Department shall request authority, in writing, and receive approval from the City’s Purchasing Agent to use a CMAR contract for a project.
 - (b) The request shall justify the use of a CMAR contract, including the stipulations that the CMAR contract will be initiated no later than the Schematic Phase of design and that the criteria found in Section “B” of these Procedures have been met. These justifications/determinations for the use of a CMAR contract shall also be stated in the Request for Qualifications (“RFQ”) and maintained in the procurement file.
- (2) Approval of, or exceptions to these Procedures, may be granted by the City’s Purchasing Agent, who is the approving authority for requests to use CMAR.

E. CMAR SELECTION PROCEDURES

On projects approved for CMAR, procurement of the contract shall be a two (2)-step process. The following procedures shall be used in selecting a CMAR and awarding a contract:

- (1) The City Attorney’s Office shall be advised that the CMAR procurement process has been approved for a specific project.

- (2) The City shall appoint an Evaluation Committee (“Committee”) which shall consist of at least three (3) City Staff Members. The Committee shall include a licensed professional engineer or architect, either City Staff or under contract.
- (3) The basis of the award of the contract shall be in accordance with Virginia Code § 2.2-4382, as amended. It is noted that cost is a critical component of the selection process.
- (4) **PREQUALIFICATION (STEP 1)**

On projects approved for CMAR, City shall conduct a Prequalification process as follows to determine which Offerors are qualified to be invited to respond to the RFP; (STEP 2).

- (a) City shall prepare an RFQ containing the project scope, site and survey data (if available), the criteria to be used to evaluate RFQ Responses, and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All Offerors shall have a licensed Class “A” contractor registered in the Commonwealth of Virginia as part of the project team. Prior CMAR or previous experience with the Division shall not be considered as a prerequisite or factor considered for prequalification of a CMAR. However, in the selection of a contractor, the City may consider the experience of each contractor on comparable CMAR projects.
- (b) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Virginia Code and in accordance with the latest City’s Purchasing Procedures, but at least public notice of the RFQ shall be posted on the DGS’ central electronic procurement website known as eVA, or City’s website, at least thirty (30) days prior to the date set for receipt of qualification proposals.
- (c) The Committee shall evaluate each responding firm's RFQ responses and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
- (d) Prequalification shall be determined based upon the RFQ criteria, and, as and shall result in a short list of two (2) to five (5) Offerors.
- (e) At least thirty (30) days prior to the date established for the submission of proposals, City shall advise in writing each Offeror, which sought prequalification, whether that Offeror has been prequalified. Prequalified Offerors that are not selected for the short list shall likewise be provided with the reasons for such decision. If an Offeror is denied prequalification, the written notification to such Offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

(5) **REQUEST FOR PROPOSALS (STEP 2) - SELECTION OF A CONSTRUCTION MANAGER**

- (a) City shall send an RFP to the Offerors on the short list and request submission of formal proposals from them. The criteria for award shall be included in the RFP.
- (b) Proposals shall only be accepted from Step 1 Prequalified short-listed firms. Proposals as described in the RFP shall be submitted to the Committee.
- (c) The Committee will evaluate and rank the proposals. After evaluation and ranking of the proposals, the Committee shall:
 - (1) Conduct negotiations with two (2) or more Offerors submitting the highest ranked proposals; or
 - (2) Should the Committee determine, in writing, and at its sole discretion, that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- (d) The Committee shall make its recommendation on the selection of a Construction Manager to the City's Purchasing Agent. The contract shall be awarded to the Offeror who is fully qualified and has been determined will provide the best value in response to the RFP.
- (e) The City Department shall request authority to award a contract from City Council.
- (f) The City's Purchasing Agent will notify all Offerors who submitted proposals which Offeror was selected for the project. Alternatively, the City's Purchasing Agent may notify all Offerors who submitted proposals of City's intent to award the contract to a particular Offeror at any time after City has selected the Construction Manager. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one (1) Offeror.
- (g) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

F. CMAR CONTRACTUAL TERMS

- (1) Any CMAR contract entered into by City shall contain provisions requiring that:
 - (i) not more than ten percent (10%) of the construction work (measured by cost of

the work) will be performed by the Construction Manager with its own forces; and (ii) that the remaining ninety percent (90%) of the construction work will be performed by subcontractors of the Construction Manager, which the Construction Manager must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. This requirement shall not apply to CMAR contracts involving infrastructure projects. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding. The City's Purchasing Agent may modify these contractual requirements, in whole or in part, for projects where it would be fiscally advantageous to the public to increase the amount of construction work performed by the Construction Manager.

(2) CMAR contracts are normally structured in two (2) parts.

- (a) Part 1: Pre-Construction Services. These services typically relate to work as an advisor to City and the Design Team in areas such as: constructability, material availability, scheduling, cost estimating, and value engineering. This portion of the contract will normally be a fixed fee, or cost plus fee contract.
- (b) Part 2: Construction Services. This portion of the contract is contingent upon the Construction Manager providing an agreeable GMP to City. Once that occurs, and the parties have an executed contract, the project can proceed to construction with the Construction Manager at risk for delivering the project at GMP.

Date Introduced: _____

Date Adopted: _____

Certified: _____
Clerk of Council