

# Document 00 21 16 - Instructions to Proposers (CM at Risk Project)

## State of Ohio Standard Requirements for Public Facility Construction

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### ARTICLE 1 - GENERAL INFORMATION

#### 1.1 Project Delivery

1.1.1 The Project will be delivered through the construction manager at risk method described in ORC Sections 9.33 through 9.335.

#### 1.2 Contract Requirements

1.2.1 The Contract will include **(1)** the State of Ohio Standard Requirements for Public Facility Construction using the construction manager at risk project delivery system and **(2)** appropriate Project-specific documents.

1.2.1.1 This Project is subject to the State of Ohio’s Equal Employment Opportunity requirements described under OAC 123:2-3 through 123:2-9.

1.2.1.2 This Project may be subject to the State of Ohio’s Encouraging Diversity, Growth, and Equity (“EDGE”) Business Development Program. If applicable, each Proposer is required to submit with its Proposal certain information about the certified EDGE Business Enterprise(s) participating on the Project with the Proposer. See the **Request for Proposal** for the Project-specific EDGE Participation Goal.

.1 The EDGE-participation percentage is determined by the contracted value of goods, services, materials, and labor that are provided by EDGE-certified business(es). The participation is calculated on the total amount of each awarded contract. For more information about EDGE, contact the State of Ohio EDGE Certification Office at <http://das.ohio.gov/eod>, or at its physical location: 4200 Surface Road, Columbus, Ohio 43228-1395; or by telephone at (614) 466-8380.

1.2.1.3 The Proposer must indicate the locations where its services will be performed by an attachment to its Proposal in accordance with the requirements of Executive Order 2011-12K related to providing services only within the United States.

**1.2.1.4 DOMESTIC STEEL USE REQUIREMENTS AS SPECIFIED IN OHIO REVISED CODE SECTION 153.011 APPLY TO THIS PROJECT. COPIES OF OHIO REVISED CODE SECTION 153.011 CAN BE OBTAINED FROM THE OHIO FACILITIES CONSTRUCTION COMMISSION.**

1.2.1.5 Proposers are encouraged to be enrolled in good standing in a Drug-Free Safety Program (“DFSP”) approved by the Ohio Bureau of Workers’ Compensation (“OBWC”) prior to submitting a Proposal. Proposers are required to provide on the **Proposal Form** certain information relative to their enrollment in such a program; and, if awarded a Contract, to comply with all other applicable DFSP requirements.

1.2.2 See the **Request for Proposal** for Project-specific expectations concerning project phasing, number and timing of GMP Amendments, and similar topics.

### ARTICLE 2 - PROPOSAL PREPARATION AND SUBMISSION

#### 2.1 General Requirements

2.1.1 The Proposal must include the Technical Proposal and Pricing Proposal as described below. Divide and organize the Proposal accordingly.

#### 2.2 Technical Proposal Requirements

2.2.1 The Technical Proposal must include the below-listed items (and only the below-listed items) and must be clearly divided/organized as described.

## 2.2.2 Proposed Staffing.

### 2.2.2.1 Implementation Plan:

- .1 Identify the proposed Project team (include Key Personnel identified in the **Proposal Form** and other team members).
- .2 Provide a proposed organizational chart for the Project. Proposers with “partner-company” participation must describe **(1)** the division of services/work and percentage of contract for each company, **(2)** the contractual/legal relationship between the companies, and **(3)** whether a separate legal entity has been formed or will be formed for this Project.
- .3 If the Proposer is a corporation, partnership, sole proprietorship, or separate legal entity, identify an officer, partner or principal of the Proposer associated with the legal name of the Proposer.
- .4 If the Proposer is a joint venture, identify an officer, partner or principal, as applicable, of each joint venturer associated with the legal name of the applicable joint venturer.
- .5 Describe the Proposer’s plan for staffing the Project. The Staffing Plan must coordinate with **(1)** the cost details required on the **Proposal Form** and **(2)** the proposed Project Schedule.

**2.2.2.2 Staff Availability:** Describe the availability of each member of the Proposer’s proposed Project team and the amount of time each team member is expected to dedicate to the Project.

**2.2.2.3 Flexibility to Schedule Changes:** Describe the ability and limitations on the ability of the proposed Project team to accommodate changes of the Project’s schedule.

## 2.2.3 Subcontracting Plan.

**2.2.3.1 Prequalification Plan:** Outline the Proposer’s plan for prequalifying Subcontractors including **(1)** general and Project-specific prequalification criteria, **(2)** activities for developing prospective bidders’ interest in the Project, and **(3)** the Proposer’s evaluation processes.

### 2.2.3.2 Packaging Plan and Self-Performed Work:

- .1 Describe the Proposer’s strategy for packaging and scheduling bidding and ensuring that scopes of Work of the various Subcontractors are coordinated, and all requirements for the Project have been assigned to the appropriate Subcontract.
- .2 Provide a description of the Work the Proposer proposes to self-perform on the Project (if any). Proposers are advised that self-performed Work is subject to Contracting Authority approval as described in the Contract’s General Conditions.

**2.2.3.3 Design-Assist Strategies:** Describe the Proposer’s plan (if any) for engaging one or more design-assist firms to facilitate the Preconstruction Stage of the Project.

## 2.2.4 EDGE Plan. (if applicable)

**2.2.4.1 Outreach Plan:** Describe the Proposer’s plan for seeking one or more businesses certified as an EDGE Business Enterprise (“EDGE-certified Business”) by the EOC to participate in the Project.

**2.2.4.2 Services Participation:** Describe the Proposer’s demonstrated engagement of EDGE-certified Businesses to meet or exceed the stated EDGE Participation Goal for the Project, evidenced by fully executed EDGE Affidavits submitted with its Proposal (Preconstruction Stage Compensation plus the Contract Sum minus Subcontracted Work, Self-performed Work, and the CM’s Contingency).

**2.2.4.3 Subcontracted Work Participation:** Describe the Proposer’s intent and strategy for meeting or exceeding the stated EDGE Participation Goal for the Project, by engaging EDGE-certified Businesses for Subcontracted Work during the Construction Stage.

## 2.2.5 Estimating Strategies.

**2.2.5.1 A/E Collaboration Strategies:** Describe the Proposer’s plan for collaborating with the A/E in connection with the preparation of Project estimates.

**2.2.5.2 Design-Assist Collaboration Strategies:** Describe the extent to which the Proposer intends to incorporate design-assist firms into its planned approach to estimating on the Project.

**2.2.5.3 Use of Estimating and Market Pricing:** Describe the Proposer’s planned approach to estimating and the use of market pricing to develop estimates and to verify scopes of work on the Project.

## 2.2.6 Procurement Strategies.

### 2.2.6.1 Buyout Plan:

- .1 Describe the Proposer's buyout plan for the Project.
- .2 Identify any anticipated labor-, materials-, and equipment-procurement difficulties and the Proposer's plan for addressing those difficulties.

### 2.2.6.2 Long-lead and Bulk-purchase Strategies:

- .1 Identify any anticipated long-lead items and describe the Proposer's plan for procuring those items within the anticipated Project schedule.
- .2 Identify any anticipated bulk-purchase opportunities for the Project and describe the Proposer's plan for taking advantage of those opportunities.

**2.2.6.3 Support of Owner Objectives:** Describe how the Proposer's procurement strategies support the Owner's identified scope, schedule, budget, and other objectives for the Project.

## 2.2.7 Value Added Suggestions.

**2.2.7.1 Description:** Describe the Proposer's suggestions (if any) related to construction feasibility; time requirements for Project completion; and factors related to construction cost, including suggestions for alternative designs or materials.

**2.2.7.2 Benefits:** Describe the benefits to the Owner of each suggested alternate.

## 2.2.8 Schedule.

**2.2.8.1 Baseline Schedule:** Provide a detailed schedule which clearly identifies the manner in which the Proposer proposes to sequence the Work and complete it within the Project's schedule requirements.

### 2.2.8.2 Schedule Enhancements:

- .1 Describe the Proposer's proposed Schedule Enhancements (if any) for alternative approaches to the baseline Project schedule. For each proposed Schedule Enhancement or other suggestion, identify all anticipated effects on the Project's scope, cost, and other Project participants and all associated assumptions.
- .2 Provide a detailed schedule, which clearly identifies the incorporation of the proposed Schedule Enhancements or other suggestions into the baseline schedule.

**2.2.8.3 Phasing/Procurement Activities:** Identify all phasing/procurement activities and the manner in which the Proposer proposes to sequence phasing and procurement activities in order to complete the Work within the Project's schedule requirements.

### 2.2.8.4 Milestones/Activities:

- .1 Identify all significant milestones and activities in the baseline and any alternative schedule(s), including but not limited to milestones identified in the **Request for Proposal**.
- .2 Describe the significance and other important characteristics of the milestones and major activities identified in the proposed baseline and alternate schedule(s).

## 2.2.9 Site Logistics, Safety, and Phasing Plans.

**2.2.9.1 Site Logistics Plan:** Provide an outline or diagram or both of the Proposer's anticipated site logistics plan.

**2.2.9.2 Safety Plan:** Provide an outline of the Proposer's anticipated site safety plan.

**2.2.9.3 Diagrammatic Project Phasing Plan:** Provide a diagrammatic Project phasing plan.

## 2.2.10 Quality-Assurance/Quality-Control ("QA/QC") Plan.

**2.2.10.1 Design Stage:** Provide the Proposer's QA/QC Plan for the Design Stage of the Project.

**2.2.10.2 Estimating and Scheduling:** Provide the Proposer's QA/QC Plan for estimating and scheduling on the Project.

**2.2.10.3 Construction Stage:** Provide the Proposer's QA/QC Plan for the Construction Stage of the Project.

## 2.2.11 Unique Challenges and Solutions.

**2.2.11.1 Project/Scope Characteristics:** Describe any Proposer-identified challenges that are unique to the Project and its anticipated scope and provide suggested solutions to the identified challenges.

**2.2.11.2 Budget/Schedule Characteristics:** Describe any Proposer-identified challenges that are unique to the Project's budget and schedule characteristics and provide suggested solutions to the identified challenges.

**2.2.11.3 Quality/Process Characteristics:** Describe any Proposer-identified challenges that are unique to the Project's quality and process characteristics and provide suggested solutions to the identified challenges.

**2.2.12 Project-Specific Information.**

**2.2.12.1** Include all additional items (if any) requested as Supplemental Information in the **Request for Proposal**.

**2.2.13 Additional Considerations.**

**2.2.13.1** Update any information contained in the Proposer's Statement of Qualifications that has changed since the Proposer submitted it.

**2.2.13.2** Concisely identify any additional considerations the Proposer believes are relevant to the Project. The Evaluation Committee will not review or consider copies of general marketing materials, web-site printouts, or any other information not specific to the Project.

## 2.3 Pricing Proposal Requirements

**2.3.1** The Pricing Proposal must include only a completed **Proposal Form** clearly marked with the Contracting Authority's Project number and name.

**2.3.1.1** The Proposer must complete all lines in the **Proposal Form**.

- .1 Identify the percentage of EDGE participation for each line on the **Proposal Form** related to the CM's Services compensation (Preconstruction Stage Compensation plus the Contract Sum minus Subcontracted Work, Self-performed Work, and the CM's Contingency).

**2.3.1.2** The pricing terms used in the form are defined in the Contract's **Contracting Definitions**. Additional relevant information is included in the Contract's **General Conditions**.

**2.3.2** Proposers are requested to complete the information on the **Proposal Form** consistent with the **Contracting Definitions** and as further outlined below:

**2.3.2.1 Preconstruction Fee.** Provide your proposed lump sum fee for Preconstruction Services.

**2.3.2.2 Preconstruction Stage Personnel Costs Cap.** Provide your list of key personnel with their names, roles during the Preconstruction Stage, proposed hourly rates, number of hours proposed, and the total amount (rate x hours). Provide a total amount for all personnel.

**2.3.2.3 Preconstruction Reimbursable Expense Cap.** Provide your proposed reimbursable expenses incurred during the Preconstruction Stage. The cost of Bonds, in the full amount of the proposed initial Agreement amount, are to be included in the Preconstruction Stage Reimbursable Expenses.

**2.3.2.4 Construction Stage Personnel Costs.** Provide your list of key personnel with their names, roles during the Construction Stage, proposed hourly rates, number of hours proposed, and the total amount (rate x hours). Provide a total amount for all personnel.

**2.3.2.5 Statement of General Conditions Costs.** Provide your proposed General Conditions Costs based upon the definition provided in the **Request for Proposal**.

**2.3.2.6 Statement of Contingency Requirements.** Indicate the anticipated level of contingency that will be within the GMP for the Project as a percentage of the Cost of the Work, and any recommendations on the use of such contingency.

**2.3.2.7 CM's Fee.** Provide your proposed fee as defined in the **Contracting Definitions** as a percentage of the Cost of the Work plus Contingency.

**2.3.2.8 Schedule Enhancements.** Provide the number of days and the cost or credit associated with the proposed schedule adjustment (if any).

**2.3.2.9 CM Adviser Fee.** Provide your proposed fee as a percentage of the Cost of the Work in the "CM Adviser Fee" section under Additional Information on the **Proposal Form**. If a GMP cannot be negotiated, the Contracting Authority may convert the Contract to a CM Adviser contract.

**2.3.2.10 CM Billing Rates.** Include hourly individual billing rates that correspond to the Project organizational chart. The billing rates shall reflect direct personnel expenses (e.g., direct salaries or labor wages of personnel listed plus the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes, other statutory employee benefits, employee retirement plans and similar contributions). The billing rates shall not contain any profit or allocation for home office overhead for the CM or any Consultant.

**2.3.3 Bonding/Insurance.** Provide evidence of capacity to provide bonding in the amount of the Contract Sum, based on the estimated Construction Budget (e.g., a letter from its Surety or Sureties stating that the Proposer is eligible for the Performance Bond and Payment Bond for 100 percent of the estimated Contract Sum as required under OAC Section 153:1-4-02 if the Proposer is selected), and a copy of the Proposer's certificate of insurance showing the Proposer's current limits of liability for commercial general liability, employer's liability, business automobile liability and professional liability. **Failure of the Proposer to provide acceptable evidence of bonding capacity sufficient to complete the Project may result in disqualification of the Proposer and rejection of its Proposal.**

**2.3.4** If the **Request for Proposal** requires submission of a proposed GMP Amendment, see **Article 4** for related requirements.

## ARTICLE 3 - SELECTION AND CONTRACT NEGOTIATION

### 3.1 Selection Criteria

**3.1.1** The Evaluation Committee will make its selection using a best-value selection process.

**3.1.2** The **Request for Proposal** and the **Best Value Rating Form** identify the selection criteria that will be factored into the evaluation process.

### 3.2 Pre-Proposal Meeting

**3.2.1** The Selection Coordinator will invite each Proposer to meet individually with members of the Evaluation Committee before the Proposal-submission deadline. The purpose of the pre-proposal meeting is to permit each Proposer to ask the Evaluation Committee questions in an individual setting to help the Proposer prepare its Proposal.

**3.2.2** If the date and time for the Pre-Proposal Meetings are not included the anticipated schedule in the **Request for Proposal**, the Selection Coordinator will contact each Proposer to schedule individual times for the meetings.

### 3.3 Proposal Submission

**3.3.1** The Proposer shall submit the required number of copies of its Proposal to the Selection Coordinator in the format, at the location, and by no later than the deadline indicated in the **Request for Proposal**. Proposers are cautioned to allow sufficient time for inspection of packages by building security.

**3.3.2** If electronic submittals are required, combine the Proposal documents into one PDF file named with the project name listed on the **Request for Proposal** and the Proposer's name. Use the "print" feature of Adobe Acrobat or similar software for creating a PDF rather than using a scanner. If possible, reduce the file size of the PDF. Mark or label the CD or DVD and the cover with the project name and the Proposer's name.

### 3.4 Post-Proposal Interview

**3.4.1** After the Proposal-submission deadline, the Evaluation Committee will interview each Proposer. The interview will not be scored or included in the scoring of the Proposal. The purpose of the interview is to allow the Evaluation Committee to meet the proposed Project team, become familiar with Key Personnel, and to understand the Proposer's approach and ability to meet the Project's objectives.

**3.4.2** Each Proposer is expected to **(1)** plan its allotted interview time to cover all criteria listed on the **Best Value Rating Form** and **(2)** be prepared to discuss with specificity the Proposer's capacity to meet the Project's requirements.

**3.4.3** The Selection Coordinator will contact each Proposer to schedule individual times for the interviews.

### 3.5 Evaluation and Ranking

**3.5.1** The Evaluation Committee will evaluate each Proposal using the technical criteria to evaluate the Technical Proposal and the pricing criteria to evaluate the Pricing Proposal. The Evaluation Committee will evaluate the Technical Proposal separately from the Pricing Proposal, then combine the evaluations using the weighting shown on the **Best Value Rating Form** to reach a final evaluation of the Proposal.

**3.5.2** The Evaluation Committee will rank the Proposals based on the final evaluations to identify the Proposal which presents the best value for the Project. The Selection Coordinator will notify each Proposer of the Evaluation Committee's ranking.

**3.5.3** If the **Request for Proposal** requires submission of a proposed GMP Amendment, see **Article 4** for related requirements.

### 3.6 Contract Negotiation Submissions

**3.6.1** The Proposer with whom the Contracting Authority is negotiating shall submit the following documents to the Contracting Authority within five days after commencement of contract negotiations:

**3.6.1.1** Completed Exhibits to the Agreement:

- .1 Personnel Costs Rate Schedule** attached as **Exhibit A**;
- .2 Preconstruction Stage Reimbursable Expenses Schedule** attached as **Exhibit B**; and
- .3 General Conditions Costs Description** attached as **Exhibit C**.

**3.6.1.2** The Bonds required under the Contract along with **(1)** a certified copy of the authority to act (power of attorney) of the agent signing the Bonds on behalf of the Surety and **(2)** a current and signed Certificate of Compliance under ORC Section 9.311 issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio.

**3.6.1.3** Ohio Bureau of Workers' Compensation Certificate of Premium Payment.

**3.6.1.4** Certificate of Insurance (ACORD form is acceptable), a copy of additional insured or loss payee endorsement(s) reflecting coverage that complies with the Contract's requirements, and a current loss run report for the current policy period of the required professional liability insurance.

**3.6.1.5** Certificate of Compliance with Affirmative Action Programs, issued by the Equal Opportunity Coordinator. The form must be submitted through the Ohio Business Gateway: <http://business.ohio.gov/efiling/>.

**3.6.1.6** Evidence that the Proposer is enrolled in, and in good standing in, a DFSP approved by the OBWC.

**3.6.1.7** If applicable to this Project, evidence acceptable to the Contracting Authority of the Proposer's participation in the EDGE Program **(1)** by contracting with EDGE-certified Business Enterprise(s) for the Project by submitting a fully completed EDGE Affidavit for each EDGE-certified Business Enterprise, **(2)** by requesting a waiver or partial waiver of the advertised EDGE Program participation goal for the Project on the Proposer's company letterhead including full documentation of the Proposer's good faith effort to contract with EDGE-certified Business Enterprise(s) for this Project, or **(3)** both.

**3.6.1.8** If the Proposer is a foreign corporation (i.e., not incorporated under Ohio law), it must submit a Certificate of Good Standing from the Ohio Secretary of State showing the right of the Proposer to do business in Ohio.

**3.6.1.9** If a Proposer is an individual or partnership, nonresident of the State of Ohio, it must submit a Power of Attorney designating the Ohio Secretary of State as the Proposer's agent for accepting service of summons in any action brought under ORC Section 153.05 or under ORC Sections 4123.01 to 4123.94, inclusive.

**3.6.1.10** If the Proposer is a joint venture, the executed agreement between the joint venturers describing the division of services/work and percentage of contract for each company, and a Power of Attorney which authorizes one or more individuals to bind the joint venture and each individual joint venturer to Contract Modifications including GMP Amendments.

### 3.7 Contract Negotiations

**3.7.1** The Contracting Authority will enter into contract negotiations with the Proposer that submitted the Proposal identified by the Evaluation Committee as presenting the best value for the Project.

**3.7.2** If the negotiations with the Proposer determined to be the best value are unsuccessful, the Contracting Authority will inform that Proposer in writing of termination of negotiations. The Contracting Authority may then begin negotiating with the Proposer ranked next best value. If those negotiations fail, the Contracting Authority may follow the same process with each successive Proposer in order of ranking until the Contract is negotiated. If negotiation fails with all Proposers, the Contracting Authority may **(1)** issue the **Request for Proposal** to additional firms from the qualifications short-listing process and follow the above-described process, **(2)** re-start the solicitation process, or **(3)** take other action.

### 3.8 Schedule

**3.8.1** See the **Request for Proposal** for the anticipated schedule and related deadlines.

## ARTICLE 4 - GMP-RELATED PROCESS

### 4.1 Proposed GMP Amendment

**4.1.1** If required in the **Request for Proposal**, the Proposer shall submit the following documents in a separate, sealed package within the submitted Proposal package:

- 4.1.1.1** a proposed GMP Amendment including all exhibits, the form of which is an exhibit to the Contract's Form of Agreement;
- 4.1.1.2** a proposed Subcontracting Plan as described in the Contract's General Conditions;
- 4.1.1.3** the prequalification criteria for prospective Bidders on each anticipated Subcontract; and
- 4.1.1.4** a list of proposed Subcontractors indicating the anticipated scope of Work for each.

**4.1.2** NOTE: Identify the firm on the outside of the GMP package as required for the entire Proposal package and also prominently include "Proposed GMP Amendment" on the GMP package.

### 4.2 Evaluation of Proposed GMP Amendments

**4.2.1** If the **Request for Proposal** requires submission of a proposed GMP Amendment, the Evaluation Committee will not open any submitted GMP Amendment until after the Evaluation Committee concludes all interviews and has scored each Proposer's Technical Proposal and Pricing Proposal as described under **Article 3**.

**4.2.1.1** Notwithstanding **Section 4.2.1**, a representative of the Contracting Authority **(1)** may review submitted GMP Amendments before the Evaluation Committee concludes all interviews and has scored the submitted Technical Proposals and Pricing Proposals, **(2)** may communicate with a Proposer to obtain clarification of information contained in a Proposer's submitted GMP Amendment, but **(3)** may not communicate to the Evaluation Committee any of the information about or contained in the submitted GMP Amendments until after the Evaluation Committee concludes all interviews and has scored each Proposer's Technical Proposal and Pricing Proposal as described under **Article 3**.

**4.2.2** The Evaluation Committee will consider each Proposer's proposed GMP Amendment and related documents with the score previously given by the Evaluation Committee to reach a final evaluation of each Proposal. The Evaluation Committee will use those final evaluations when it ranks the Proposals as described under **Section 3.5.2**.

**4.2.3** The proposed GMP Amendment shall remain valid and open for acceptance for a period of 90 days after submission.

## ARTICLE 5 - GENERAL PROVISIONS

### 5.1 Questions

**5.1.1** All questions must be submitted in writing to the Selection Coordinator. The Selection Coordinator will email the answers to all Proposers. The Proposers shall communicate through the Selection Coordinator.

**5.1.2** The Selection Coordinator may also email other Project-related information to the Proposers.

**5.1.3** Addenda.

**5.1.3.1** Should any question prompt the Contracting Authority to amend the **Request for Proposal**, a notice will be sent to all Proposers. Addenda will be deemed to have been validly given if emailed or otherwise furnished to each Proposer's contact person of record.

**5.1.3.2** When an Addendum to this **Request for Proposal** is necessary less than three days before the Proposal deadline, the Contracting Authority may extend the Proposal deadline through an announcement via email. The Selection Coordinator will make reasonable attempts to contact all Proposers.

### 5.2 Proposal Certifications

**5.2.1** By submitting a Proposal, the Proposer certifies to the Contracting Authority and Owner that:

**5.2.1.1** the Proposer is not the subject of an unresolved finding for recovery issued by the Auditor of State under ORC Section 9.24;

**5.2.1.2** the Proposer is not debarred under ORC Section 153.02;

**5.2.1.3** the Proposer has not been found by a court to be in default of a judgment or breach of settlement agreement; and

**5.2.1.4** the Proposer has not violated ORC Section 3517.102 by exceeding allowable campaign contributions.

### **5.3 Cancellation and Rejection; Waiver of Minor Errors**

**5.3.1** The Contracting Authority may reject all Proposals and cancel all or any portion of this solicitation at any time for any reason. The Contracting Authority will have no liability to any Proposer arising out of any cancellation of this solicitation or rejection of any related submission.

**5.3.2** After the Evaluation Committee ranks the Proposals based on the final evaluations to identify the Proposal which presents the best value for the Project, the Contracting Authority shall reject the recommendation of the Evaluation Committee if the Contracting Authority determines that:

**5.3.2.1** the Contract cannot be awarded under ORC Section 9.24 because the recommended Proposer has a finding for recovery issued by the Auditor of State, and the finding for recovery is unresolved;

**5.3.2.2** the recommended Proposer is debarred under ORC Section 153.02;

**5.3.2.3** the recommended Proposer has been found by a court to be in default of a judgment or breach of settlement agreement;

**5.3.2.4** the recommended Proposer has violated ORC Section 3517.102 by exceeding allowable campaign contributions; or

**5.3.2.5** a correction of a clerical error made by the Selection Coordinator or the Evaluation Committee changes the result of a selection.

**5.3.3** If the Proposer that was recommended by the Evaluation Committee is not awarded the Contract due to reasons set forth in **Sections 5.3.2.1, 5.3.2.2, 5.3.2.3, and 5.3.2.4**, the Contracting Authority shall notify that Proposer in writing and describe the reason(s) for rejection.

**5.3.3.1** Only the Proposer that was recommended by the Evaluation Committee but not awarded the Contract by the Contracting Authority may protest the decision within five days and request a meeting seeking a final administrative decision. The reason(s) for the protest must be in writing. The Contracting Authority shall consider the objection within 15 days of the notice. This process is not subject to ORC Chapter 119.

**5.3.3.2** No award of Contract shall be made final until the Contracting Authority either affirms or reverses the rejection, which is the final administrative decision.

**5.3.4** If the Contracting Authority determines that a conflict of interest exists between the Evaluation Committee members and the Proposers, the Contracting Authority shall reject the recommendation of the Evaluation Committee, establish a new evaluation committee, and repeat the selection process.

**5.3.5** If the Contracting Authority determines that the Evaluation Committee did not follow the best-value selection processes established under the OAC, or had inadequate documentation in support of the selection and is unable to cure the failure to consider adequate documentation, the Contracting Authority may reject the recommendation of the Evaluation Committee, establish a new evaluation committee, and repeat the selection process.

**5.3.6** The Contracting Authority may waive minor errors that do not change the results of a selection.

### **5.4 Proposal Revision**

**5.4.1** If the Contracting Authority requests a clarification of any Proposal, the Proposer must submit the clarification in writing to the Contracting Authority by the date specified in the **Request for Proposal** but no later than the date scheduled for the Proposer's interview.

### **5.5 Proposal Withdrawal**

**5.5.1** If the Proposer that was recommended by the Evaluation Committee withdraws its proposal, the Contracting Authority may approve award of the Contract to the firm next determined to provide the best value.

### **5.6 Applicable Law and Forum**

**5.6.1** The rights of any Proposer or any party to a subsequent Contract shall be governed by Ohio law, and only Ohio courts shall have jurisdiction over any action or proceeding related to the Proposal or any subsequent Contract. The Proposer irrevocably consents to that jurisdiction.



## 5.7 Computing Time

**5.7.1** When the **Request for Proposal** refers to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday.

## 5.8 Public Records

**5.8.1** Pursuant to ORC Section 9.28, documents submitted to the Contracting Authority in response to this **Request for Proposal** will not be available for public inspection under ORC Section 149.43 until after the Contracting Authority either announces award of the Contract or cancels this **Request for Proposal**.

**5.8.2** The following information shall remain confidential and will not be released: **(1) Proposal Form(s)**, except for subtotals for cost categories which will be transferred to the **Best Value Rating Form**; **(2)** Surety letters showing bonding capacity, and **(3)** insurance certificate(s).

## ARTICLE 6 - DEFINITIONS

### 6.1 General

**6.1.1** Terms used but not otherwise defined in these **Instructions to Proposers** or in the **Request for Proposal** have the meanings assigned to them in **(1)** the State of Ohio Standard Requirements for Public Facility Construction using construction manager at risk project delivery system; and **(2)** ORC Sections 9.33 through 9.334, OAC Section 153:1-6-01, and related statutory and regulatory provisions.

### 6.2 Defined Terms

**6.2.1 Best Value Rating Form**. State of Ohio Standard Forms and Documents Document F170-03 as prepared for the Project. This form may be combined with the **Proposal Form** in a single Excel workbook.

**6.2.2 Evaluation Committee**. The Contracting Authority- and Owner-appointed committee convened to evaluate the Proposals.

**6.2.3 Project Manager**. The permanent employee of the Contracting Authority designated by the Contracting Authority to represent the Contracting Authority and to advise the Evaluation Committee on technical and pricing issues.

**6.2.4 Proposal**. The combined Technical Proposal and Pricing Proposal submitted by a Proposer in response to the **Request for Proposal**.

**6.2.5 Proposer**. A firm which **(1)** receives the **Request for Proposal** from the Contracting Authority and **(2)** submits a Proposal in compliance with these **Instructions to Proposers** and the **Request for Proposal**.

**6.2.6 Proposal Form**. State of Ohio Standard Requirements for Public Facility Construction Document 00 43 23 as prepared for the Project. This form may be combined with the **Best Value Rating Form** in a single Excel workbook.

**6.2.7 Request for Proposal**. State of Ohio Standard Requirements for Public Facility Construction Document 00 11 19 as prepared for the Project and issued to the Proposers.

**6.2.8 Responsive Proposal**. A valid and complete Proposal that meets all requirements of the **Request for Proposal**, and shall not be conditioned or qualified in any way, except to the extent permitted by the **Request for Proposal** and **Instructions to Proposers**.

**6.2.9 Schedule Enhancement**. A schedule adjustment that adds value to the Project.

**6.2.10 Selection Coordinator**. The employee of the Contracting Authority designated by the Contracting Authority to facilitate and manage the best value selection process.

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