# **18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

**554 BUREAU OF GENERAL SERVICES**

**Chapter 8: ALTERNATIVE PROJECT DELIVERY METHODS**

**Summary:** This chapter explains procedures the Bureau will follow in undertaking contracts using other than the traditional design-bid-build method for the construction of public improvements.

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**SECTION 1 – Purpose and Scope**

**Summary:** This section states the purpose and scope of the Bureau’s rule establishing procedures for undertaking contracts using other than the traditional design-bid-build method for the construction of public improvements.

The purpose of this Chapter is to implement the Director’s authority to establish procedures, in addition to those established by statute, for procuring and awarding contracts using alternative project delivery methods. This Chapter does not apply to the award of contracts for public improvements under the traditional design-bid-build method. The rules for public school construction using alternative project delivery methods are addressed separately.

STATUTORY AUTHORITY: 5 M.R.S.A. §1743

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**SECTION 2 – Definitions**

**Summary:** This section defines certain terms that are used in this Chapter but that are not defined in 5 M.R.S.A. §1741 or §1743.

**1. Incorporation by Reference**

The definitions that appear in 5 M.R.S.A. §§ 1741 and 1743 are incorporated in these rules.

**2. Definitions**

As used in this Chapter, unless the context otherwise indicates, the following terms have the following meanings:

A. **Alternative Delivery Method** or **Alternative Project Delivery Method** means any one of the following three methods of project delivery: design/build method; construction-manager-at-risk method; or construction-manager-advisor method.

B. **Bureau** means the Bureau of General Services, commonly referred to as BGS.

C. **Construction Manager Advisor**, commonly referred to as CMa, means a method of project delivery in which the Owner engages a single firm for a fee to advise and consult with the Owner as to design and construction, and may include consultation as to the selection of one or more design professionals to furnish the design when trade contracts for performance are held directly by the Owner. The firm is contractually bound to manage the schedule and budget to ensure adherence to both by the trade contractors.

D. **Construction Manager at Risk**, commonly referred to as CMR, means a method of project delivery in which the Owner engages a single firm for a fee to advise and consult with the Owner as to design and construction; the Owner separately engages one or more design professionals to furnish the design; and, in which the firm is responsible to the Owner for schedule and price. The firm engaged to act as construction manager at-risk may perform all or a portion of the work on the project at the Owner’s discretion.

E. **Design/Build**, commonly referred to as D/B, means a method of project delivery in which the Owner contracts directly with a single entity that is responsible to perform design, construction, related services, and serves as the “designer-of-record.”

F. **Director** means the Director of the Bureau of General Services or the Director’s designee.

G. **Fee or Fees** means the amount paid to a “Construction Manager-Advisor” or “Construction Manager at Risk” for providing professional services during the design phases of a project, prior to the signing of a formal “Construction Agreement” or a “Guaranteed Maximum Price Agreement” for the Work, exclusive of Reimbursable Expenses. The determination of the fee will be based on the estimated dollar value of the Work as shown in the RFQ and RFP.

H. **Firm** means an individual, corporation, partnership, limited liability company, or unincorporated association that applies to provide or is selected to provide services under an alternative delivery method.

I. **Guaranteed Maximum Price** means the guaranteed maximum amount the Construction Manager at Risk will bill the Owner for the cost of the Work as shown on the design drawings at that time, and includes allowances, defined assumptions and the Construction Manager’s Fee for services during the construction phase of the project subject to adjustments caused by Change Orders issued during the Construction Phase.

J. **Owner** means any department, office, board, commission, or agency of the State of Maine subject to 5 M.R.S.A. §1743 that proposes to enter into a contract for construction or renovation of a public improvement.

K. **Price Proposal** means a Request for Proposal where price or cost of the defined services is a consideration in the evaluation process.

L. **Project** means the total activities required for the planning, design, documenting, construction and related services until acceptance by the Owner.

M. **Reimbursable Expense** means a cost, not included in the Fee, incurred by a firm in providing professional or construction related services when providing services for an Alternative Delivery Project. The detailed definition of the division between “Fee” and “Reimbursable Expense” will be included in the actual contract for the services to be provided under the appropriate Alternative Delivery Method.

N. **Request for Proposal,** commonly referred to as RFP, means a detailed explanation of the specific requirements to be performed and the methods used to select the successful firm. It is the basis for final proposals and will become the basis of the contract for services under an Alternative Delivery Method.

O. **Request for Qualifications**, commonly referred to as RFQ, means an announcement, in the form of a newspaper advertisement, issued or approved by the Bureau of General Services for the purpose of identifying qualified firms, contractors or subcontractors that could be considered for providing services under any Alternative Delivery Method, will be the basis for the establishment of the Short List, and will include the general basis for the evaluation of the submittals.

P. **Short List** means a pool of 3 to 5 candidates who have submitted Qualification Statements and have been deemed by the Bureau to be the better qualified firms to provide the services defined in the RFQ.

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**SECTION 3 – Alternative Delivery System Review Panel**

**Summary**: 5 M.R.S.A. §1743 authorizes the Director to establish the Alternative Delivery System Review Panel to advise the Director in developing alternative project delivery policies, procedures, rules, and in selecting public improvement projects for construction under an alternative delivery method.

**1. Facilitation**

A. The Director shall appoint a Review Panel facilitator from BGS staff.

B. The facilitator shall coordinate the work and functions of the Review Panel; moderate at any meetings of the Review Panel; and act as the Review Panel’s liaison with the Director, communicating with the Director as necessary to implement the purposes of 5 M.R.S.A. §1743.

**2. Meetings**

A. The Review Panel shall meet when requested by the Director for advice or recommendation as to (i) developing alternative project delivery policies, procedures, and/or rules, or (ii) selecting public improvement projects for construction under an alternative delivery method

B. When requested to meet by the Director, the Review Panel may either convene at a single location or may communicate electronically or by other means to arrive at their recommendation.

C. At least four (4) members of the Review Panel, or their alternates, must participate in a meeting to review and make a recommendation as to a matter requested by the Director.

**3. Recommendation for Selection of Projects for Alternative Delivery**

A. When the Director has asked the Review Panel for a recommendation as to whether a public improvement project should be constructed under an alternative delivery method, the Bureau shall provide the Review Panel with sufficient information about the project to assist the Review Panel to make an informed recommendation based on the criteria specified in 5 M.R.S.A. §1743(4)(B).

B. When making a recommendation to the Director as to whether a project should be selected for construction under an alternative delivery method, the Review Panel shall apply the criteria specified in 5 M.R.S.A. §1743(4)(B) and make the recommendation in writing. The written recommendation must state (i) whether the project should be selected for alternative delivery method or should be awarded by conventional design-bid-build method; (ii) the reasons why the Review Panel recommends or declines to recommend the project for an alternative delivery method; and, (iii) if the Review Panel recommends the project for an alternative delivery method, the particular type of alternative delivery method and the reasons for the recommendation.

C. If any members of the Review Panel dissent from the recommendation of a majority of the Panel, the Panel’s written response to the Director must identify the nature of each differing recommendation, the identity of the Panel members favoring each such recommendation, and their reasons for supporting the differing recommendation.

D. The written recommendation of the Review Panel will be distributed by the facilitator to panel members for review within one business day of the meeting, with any responses due within 2 business days of that transmission, and then sent to the Director within 5 business days of the meeting.

E. The Director’s written decision will be sent to the applicant within 5 business days of receipt of the Review Panel’s recommendation.

**4. List of Members**

The Bureau shall prepare and maintain a list of all members including designated alternates of the Review Panel. The list shall specify the member’s category of membership in accordance with 5 M.R.S.A. §1743(4)(A)(1-4), the date of expiration of the member’s term, whether the member is a regular member or an alternate, and the member’s contact information.

STATUTORY AUTHORITY: 5 M.R.S.A. §1743

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**SECTION 4 –Request for Qualifications, RFQ**

**1. Approval Required**

A contract may be awarded for construction of a public improvement by an alternative delivery method only after the Director has received the recommendation of the Review Panel in accordance with this Chapter, and has issued written approval to proceed by the noted alternative delivery method.

**2. Issuance**

A. The Bureau shall initiate the process of solicitation of bids for contracts for alternative delivery projects by publishing an advertisement requesting qualifications of firms to provide the required services.

B. The Bureau will make copies of each RFQ form available to all firms on an equal basis.

**3. Contents**

The advertisement must contain sufficient information to summarize the project and evaluation criteria in order to attract qualified firms to respond.

**4. Format of Response**

All responses to an advertisement for a request for qualifications under this section must be made in a format approved and provided by the Bureau. Responding firms shall limit the information in their responses to the information requested by the advertisement.

**5. RFQ Selection Committee**

The RFQ selection committee shall be appointed by the Director and composed of a minimum of 3 members, one of which may be a representative of the Owner.

**6. Opening of Responses**

The Bureau may not open the responses to the advertisement at any time before the date and time specified in the advertisement for final submission of responses.

**7. Rejection of Response**

The Bureau may reject a response to the advertisement because the response was not filed by the date and time specified in the advertisement, otherwise failed to comply with the terms of the advertisement, or failed to comply with the requirements of any applicable statute or this section. Within a reasonable time after rejecting a response, the Bureau shall notify the firm in writing of the rejection.

**8. Evaluation Process**

A. The RFQ selection committee shall prepare evaluations based solely on the criteria set forth in the RFQ.

B. Prior to undertaking the evaluation of the responses, the committee shall develop a ranking system. This ranking system may consist of weighting different factors.

C. The committee shall specify in writing a rating for each qualifications.

D. In the event there are more than 5 qualifications statements that would initially qualify, the selection committee must reduce this number to not more than 5.

E. If fewer than 3 responses are received, or if the Committee determines that fewer than 3 firms are qualified for the project, the committee shall ask the Director to approve selection of fewer than 3 applicants for the short list. Upon receipt of such request, the Director shall either (i) approve the request, (ii) deny the request and direct that a new advertisement be published, or (iii) deny the request and terminate the process. The Director’s determination shall be based upon the purposes underlying 5 M.R.S.A. §1743 and this Chapter. The determination of the Director is final.

F. In making the required determinations, the Committee’s evaluation of each applicant must be based on the information contained in the applicant’s response to the request for qualifications and information provided by an applicant’s references.

**9.** **Decision and Notification**

Once the RFQ selection committee has completed the evaluation of the qualifications and rankings, it shall provide the Director with the rankings and the Director shall make the final decision as to the firms that will be invited to submit a Request for Proposal. The Bureau shall complete the qualification selection process by written notice to the firms selected to participate in submitting a RFP and to all other candidates, if any.

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**SECTION 5 – Request for Proposals, RFP**

**Summary**: 5 M.R.S.A. §1743(6)(B) requires the Bureau to notify the short-listed candidates of the evaluation criteria upon which they will be evaluated in their technical proposal and to invite them to submit a fee proposal.

**1. Issuance**

The Request for Proposals (RFP) is the second part of the 2-part procurement process, partially described under Request for Qualification (RFQ), for the D/B and CMR methods and the only procurement step for the CMa method. An Owner shall initiate the second part of the solicitation for contracts for alternative delivery projects by providing a copy of the RFP to all firms that are on the project short list. The RFP must comply with the provisions of this Section and must be reviewed and approved by the Bureau before the RFP is distributed. The Bureau shall review the RFP to ensure its compliance with any applicable statutory requirements and with this Chapter.

**2. Contents**

The RFP must contain information as directed by the Bureau to satisfy the evaluation criteria required in 5 M.R.S.A. §1743 and such other matters as may be determined by the Owner and the Director.

**3. Format of Response**

All responses to an advertisement for a request for proposals under this section must be made in a format approved by the Bureau and provided by the Owner. Responding firms shall limit the information in their responses to the information requested by the RFP.

**4. RFP Evaluation Committee**

The RFP evaluation committee, appointed by the Director, will evaluate the responses to the RFP in accordance with the requirements of 5 M.R.S.A. §1743. One member of this committee may be a representative of the Owner.

**5. Rejection of Response**

The Bureau may reject a response to the RFP because the response was not filed by the date and time specified, otherwise failed to comply with the terms of the request, or failed to comply with the requirements of any applicable statute or this section. Within a reasonable time after rejecting a response, the Bureau shall notify the firm in writing of the rejection.

**6. Additional Information**

After the responses have been received, the RFP evaluation committee will schedule a time for each firm submitting a response to make an oral presentation of their proposal.

**7. Evaluation Process**

A. The RFP evaluation committee shall prepare evaluations based on the criteria set forth in the RFP, on the oral presentation, and the responder’s references.

B. Prior to undertaking the evaluation of the responses and the oral presentations, the committee shall develop a ranking system. This ranking system may consist of weighting different factors.

C. The committee shall specify in writing a rating for each response.

D. The evaluation of the technical proposal shall be completed prior to opening the price proposal.

E. The determination of the successful firm shall be determined in accordance with the requirements of 5 M.R.S.A. §1743.

**8.** **Decision and Notification**

Once the evaluation process has been completed, the results of the evaluation will be submitted to the Director prior to any public announcement. The Bureau and Owner shall complete the evaluation process by written notice to the firm selected and to all other candidates, if any.

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