

UNIVERSITY POLICY FOR FINANCIAL AFFAIRS
Policy No. UPFA-9
Selection of Construction Management At-Risk Contractor

I. Purpose

West Virginia Code §5-22B-3 (2025) requires that prior to entering into a construction management at-risk (CMAR) contract, “the state and/or its subdivisions shall adopt policies for utilization of a construction management at-risk contract.” Accordingly, and for purposes of compliance with West Virginia law, this policy establishes procedures and guidelines for Marshall University’s utilization of CMAR contracts and selection of CMAR contractors.

II. Scope

This policy applies to public construction projects of Marshall University (“University”) that utilize the CMAR method and are subject to the Government Construction Management At-Risk Contracts Act, West Virginia Code §5-22B-1, *et seq.* (2025) (“the Act”).

III. Definitions

- **Construction Management At-Risk (CMAR):** A project delivery method where a construction manager is engaged and acts as a consultant to Marshall University during the design development phase when the state and/or its subdivisions designs the project, but assumes the risk for construction performance within a contracted price and is the builder during the construction phase of the project.
- The “Definitions” of terms as set forth within West Virginia Code §5-22B-2 (2025) are incorporated herein by reference.

IV. Policy Statement

Marshall University shall use a qualifications-based, competitive selection process to select a CMAR contractor. The process shall comply with West Virginia state procurement laws.

V. Contractor Selection Process

1. Authorization of Project. Before initiating a CMAR process, the project must be:

- (a) Approved by the University’s Board of Governors or its express designee; and
- (b) Included in University’s capital improvement plan and budget.

2. Establishment of Evaluation Committee. University shall appoint an Evaluation Committee for each CMAR project.

- (a) The Evaluation Committee shall consist of no fewer than three (3) members, but per W. Va. Code §5-22B-5(a), the Committee “shall not consist of enough members of a public body to constitute a quorum.”
- (b) Members of the Evaluation Committee shall be appointed at the discretion of University’s

Vice President of Operations.

(c) Membership of the Evaluation Committee may, but is not required to, include: individuals with knowledge of procurement and compliance with relevant law and policy; individuals with technical and administrative expertise; individuals employed in the department that will utilize the subject product or service; specialists in areas such as finance, database design or business; and other knowledgeable individuals from within the organization with special expertise valuable to the subject project.

(d) University may, but is not required to, permit the subject project's architectural or professional design firm, or other independent advisors, to provide guidance and advice to the Evaluation Committee as to subjects such as technical and pricing issues, but such design firm or advisor shall not participate as a voting member of the Committee.

VI. Establishment of Qualifications Criteria.

University shall establish Qualifications Criteria for each CMAR project, consistent with the scope and needs of the subject project, which shall include at a minimum:

(a) Competence to perform the required management services. Indicators of such competence to be considered shall include, but need not be limited to, the technical training, education and experience of the CMRA's personnel to be assigned to perform services on the subject project;

(b) Ability to manage the workload associated with the project including the availability of qualified personnel, equipment and facilities to perform the required management services expeditiously;

(c) Pertinent experience working on similar types of projects;

(d) Past performance as reflected by the evaluation of previous clients of the contractor, based on factors such as cost control, work quality, dispute resolution, administration of subcontractors and meeting deadlines;

(e) Financial responsibility including evidence of the capability to provide a letter of surety; and,

(f) Knowledge of the local area and working relationships with local subcontractors and suppliers.

VII. Procedures for Requests for Qualifications (RFQ).

(a) RFQ Contents. Following establishment of an Evaluation Committee and establishment of qualifications, University shall prepare a Request for Qualifications for the CMAR project. The RFQ must, at a minimum:

(1) State the scope of the project in sufficient detail to enable prospective construction managers to submit letters of interest;

(2) Be published as a Class II legal advertisement in compliance with the requirements of the Act; and

(3) Upon request, be sent by first-class mail to any requesting construction manager, evaluation criteria, timeline, and any required certifications.

(b) Prequalified Firms. As per W. Va. Code §5-22B-7:

(1) When University has received responses to the RFQ, the Evaluation Committee shall evaluate the responses based on the information submitted to University in response to the RFQ, and select no fewer than three firms that it considers most qualified to provide the required services; provided, that the Evaluation Committee shall select fewer than three firms when it determined, in writing, that fewer than three qualified construction managers at risk are available.

(2) The firms selected in the qualifications phase shall be referred to as the "prequalified firms" in the Request for Proposal phase.

(3) Prior to the submission of proposals, University may meet individually with each prequalified listed firm to permit University to clarify any ambiguities in the qualifications of the prequalified firm and allow the prequalified firm to ask questions regarding the proposal requirements.

VIII. Procedures for Requests for Proposals (RFP).

(a) Following identification of prequalified firms and the conclusion of the RFQ Phase outlined above, the RFP Phase shall begin. University shall prepare a RFP for CMAR contract proposals. The request for proposal shall consist of pricing criteria and performance criteria.

(1) Pricing criteria: University shall establish pricing criteria which shall contain (A) a Preconstruction Fee, (B) a Construction Fee, and (C) General Conditions.

(2) Performance criteria: University shall establish performance criteria which may include an evaluation of a firm's proposed:

(A) Schedule;

(B) Approach to the work, including any anticipated self-performed work;

(C) Work sequencing;

(D) Performance history;

(E) Approaches to performance specifications when used;

(F) Plan for anticipated procurement difficulties; and,

(G) Plan for additional considerations which may include technical design, technical approach, quality of proposed personnel, and management plan.

(b) Preparation for RFP. University shall prepare a RFP for each CMAR project. At least 30 days prior to the deadline for receiving and opening proposals, notice of the request shall be published as a Class II legal advertisement in compliance with the provisions of W. Va. Code §59-3-1 et seq., and sent by first-class mail to any construction manager upon request.

(c) Contents of RFP. The RFP shall contain, at a minimum, the following elements:

(1) The identity of the state and/or its subdivision for which the project will be built and the name of the state agency or subdivision that will execute the contract;

(2) The proposed terms and conditions of the CMAR contract, including any terms and conditions that are subject to further negotiation;

(A) 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 West Virginia.

(B) The proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor;

(3) Any bonds and insurance required by law or as may be additionally required by University;

(4) General information about the project which will assist University in its selection of the construction manager, including a project statement that contains information about the scope and nature of the project, the project site, and the project schedule;

(5) The criteria for evaluation of proposals;

(6) Estimated construction budget; and,

(7) A description of any other information University may require.

(d) Format of RFP. The format of the RFP shall comply with the specifications set forth within W. Va. Code §5-22B-9.

IX. Procedures for Evaluating Proposals.

(a) Pursuant to W. Va. Code §5-22B-11, University shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the Evaluation Committee.

(b) Determination of value. The Evaluation Committee shall interview each prequalified firm that submits a proposal and shall do so in accordance with the provisions of §5-22B-10(a).

(c) Evaluation Criteria. The Evaluation Committee shall evaluate each proposal on a points system, pursuant W. Va. Code §5-22B-12, with the maximum percentage of total points for evaluation which may be assigned to each criterion as set forth therein. The following criteria shall be evaluated, when applicable:

(1) The financial resources of the construction manager to complete the project, 10 percent;

(2) The ability of the proposed personnel of the construction manager to perform, 20 percent;

(3) The character, integrity, reputation, judgment, experience, and efficiency of the construction manager, 20 percent;

(4) The quality of performance on previous projects, 20 percent;

(5) The ability of the construction manager to perform within the time specified, 10 percent;

(6) The previous and existing compliance of the construction manager with laws relating to the contract, 10 percent; and

(7) Such other information as may be secured having a bearing on the selection, 10 percent.

(d) University shall rank the prequalified firms based on the final evaluation of each proposal to determine the best value.

(e) University shall announce the firm determined to be the best value and shall enter into negotiations with that firm for a CMAR contract.

X. Procedures for Negotiating.

(a) The University shall attempt to negotiate the CMRA contract with the highest ranked construction manager;

(b) The negotiations shall include a final determination of the manner in which the construction manager will select each subcontractor;

(c) If the negotiations are satisfactory, the University may execute the CMR contract with the highest ranked construction manager;

(d) If University is unable to negotiate a satisfactory contract with the highest ranked construction manager, University may terminate negotiations with said construction manager;

(e) If University terminates negotiations with the highest ranked construction manager, only then may it begin negotiations with the second highest ranked construction manager. If negotiations with the second highest ranked construction manager are satisfactory, University may execute a contract with said second highest ranked construction manager;

(f) If University is unable to negotiate a satisfactory contract with the second highest ranked construction manager, University may terminate negotiations with said construction manager;

(g) If University terminates negotiations with the second highest ranked construction manager, only then may it begin negotiations with the third highest ranked construction manager. If negotiations with the third highest ranked construction manager are satisfactory, University may execute a contract with said third highest ranked construction manager; and,

(h) If University is unable to negotiate a satisfactory contract with any of the prequalified and ranked construction managers, University may either revise the request for proposals and solicit new proposals or it may cancel the CMRA process.

XI. Procedure for Protests: University shall adhere to the following procedures for filing and acting on formal protests relating to the solicitation or execution of CMRA contracts.

(a) Protests and requests for reconsideration of a determination of successful bid for a CMAR project may only be made by a person and/or a vendor who is a potential or actual bidder on that particular project.

(b) Protests.

(1) Protests based on specifications or improprieties in any type of solicitation which are apparent or should have been apparent prior to the bid or proposal opening or closing date must be filed not later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following the notice of the University's intent to award the contract as posted or otherwise made available in the institution's Purchasing Office for competitive transactions greater than the statutory bid minimum. Protests filed prior to five calendar days following the notice of intent to award shall be resolved in accordance with this rule before an award is made. Information regarding awards may be obtained from the purchasing Officer, and a vendor contemplating a protest has a duty to obtain this information in a timely manner.

(2) The protest must be filed in writing with the Chief Procurement Officer and contain the name and address of the protestor, the requisition number of the bid or the purchase order number, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

(3) The Chief Procurement Officer shall review the protest and issue a decision in writing. In the event a hearing on the merits of the protest is requested by the protestor, the Chief Procurement Officer shall set a time and place for the hearing. The hearing shall be recorded, and an official record shall be prepared. Following the hearing, the Chief Procurement Officer shall issue a written decision.

(c) Reconsideration.

(1) Reconsideration of a decision on a protest by the Chief Procurement Officer may be requested by an aggrieved party to the Vice President of Operations. A request for reconsideration shall be made in writing within five calendar days after receiving the Chief Procurement Officer's written decision, and it shall contain the name and address of the aggrieved party, the requisition or purchase order number, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

(2) The Vice President of Operations shall review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, he or she shall set a time and place for the hearing. The hearing shall be recorded, and an official record shall be prepared. Following the hearing, he or she shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

(3) The Chief Procurement Officer and Vice President of Operations may refuse to decide any protest or reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the two.

XII. Supplemental Conditions

(a) Pursuant to W. Va. Code §5-22B-3(d), University may require supplemental conditions to a CMRA agreement. Any modifications to the agreement shall be communicated to all parties before the contract is executed; and,

(b) Pursuant to W. Va. Code §5-22B-13, a CMAR contract may be conditioned upon later refinements in scope and price and may permit University and construction manager to make changes in the project without invalidating the contract. Any such later refinements shall not exceed the scope of the project statement contained in the RFP.

XIII. Conflicts of Interest

All Evaluation Committee members and University personnel involved in the selection process must disclose any actual or potential conflicts of interest and recuse themselves when appropriate.

XIV. Transparency and Recordkeeping

All records maintained by University during the qualifications and proposal shall be considered public records for purposes of W. Va. Code §29B-1-1, *et seq.* Said records shall be available for inspection only after the University's announcement of the firm determined to be the best value pursuant to W. Va. Code §5-22B-10(d).

XV. Policy Review

This policy shall be reviewed at least one year in advance of the statutory sunset date applicable to the Government Construction Management At-Risk Contracts Act, or as required by changes in law

or University governance. As of the date of enactment of this Policy, said sunset date is July 1, 2030, per W. Va. Code §5-22B-19 (2025).

Approved by:

A handwritten signature in blue ink, appearing to read "H. Toney Stroud", is written over a horizontal line.

H. Toney Stroud
Chief Legal Officer

Date:

A handwritten date "6-10-25" in blue ink is written over a horizontal line.