

One-rdg. _____
P. Hrngs. _____
Pgs. 7
Filed: 06-23-20

Sponsored by: McGull

First Reading: _____

Second Reading: _____

COUNCIL BILL 2020 - 148

GENERAL ORDINANCE _____

AN ORDINANCE

1 AMENDING the Springfield City Code, Chapter 2, 'Administration,' Article VI,
2 'Finances,' Division 2, 'Purchasing,' Section 2-401, 'Purchasing Manual
3 adopted,' by adding Section 13-3.104(5)(C) for the purpose of allowing the
4 use of the "Construction Manager at Risk " contracting processes.
5
6

7 WHEREAS, the Construction Manager at Risk ("CMAR") bidding and contracting
8 process provides a unique relationship between Owner, Designer, General Contractor
9 and sub-contractors bringing together multiple disciplines early in the project to deliver
10 better overall value in particular construction projects; and
11

12 WHEREAS, use of this process was authorized by the State of Missouri in 2016
13 with the passage of 67.5050 RSMo.; and
14

15 WHEREAS, staff believe the ability to utilize this process will be of benefit as the
16 City embarks on several major development projects.
17

18 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
19 SPRINGFIELD, MISSOURI, as follows, that:
20

21 Section 1 – City Council hereby amends the Springfield City Code, Chapter 2,
22 'Administration,' Article VI, 'Finances,' Division 2, 'Purchasing,' Section 2-401,
23 'Purchasing Manual adopted,' by adding to Chapter 1, 'Legal Basis, Policies and
24 Organization of the Purchasing System,' 13-3.104 'Regulations Governing Competitive
25 Bidding,' section (5)(C), as set forth in "Exhibit A," attached hereto and incorporated
26 herein by reference.
27

28 Section 2 – Savings Clause. Nothing in this Ordinance shall be construed to
29 affect any suit or proceeding now pending in any court or any rights acquired or liability
30 incurred nor any cause or causes of action occurred or existing, under any act or
31 ordinance repealed hereby. Nor shall any right or remedy of any character be lost,
32 impaired, or affected by this Ordinance.
33

34 Section 3 – Severability Clause. If any section, subsection, sentence, clause or
35 phrase of this Ordinance is for any reason held to be invalid, such decision shall not

36 affect the validity of the remaining portions of this Ordinance. City Council hereby
37 declares that it would have adopted the Ordinance and each section, subsection,
38 sentence, clause or phrase thereof, irrespective of the fact that any one or more
39 sections, subsections, sentences, clauses, or phrases be declared invalid.

40
41 Section 4 – This Ordinance shall be in full force and effect from and after
42 passage.

43
44 Passed at meeting: _____

45
46 _____
47 Mayor

48
49 Attest: _____, City Clerk

50
51 Filed as Ordinance: _____

52
53
54 Approved as to form: , Assistant City Attorney

55
56 Approved for Council action: , City Manager
57

EXPLANATION TO COUNCIL BILL 2020-148

FILED: 06-23-20

ORIGINATING DEPARTMENT: Public Works

PURPOSE: Amending the Springfield City Code, Chapter 2, 'Administration,' Article VI, 'Finances,' Division 2, 'Purchasing,' Section 2-401, 'Purchasing Manual adopted,' by adding Section 13-3.104(5)(C) for the purpose of allowing the use of the "Construction Manager at Risk" contracting processes.

BACKGROUND INFORMATION: Construction Manager at Risk, ("CMAR"), is a project delivery method that fosters a more collaborative relationship among the architect/engineer, owner, and contractor during the design and construction of a capital improvement project. This method of project delivery has been used for many years in the private industry, but state statutes were only recently revised in 2016 allowing political subdivisions to utilize this method. This method offers some advantages over the Design-Bid-Build method that the City has traditionally employed. Some of the advantages include integrating input from a contractor on constructability and construction costs as well as the ability to begin portions of the construction early to compress the overall project schedule. Incorporating this method into the Purchasing Manual will give the City another tool in its toolbox that may be beneficial for larger and more complex projects. The revisions to the Purchasing Manual are consistent with the provisions in the state statutes (RSMo 67.5050).

Supports the following City Council Priorities:

- Fiscal Sustainability
- Economic Vitality

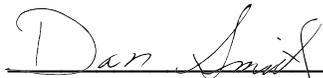
REMARKS: None

Submitted by:



Martin Gugel, Assistant Director of Public Works

Recommended by:



Dan Smith, Director of Public Works

Approved by:



Jason Gage, City Manager

Exhibit A

Language to be added is underlined. Language to be deleted is ~~stricken~~.

13-3.104 REGULATIONS GOVERNING COMPETITIVE BIDDING

5. Bidding Methods – Informal or formal bids exceeding \$5,000.00 may be made utilizing either of two methods:

(C) CONSTRUCTION MANAGER AT RISK (“CMAR”)

- 1) When appropriate for the project such as, but not limited to: civil works projects such as roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects commonly designed by professional engineers in excess of two million dollars total project cost; and noncivil works projects such as buildings, site improvements, and other structures, habitable or not, commonly designed by architects in excess of three million dollars total project cost and subject to the terms and conditions set forth herein, the City may use the process known as “Construction Manager At Risk”.

2) DEFINITIONS:

As used in this section, the following terms mean:

- a. “Construction manager”, the legal entity that proposes to enter into a construction management-at-risk contract under this section.
- b. “Construction manager-at-risk”, a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the construction, rehabilitation, alteration, or repair of a project at the contracted price as a general contractor and provides consultation to the City regarding construction during and after the design of the project.
- c. “Guaranteed Maximum Price” (GMP), shall mean the costs necessarily incurred by the Construction Manager for the proper performance of the Work and based on a defined scope of work. The GMP will typically include costs for preconstruction services, contractor’s fee including office expenses, overhead, and profit, construction costs including general conditions work, materials, subcontractors, supplies, owner’s contingency, and other costs necessary to deliver a specific project complete and accepted by the City. General conditions costs are generally defined as the those incurred by the contractor for their onsite

supervision, inspections, coordination, and managing of the work, as well as equipment, utilities, facilities, bonds, insurance, labor, etc. The GMP will typically not include professional design services.

- d. “Total Project Cost”, shall mean any and all costs necessary for the successful completion of the project. These may include but are not limited to expenses incurred for planning, design, land and easement acquisition, permitting, bidding, administration, construction, inspection, and other applicable costs which are essential to complete the project.
- 3) For each project for which CMAR is being used, the City Council shall disclose such at a regular meeting and announcing its selection criteria at least one week prior to the publication of the request for qualifications.
- 4) The City shall select, based upon the qualifications in 8.285 to 8.291 RSMo., a primary engineer or architect before or concurrent with the selection of the CMAR to prepare the construction documents for the project in compliance with all state laws and professional standards. The primary engineer or architect may not serve in any capacity as the CMAR but is not prohibited from providing customary construction administration services as part of their job duties and in accordance with applicable licensing laws.
- 5) Nothing herein shall be construed to prohibit the City from contracting with or engaging independent/third party inspection, testing and engineering services necessary for acceptance of the project.
- 6) Procedure: Projects utilizing the CMAR project delivery method shall be in two parts: selection of the CMAR, followed by engagement of contractors and sub-contractors. Both steps are to be publicly advertised and procured in accordance with state law, City Charter, and City code.

Publication for the request for qualifications or proposals shall be by publication in a newspaper of general circulation published in Greene County once a week for two consecutive weeks prior to opening the proposals or qualifications submissions or by a virtual notice procedure that notifies interested parties for at least twenty various purchases, design contracts, construction contracts, or other contracts each year for the City.

- a) Selection of CMAR. After, but at least one week following, the Council's announcement of its intent to use CMAR on a particular project, the City shall solicit a request for qualifications (RFQ). The RFQ at a minimum shall include general information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of qualifications, and other information that may assist the City in its selection of a CMAR.

The City shall state the selection criteria in the request for qualifications. The selection criteria may include the construction manager's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the CMAR. The Director of the Department, which is procuring the CMAR, shall promulgate such rules and regulations needed to identify selection criteria based upon the type of project. No fees or prices shall be included in the initial response.

- b) After review, the City may request that five or fewer construction managers, selected solely on the basis of qualifications, provide additional information as part of a request for proposals (RFP). RFP's at a minimum shall include a description of the scope of work, design guidelines, project goals, applicable deadlines, budget, selection criteria, time and place for receipt of proposals, and other information that may assist the City in its selection of a CMAR. CMAR's shall also include their proposed fee and price for fulfilling the general conditions.

Qualifications shall account for a minimum of forty percent of the evaluation. Cost shall account for a maximum of sixty percent of the evaluation.

- 7) For each step, the City shall receive, publicly open, and read aloud the names of the construction managers. Within forty-five days after the date of opening the proposals or qualification submissions, the City or its representative shall evaluate and rank each proposal or qualification submission submitted in relation to the criteria set forth in the request for proposals or request for qualifications. The City shall interview at least two of the top qualified offerors as part of the final selection.
- 8) City shall select the construction manager that submits the proposal that offers the best value for the City based on the published selection criteria and on its ranking evaluation.

The City or its representative shall first attempt to negotiate a contract with the selected construction manager. If the City or its representative is unable to negotiate a satisfactory contract with the selected construction manager, the City or its representative shall, formally and in writing, end negotiations with that construction manager and proceed to negotiate with the next construction manager in the order of the selection ranking until a contract is reached or negotiations with all ranked construction managers end.

- 9) After the City has entered into a contract with the CMAR, the City shall publicly advertise for bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A

construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its sealed bid or sealed proposal for those portions of the work in the same manner as all other trade contractors or subcontractors. The City shall have the authority to restrict the construction manager-at-risk from submitting bids to perform portions of the work. All sealed bids or proposals shall be submitted at the time and location as specified in the advertisement for bids or proposals and shall be publicly opened and the identity of each bidder and their bid amount shall be read aloud.

- 10) The construction manager-at-risk and the City shall review all trade contractor, subcontractor, or construction manager-at-risk bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or City involved with the project. If the construction manager-at-risk submitted bids or proposals, the City shall determine if the construction manager-at-risk's bid or proposal offers the best value for the City. After all proposals have been evaluated and clarified, the award of all subcontracts shall be made public.
- 11) If the construction manager-at-risk reviews, evaluates, and recommends to the City a bid or proposal from a trade contractor or subcontractor but the City requires another bid or proposal to be accepted, the City shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the City's requirement that another bid or proposal be accepted.
- 12) If a selected trade contractor or subcontractor materially defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may itself, with approval of the City, and without further advertising, fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.
- 13) The penal sums of the performance and payment bonds delivered to the City shall each be in an amount equal to the fixed contract amount or guaranteed maximum price. The construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the fixed contract amount or guaranteed maximum price is established.